

Tab 1	SB 102 by Book; (Identical to H 00103) Recovery Residences					
Tab 2	SB 128 by Bean; (Similar to H 00179) Child Abuse					
758260	A	S	RCS	CF, Bean	Delete L.24:	02/19 02:17 PM
169400	A	S	RCS	CF, Bean	btw L.47 - 48:	02/19 02:17 PM
Tab 3	SB 318 by Montford; (Compare to H 00601) Child Abuse, Abandonment, and Neglect					
193838	D	S	RCS	CF, Montford	Delete everything after	02/20 01:33 PM
Tab 4	SB 452 by Gibson; (Identical to H 00583) Elder Protection					
229654	D	S	RCS	CF, Gibson	Delete everything after	02/19 02:17 PM
Tab 5	SB 454 by Gibson; (Identical to H 00585) Public Records and Public Meetings/Elder Abuse Fatality Review Team					
802868	A	S	RCS	CF, Gibson	Delete L.21:	02/19 02:17 PM
709012	A	S	RCS	CF, Gibson	Delete L.71:	02/19 02:17 PM
Tab 6	SB 528 by Rouson; (Compare to H 00369) Mental Health and Substance Use Disorders					
257928	A	S	RCS	CF, Rouson	Delete L.234 - 243:	02/19 02:17 PM
Tab 7	SPB 7048 by CF; Disclosure of Confidential Records					
897740	A	S	FAV	CF, Book	Delete L.103 - 111:	02/19 02:17 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Book, Chair

Senator Mayfield, Vice Chair

MEETING DATE: Tuesday, February 19, 2019

TIME: 12:30—2:00 p.m.

PLACE: 301 Senate Building

MEMBERS: Senator Book, Chair; Senator Mayfield, Vice Chair; Senators Bean, Harrell, Rader, Torres, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 102 Book (Identical H 103)	Recovery Residences; Requiring that recovery residences obtain certification by a specified date or before commencing operation; creating a criminal penalty for a person who operates a recovery residence without a certificate of compliance; requiring that recovery residence administrators be certified by a specified date or before beginning employment, etc. CF 02/19/2019 Favorable HP JU RC	Favorable Yeas 6 Nays 0
2	SB 128 Bean (Similar H 179)	Child Abuse; Expanding the list of incidents or injuries that constitute harm to a child's health or welfare to include incidents or injuries resulting from violations of child restraint and seatbelt requirements; requiring the central abuse hotline to accept certain reports or calls for investigation for children who do not live in this state; expanding the types of reports that the Department of Health must refer to Child Protection Teams, etc. CF 02/19/2019 Fav/CS CJ IS AP	Fav/CS Yeas 6 Nays 0
3	SB 318 Montford (Compare H 601)	Child Abuse, Abandonment, and Neglect; Specifying that instructional personnel, school administrators, and educational support employees who follow certain policies when reporting or providing information related to child abuse, abandonment, or neglect are reporters; providing that any information that would identify a reporter in cases of child abuse, abandonment, or neglect may be released only under certain circumstances, etc. CF 02/11/2019 Temporarily Postponed CF 02/19/2019 Fav/CS ED RC	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, February 19, 2019, 12:30—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 452 Gibson (Identical H 583, Compare H 585, Linked S 454)	Elder Protection; Requiring that elder abuse fatality review teams be granted access to certain records; authorizing the establishment of elder abuse fatality review teams in each judicial circuit and housing the review teams, for administrative purposes only, in the Department of Elderly Affairs; assigning responsibility for paying the administrative costs of review team operations to the team members or the entities they represent, etc. CF 02/19/2019 Fav/CS JU GO AP	Fav/CS Yeas 6 Nays 0
5	SB 454 Gibson (Identical H 585, Compare H 583, Linked S 452)	Public Records and Public Meetings/Elder Abuse Fatality Review Team; Specifying that information obtained by an elder abuse fatality review team which is exempt or confidential and exempt from public records requirements retains its protected status; providing an exemption from public records requirements for identifying information of an elder abuse victim in records created by a review team; providing for future legislative review and repeal; providing statements of public necessity, etc. CF 02/19/2019 Fav/CS GO AP	Fav/CS Yeas 6 Nays 0
6	SB 528 Rouson (Compare H 369, S 900)	Mental Health and Substance Use Disorders; Defining the term "peer specialist"; requiring a specific level of screening for peer specialists working in mental health programs and facilities; authorizing a person to seek certification as a peer specialist if he or she meets specified qualifications; requiring the Department of Children and Families to develop a training program for peer specialists and to give preference to trainers who are certified peer specialists; requiring recovery residences to comply with specified Florida Fire Prevention Code provisions, etc. CF 02/19/2019 Fav/CS AHS AP	Fav/CS Yeas 6 Nays 0

Consideration of proposed bill:

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, February 19, 2019, 12:30—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SPB 7048	Disclosure of Confidential Records; Requiring service providers to disclose information from a clinical record under certain circumstances relating to threats to cause seriously bodily injury or death; requiring, rather than authorizing, psychiatrists to disclose certain patient communications for purposes of notifying potential victims and law enforcement agencies of certain threats; requiring, rather than authorizing, psychologists to disclose certain patient and client communications for purposes of notifying potential victims and law enforcement agencies of certain threats; providing psychologists with immunity from specified liability and actions under certain circumstances, etc.	Submitted and Reported Favorably as Committee Bill Yeas 6 Nays 0
(Preliminary Draft Available - final draft will be made available at least 48 hours prior to the meeting)			

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 102

INTRODUCER: Senator Book

SUBJECT: Recovery Residences

DATE: February 18, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Favorable
2.			HP	
3.			JU	
4.			RC	

I. Summary:

SB 102 requires that all recovery residences operating throughout the state obtain certification through a credentialing entity approved by the Department of Children and Families (“DCF” or the Department). Currently, certification of recovery residences in Florida is voluntary. The bill would mandate that all recovery residences obtain certification by April 1, 2020, if currently operating and uncertified, and upon the date of opening for all residences that open on or after October 1, 2019. The bill also requires that each recovery residence employ a certified recovery residence administrator within the same timeframes. The bill provides that operating a recovery residence without a current and unsuspended certificate of compliance is punishable as a first-degree misdemeanor.

The bill has an indeterminate fiscal impact and has an effective date of October 1, 2019.

II. Present Situation:

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.¹ Substance use disorder occurs when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.² Repeated drug use leads to changes in the brain’s structure and function that can make a person more susceptible to developing a substance use

¹ World Health Organization. *Substance Abuse*, available at http://www.who.int/topics/substance_abuse/en/ (last visited on February 13, 2019).

² Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, available at <http://www.samhsa.gov/disorders/substance-use> (last visited on February 13, 2019).

disorder.³ Brain imaging studies of persons with substance use disorder show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁴

Substance Abuse Treatment in Florida

DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services.

DCF provides treatment for substance abuse through a community-based provider system that serves adolescents and adults affected by substance misuse, abuse or dependence.⁵ DCF regulates substance abuse treatment by licensing individual treatment components under chapter 397, F.S., and chapter 65D-30, F.A.C.

The 2017 Legislature passed and the Governor approved HB 807, which made several changes to DCF's licensure program for substance abuse treatment providers in chapter 397, F.S.⁶ HB 807 revised the licensure application requirements and process and required applicants to provide detailed information about the clinical services they provide.

Recovery Residences

Recovery residences function under the premise that individuals benefit in their recovery by residing in an alcohol and drug-free environment. Recovery residences are designed to be financially self-sustaining through rent and fees paid by residents, and there is no limit on the length of stay for those who abide by the rules.

Section 397.311, F.S., defines a recovery residence as a residential dwelling unit, or other form of group housing, 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. A 2009 Connecticut study notes the following: "Sober houses do not provide treatment, [they are] just a place where people in similar circumstances can support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation."⁷

³ National Institute on Drug Abuse, *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 on February 13, 2019).

⁴ *Id.*

⁵ Department of Children and Families, *Treatment for Substance Abuse*, <http://www.myflfamilies.com/service-programs/substance-abuse/treatment-and-detoxification>, (last visited on February 13, 2019).

⁶ Ch. 2017-173, L.O.F.

⁷ *Id.*

Federal Fair Housing Act and Americans with Disabilities Act

The Federal Fair Housing Act of 1988 (FFHA)⁸ prohibits discrimination on the basis of a handicap in all types of housing transactions. The FFHA defines a “handicap” to mean mental or physical impairments that substantially limit one or more major life activities. The term “mental or physical impairment” may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The FFHA also protects persons who have a record of such impairment or are regarded as having such impairment. Persons who are currently using controlled substances illegally, persons convicted of illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FFHA.⁹

The Florida Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available.¹⁰ Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.¹¹

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of persons with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).¹² In its opinion in the *Olmstead* case, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective, community-based services. This decision interpreted Title II of the ADA and its implementing regulation, which requires states to administer their services, programs, and activities “in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities.”

The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.¹³ In addition, in the *United States of America v. City of Boca Raton*, the court held that the city’s ordinance excluding substance abuse treatment facilities from residential areas violates the FFHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.¹⁴

Based on this protected class status held by individuals in substance abuse recovery, federal courts have held that mandatory conditions placed on housing for people in recovery from either state or sub-state entities, such as ordinances, licenses, or conditional use permits, are overbroad

⁸ 42 U.S.C. 3601 *et seq.*

⁹ U.S. Department of Justice, *The Fair Housing Act*, available at http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited on February 13, 2019).

¹⁰ S. 760.23(7)(b), F.S.

¹¹ S. 760.23(9)(b), F.S.

¹² *Olmstead v. L.C.*, 527 U.S. 581, (1999).

¹³ U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?*, available at http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited on February 13, 2019).

¹⁴ *United States of America vs. City of Boca Raton* 1008 WL 686689 (S.D.Fla.2008).

in application and result in violations of the FFHA and ADA.¹⁵ Additionally, federal courts have invalidated regulations that require registry of housing for protected classes, including recovery residences.¹⁶

The FFHA and ADA require state and local governments to make reasonable accommodations necessary to allow a person with a qualifying disability equal opportunity to use and enjoy a dwelling.¹⁷ The governmental entity bears the burden of proving through objective evidence that a regulation serves to protect the health and safety of the community and is not based upon stereotypes or unsubstantiated inferences.¹⁸ Generally, a local government applying a zoning ordinance to sober homes must advance a legitimate governmental interest, and that the requirements of the ordinance are the least restrictive way to advance that interest.¹⁹

In November 2016, the U.S. Department of Housing and Urban Development and the U.S. Department of Justice issued joint guidance on application of the FFHA as it relates to group homes, including recovery residences.²⁰ The joint guidance essentially states that a city can deny a group home if it “would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality’s zoning scheme”²¹ (too many group homes in one neighborhood, for example, might be a consideration). Licensing and other group home requirements may be permissible. If so, however, they “must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities.”²² Action can be taken based on criminal activity, providing actions “are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities.”²³

Voluntary Certification of Recovery Residences in Florida

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.

¹⁵ Department of Children and Families, *Recovery Residence Report*, Oct. 1, 2013, available at <http://www.dcf.state.fl.us/programs/samh/docs/SoberHomesPR/DCFProvisoRpt-SoberHomes.pdf> (last visited on February 13, 2019). See, e.g., *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007); *Oxford House, Inc.*, 819 F. Supp. 1179; *Marbrunak v. City of Stow, OH.*, 947 F.2d 43 (6th Cir. 1992); *United States v. City of Baltimore, MD*, 845 F. Supp. 2d. 640 (D. Md. 2012).

¹⁶ *Recovery Residence Report*, supra note 15. See, e.g., *Nevada Fair Housing Center, Inc., v. Clark County, et. al.*, 565 F. Supp. 2d 1178 (D. Nev. 2008); See, *Human Resource Research and Management Group*, 687 F. Supp. 2d 237 (E.D.N.Y. 2010); *Community Housing Trust et. al., v. Dep’t of Consumer and Regulatory Affairs et. al.*, 257 F. Supp. 2d 208 (D.C. Cir. 2003); *City of Edmonds v. Oxford House et. al.*, 574 U.S. 725 (1995).

¹⁷ *Recovery Residence Report*, supra, note 15. 42 U.S.C. § 3604(f)(3)(B); 42 U.S.C. § 12131, et. seq., 28 C.F.R. § 35.130(b)(7).

¹⁸ *Oconomowoc Residential Programs, Inc., v. City of Milwaukee*, 300 F. 3d 775 (7th Cir. 2002); *Oxford House- Evergreen*, 769 F. Supp. 1329.

¹⁹ *Human Resource Research and Management Group, Inc. et al. v. County of Suffolk*, 687 F. Supp. 2d 237 (E.D.N.Y. 2010).

²⁰ *Joint Statement of the Department of Housing and Urban Development and the Department of Justice: State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*, November 7, 2016, available at <https://www.justice.gov/crt/page/file/909956/download>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

While certification is voluntary, Florida law incentivizes certification. Since July 1, 2016, Florida has prohibited licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence is certified and is actively managed by a certified recovery residence administrator.²⁴ Referrals by licensed service providers to uncertified recovery residences are limited to those licensed service providers under contract with a managing entity as defined in s. 394.9082, F.S.; referrals by a recovery residence to a licensed service provider when the recovery residence or its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral; and referrals before July 1, 2018 by a licensed service provider to that licensed service provider's wholly owned subsidiary.²⁵

DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.²⁶ As of February 13, 2019, there were 404 certified recovery residences in Florida.²⁷ The total number of available beds at these residences was 5,786: 2,915 available beds at these residences were men's beds, 1,493 were women's, and 1,378 were unisex.²⁸ As of January 2019, 25 counties in Florida contained at least one certified recovery residence.²⁹

III. Effect of Proposed Changes:

Section 1 requires that all recovery residences in operation throughout the state before October 1, 2019, obtain certification no later than April 1, 2020, and that all established on or after October 1, 2019, obtain certification before commencing operation.

The bill requires all recovery residences to submit a policy and procedures manual containing, among other items, a prohibition against the possession or use of alcohol and illegal drugs on the premises of a residence, and a prohibition against the use of prescription medication for anyone who does not have a proper prescription, to the credentialing entity.

The bill requires a recovery residence to retain a certified recovery residence administrator within 30 days after the termination, resignation, or removal of a then current certified administrator.

The bill specifies that no one may operate a recovery residence as certified unless it has a current and unsuspended certification or is not yet required by statute to obtain certification, and that doing so is punishable as a first-degree misdemeanor.

Section 2 requires that all recovery residence administrators employed throughout the state before October 1, 2019, obtain certification no later than April 1, 2020, and that all hired on or after October 1, 2019, obtain certification before beginning employment.

²⁴ S. 397.4873(1), F.S.

²⁵ S. 397.4873(2), F.S.

²⁶ S. 397.4872, F.S.

²⁷ Florida Association of Recovery Residences, *Certified Residences*, <http://www.dcf.state.fl.us/programs/samh/docs/FARR%20Certified%20Recovery%20Residences.pdf> (last visited February 13, 2019).

²⁸ *Id.*

²⁹ *Id.*

Section 3 provides an effective date of October 1, 2019.

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:

It is possible that mandatory certification could result in a challenge under the FFHA or ADA given the presently unclear state of federal law on the issue.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will likely be an indeterminate impact on currently uncertified recovery residences in obtaining certification.

C. Government Sector Impact:

DCF may be impacted through any changes needed to make the recovery residence certification program mandatory, however it is unclear how significant this impact would be as the Department has already established credentialing entities.

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 Changes:

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

None.

B. Amendments:

None.

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

By Senator Book

32-00184B-19

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A bill to be entitled

An act relating to recovery residences; amending s. 397.487, F.S.; removing an obsolete date; requiring that recovery residences obtain certification by a specified date or before commencing operation; creating a criminal penalty for a person who operates a recovery residence without a certificate of compliance; amending s. 397.4871, F.S.; removing an obsolete date; requiring that recovery residence administrators be certified by a specified date or before beginning employment; providing an effective date.

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

Section 1. Section 397.487, Florida Statutes, is amended to read:

397.487 ~~Voluntary~~ Certification of recovery residences.—

(1) The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(2) The department shall approve at least one credentialing entity ~~by December 1, 2015,~~ for the purpose of developing and

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

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administering a ~~voluntary~~ certification program for recovery residences. Recovery residences in operation before October 1, 2019, must obtain certification no later than April 1, 2020. Recovery residences established on or after October 1, 2019, must obtain certification before commencing operation. The approved credentialing entity shall:

(a) Establish recovery residence certification requirements.

(b) Establish procedures to:

1. Administer the application, certification, recertification, and disciplinary processes.

2. Monitor and inspect a recovery residence and its staff to ensure compliance with certification requirements.

3. Interview and evaluate residents, employees, and volunteer staff on their knowledge and application of certification requirements.

(c) Provide training for owners, managers, and staff.

(d) Develop a code of ethics.

(e) Establish application, inspection, and annual certification renewal fees. The application fee may not exceed \$100. Any onsite inspection fee shall reflect actual costs for inspections. The annual certification renewal fee may not exceed \$100.

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(a) A policy and procedures manual containing:

1. Job descriptions for all staff positions.

2. Drug-testing procedures and requirements.

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3. A prohibition ~~on the premises~~ against the possession or use of alcohol and, illegal drugs on the premises, and against the use of prescribed medications by an individual other than the individual for whom the medication is prescribed.

4. Policies to support a resident's recovery efforts.

5. A good neighbor policy to address neighborhood concerns and complaints.

(b) Rules for residents.

(c) Copies of all forms provided to residents.

(d) Intake procedures.

(e) A sexual predator and sexual offender registry compliance policy.

(f) A relapse policy.

(g) A fee schedule.

(h) A refund policy.

(i) Eviction procedures and policy.

(j) A code of ethics.

(k) Proof of insurance.

(l) Proof of background screening.

(m) Proof of satisfactory fire, safety, and health inspections.

(4) A certified recovery residence must be actively managed by a certified recovery residence administrator. All applications for certification must include the name of the certified recovery residence administrator who will be actively managing the applicant recovery residence.

(5) Upon receiving a complete application, a credentialing entity shall conduct an onsite inspection of the recovery residence.

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(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

(7) A credentialing entity shall issue a certificate of compliance upon approval of the recovery residence's application and inspection. The certification ~~shall~~ automatically expires ~~terminate~~ 1 year after issuance if not renewed.

(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.

(a) A credentialing entity may suspend or revoke a certification if 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 specified time period ~~specified~~.

(b) A certified recovery residence must notify the credentialing entity within 3 business days after the removal of

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the recovery residence's certified recovery residence administrator due to termination, resignation, or any other reason. The recovery residence ~~must has 30 days to~~ retain a certified recovery residence administrator within 30 days after such termination, resignation, or removal. The credentialing entity shall revoke the certificate of compliance of a certified ~~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.

(9) A person may not operate a recovery residence or advertise to the public, ~~in any way or by any medium whatsoever,~~ any recovery residence as a "certified recovery residence" unless such recovery residence has ~~first secured~~ a current and unsuspended certificate of compliance under this section or the recovery residence is authorized to operate without a certificate of compliance under subsection (2). A person who violates this subsection commits a misdemeanor of the first

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degree, punishable as provided in s. 775.082 or s. 775.083.

(10) (a) A certified recovery residence may allow a minor child to visit a parent who is a resident of the recovery residence. ~~However, provided that~~ a minor child may not visit or remain in the recovery residence between the hours of 9 p.m. and 7 a.m. unless:

1. A court makes a specific finding that such visitation is in the best interest of the minor child; or

2. The recovery residence is a specialized residence for pregnant women or parents whose children reside with them. Such recovery residences may allow children to visit or reside in the residence if the parent does not yet have a time-sharing plan pursuant to s. 61.13, provided that the parent files with the court for establishment of a plan within 14 days of moving into the residence.

(b) A certified recovery residence may not allow a minor child to visit a parent who is a resident of the recovery residence at any time if any resident of the recovery residence is currently required to register as a sexual predator under s. 775.21 or as a sexual offender under s. 943.0435.

Section 2. Subsections (1) and (2) of section 397.4871, Florida Statutes, are amended to read:

397.4871 Recovery residence administrator certification.—

(1) It is the intent of the Legislature that a recovery residence administrator ~~voluntarily~~ earn and maintain certification from a credentialing entity approved by the Department of Children and Families. The Legislature further intends that certification ensure that an administrator has the competencies necessary to appropriately respond to the needs of

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residents, to maintain residence standards, and to meet residence certification requirements.

(2) The department shall approve at least one credentialing entity ~~by December 1, 2015,~~ for the purpose of developing and administering a ~~voluntary~~ credentialing program for administrators. Recovery residence administrators employed by a recovery residence before October 1, 2019, must obtain certification no later than April 1, 2020. Recovery residence administrators hired on or after October 1, 2019, must obtain certification before beginning employment at a recovery residence. The department shall approve any credentialing entity that the department endorses pursuant to s. 397.321(15) if the credentialing entity also meets the requirements of this section. The approved credentialing entity shall:

(a) Establish recovery residence administrator core competencies, certification requirements, testing instruments, and recertification requirements.

(b) Establish a process to administer the certification application, award, and maintenance processes.

(c) Develop and administer:

1. A code of ethics and disciplinary process.

2. Biennial continuing education requirements and annual certification renewal requirements.

3. An education provider program to approve training entities that are qualified to provide precertification training to applicants and continuing education opportunities to certified persons.

Section 3. This act shall take effect October 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/2019

Meeting Date

102

Bill Number (if applicable)

Topic Recovery Residences

Name Lauren Jackson

Amendment Barcode (if applicable)

Job Title Lobbyist

Address 205 S. Adams St.

Street

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FL

32301

City

State

Zip

Email lauren@erichsconsultant.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing City of Plantation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb 19, 19
Meeting Date

102
Bill Number (if applicable)

Topic Recovery Residence

Amendment Barcode (if applicable)

Name Candice Erickson

Job Title Consultant

Address 205 S. Adams St.

Phone 954-648-1204

Street

Tallahassee FL 32301

City

State

Zip

Email Candice@ericksonconsulting.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Coral Springs

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/19

Meeting Date

102

Bill Number (if applicable)

Topic Certified Recovery Resident Administration

Amendment Barcode (if applicable)

Name Neal McGarry

Job Title CEO

Address 1715 S. Gadsden St

Phone 850-222-6314

Street

Tall
City

FL
State

32301
Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Certification Board

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/19
Meeting Date

102
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Legislative Advocate

Address Po Box 1757

Phone _____

Street

Tallahassee FL

City State

32302

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/19

Meeting Date

SB 102

Bill Number (if applicable)

Topic Recovery Residences

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor

Address 115 S. Andrews Ave
Street

Phone 954.789.9293

Ft. Lauderdale FL 33301
City State Zip

Email dewest@broward.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 102
Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____

Topic Recovery Residences

Name MARK FONTAINE

Job Title DIRECTOR

Address 2868 Mahan Drive
Street
Tallahassee FL 32308
City State Zip

Phone 850 - 878 - 2196

Email mfontaine@adaa.org

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA Alcohol + Drug Abuse Assoc

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/2019

Meeting Date

102

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S.
Street

Phone 727/897-9291

St Petersburg
City

FL
State

33705
Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 102
FINAL ACTION: Favorable
MEETING DATE: Tuesday, February 19, 2019
TIME: 12:30—2:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

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 128

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Bean

SUBJECT: Child Abuse

DATE: February 20, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.			CJ	
3.			IS	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 128 makes a number of changes to current law relating to child abuse, abandonment and neglect. Specifically, the bill:

- Adds a violation of child safety restraints or seat belt usage laws that results in the death or injury of a child that requires treatment at a hospital emergency department or trauma center to the definition of the term “harm” if substantiated by a licensed physician’s opinion that the violation exacerbated the child’s injuries or resulted in the child’s death.
- Provides an exception to a call to the central abuse hotline when the alleged perpetrator and the child who is the alleged victim live out of state. The call is only accepted by the hotline if the child is currently being evaluated in a medical facility in Florida.
- Adds cases involving a child who does not live in this state who is currently being evaluated in a medical facility in this state and a child who was not properly restrained in a motor vehicle and the improper restraint exacerbated the child’s injuries or resulted in the child’s death to cases that must be referred by the Department of Children and Families (DCF or department) to child protection teams of the Department of Health (DOH) for an assessment and other appropriate available support services.
- Requires the department to initiate an investigation when a report is received from an emergency room physician.

II. Present Situation:

Definition of Harm

The definition of the term “harm” currently includes “inadequate supervision” which means a parent/caregiver leaving a child without adult supervision or arrangement appropriate for the age of the child or the child’s maturity, developmental level or mental or physical condition, so that the child is unable to care for his or her own needs or is unable to exercise sufficient judgment in responding to a physical or emotional crisis.¹

Examples of inadequate supervision include a parent or legal guardian who is a driver or passenger in a motor vehicle and who fails to ensure his or her child is properly safeguarded in a legally required child restraint device or seat belt and the child has died or has suffered serious injuries requiring treatment at an emergency department or trauma center at a hospital.²

If the intake alleges failure of a parent or legal guardian to use a child restraint device an assessment should include:

- Was the child transported to the hospital by EMS or other first responders due to the injuries sustained as a result of the accident?
- What statements did the child provide to first responders, the emergency department/trauma center physician/staff, or law enforcement when questioned about being placed in a child restraint seat or having used a seat belt while being transported in the vehicle?
- What is the parent or legal guardian’s explanation for a child restraint device not being used at the time of the accident (child unbelted strap to pick up toy, another child/youth passenger reached over and undid buckle, etc.)?
- Do statements from the emergency department/trauma center physician or medical records reflect the child suffered injuries that clearly indicate use of a child restraint device (bruising or abrasions from strap(s), internal visceral injuries, etc.)?
- Do statements from the attending emergency department/trauma center physician or medical records reflect the child suffered serious injuries that clearly indicate non-use of a child restraint device (severe head trauma caused by being thrown or ejected from the vehicle, etc.)?
- Does the police report document an injured child was not properly safeguarded in a legally approved child restraint device (car seat or seat belt)? Required restraints by type of device and child’s age may be found on the Florida Department Highway Safety and Motor Vehicle website.
- What was the location of the alleged child victim when first responders appeared on scene (in the vehicle or ejected from the vehicle)?
- Attempt to obtain medical opinion on whether the severity of the vehicular accident (head-on collision at high speed, etc.) would have likely resulted in serious injury or death despite the use of a legally required child restraint device.

¹ Section 39.01(35)(a)3., F.S.

² Department of Children and Families, CFOP 170-4, available at: <http://www.dcf.state.fl.us/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-04,%20Child%20Maltreatment%20Index.pdf> (Last visited February 11, 2019).

- Does the parent have a history of traffic citations for failure to use a restraint device (ticketed for self or passengers)?
- When the parent or legal guardian reports the injured child was originally placed in a child restraint device but disconnected the device themselves during transit is/was the child physically capable of disconnecting the device on their own?
- Does the parent or legal guardian report that this was a first time incident or does/did the child have a pattern of disconnecting the device? If a pattern, how did the parent attempt to control this behavior? What other collateral sources can validate this pattern?³

Department of Children and Families – Administrative Rule

Currently, administrative rule provides that complaints concerning infants or children in automobiles who are not in legally required child restraint devices do not constitute reports of abuse, neglect or abandonment unless one or more of the following circumstances are present:

- The parent or legal guardian was charged with driving under the influence of drugs or alcohol.
- The parent or legal guardian received a traffic citation(s) for reckless driving.
- A child was seriously injured or killed during an accident.⁴

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that works with local Sheriff's offices and the department in cases of child abuse and neglect to supplement investigation activities.⁵ Current law governs CPTs, and requires the Children's Medical Services Program (CMS) in DOH to develop, maintain, and coordinate the services of the CPTs in each of the service districts of the DCF. Child protection team medical directors are responsible for oversight of the teams.⁶

- Specifically, CPTs help assess risk and protective factors, and provide recommendations for interventions that protect children.⁷ Child abuse, abandonment, and neglect reports to the DCF central abuse hotline that must be referred to child protection teams include cases involving:
 - Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
 - Bruises anywhere on a child 5 years of age or younger.
 - Any report alleging sexual abuse of a child.
 - Any sexually transmitted disease in a prepubescent child.
 - Reported malnutrition or failure of a child to thrive.
 - Reported medical neglect of a child.

³ *Id.*

⁴ 65C-29.002(6)(e), F.A.C.

⁵ Children's Medical Services, Child Protection Teams, (Aug. 30, 2012) available at: http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html .(last visited February 14, 2019).

⁶ Section 39.303, F.S.

⁷ Children's Medical Services, Child Protection Team Brochure, available at http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/documents/child_protection_brochure.pdf . (last visited February 14, 2019).

- A sibling or other child remaining in a home where one or more children have been - pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.⁸

Child Safety Restraints

Currently, any individual operating a motor vehicle while transporting a child on a roadway, street, or highway is required to provide for protection of the child by properly using a crash-tested, federally approved child restraint device, if the child is 5 years of age or younger:

- For children aged through 3 years, such restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.
- For children aged 4 through 5 years, a separate carrier, an integrated child seat, or a child booster seat 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:
 - 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.⁹

Safety Belt Usage

Current law provides that it is unlawful for any person to operate a motor vehicle or an autocycle¹⁰ 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 pursuant to s. 316.613, if applicable.¹¹

III. Effect of Proposed Changes:

Section 1 amends s. 39.01, F.S., to add a violation of s. 316.613 or s. 316.614, F.S., that results in the death or injury of a child that requires treatment at a hospital emergency department or trauma center to the definition of the term "harm" if substantiated by a licensed physician's opinion that the violation exacerbated the child's injuries or resulted in the child's death. Section 316.613, F.S., is related to child safety restraints in a motor vehicles and s. 316.614, F.S., is related to safety belt usage.

⁸ Section 39.303, F.S.

⁹ Section 316.613, F.S.

¹⁰ Section 316.003, F.S. An autocycle is 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.

¹¹ Section 318.614, F.S.

Section 2 amends s. 39.201, F.S., to provide an exception to a call to the central abuse hotline when the alleged perpetrator and the child who is the alleged victim live out of state. The call is only accepted by the hotline if the child is currently being evaluated in a medical facility in Florida. The section also requires the department to initiate an investigation when a report is received from an emergency room physician.

Section 3 amends s. 39.303, F.S. to add cases involving a child who does not live in this state who is currently being evaluated in a medical facility in this state and a child who was not properly restrained in a motor vehicle pursuant to s. 316.613 or s. 316.614, F.S., and the improper restraint exacerbated the child's injuries or resulted in the child's death to cases that must be referred by the department to child protection teams of the Department of Health for an assessment and other appropriate available support services.

Section 4 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It is estimated that there may be a need for one additional child protective investigator due to an increase in child protective investigations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

No analysis from the Department of Children and Families, the Department of Health or the Office of the State Courts Administrator was received to provide additional information on the impact of the bill.

VIII. Statutes Affected:

This bill amends ss. 39.01, 39.201, and 39.303 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 February 19, 2019:

- Clarifies that only those children that require treatment at a hospital emergency department or trauma center are added to the definition of the term “harm.”
- Requires the department to initiate an investigation when a report is received from an emergency room physician.

B. Amendments:

None.



758260

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2019	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 24
and insert:
death of a child or the injury of a child which requires
treatment at a hospital emergency department or a trauma center,
if substantiated by a licensed



169400

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with directory and title amendments)

Between lines 47 and 48
insert:

(1) The department shall initiate an investigation when a
report from an emergency room physician is received.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete line 28



169400

and insert:

39.201, Florida Statutes, is amended, and paragraph (1) is added to that subsection, to read:

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

And the title is amended as follows:

Delete line 10

and insert:

in this state; requiring the Department of Children and Families to initiate an investigation when a report is received from an emergency room physician; amending s. 39.303, F.S.; expanding the

By Senator Bean

4-00078B-19

2019128__

A bill to be entitled

An act relating to child abuse; amending s. 39.01, F.S.; expanding the list of incidents or injuries that constitute harm to a child's health or welfare to include incidents or injuries resulting from violations of child restraint and seatbelt requirements; amending s. 39.201, F.S.; requiring the central abuse hotline to accept certain reports or calls for investigation for children who do not live in this state; amending s. 39.303, F.S.; expanding the types of reports that the Department of Health must refer to Child Protection Teams; providing an effective date.

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

Section 1. Paragraph (m) is added to subsection (35) of section 39.01, Florida Statutes, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(35) "Harm" to a child's health or welfare can occur when any person:

(m) Violates s. 316.613 or s. 316.614 resulting in the death or injury of a child, if substantiated by a licensed physician's opinion that the violation exacerbated the child's injuries or resulted in the child's death.

Section 2. Paragraph (d) of subsection (2) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or

Page 1 of 3

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

4-00078B-19

2019128__

neglect; mandatory reports of death; central abuse hotline.—

(2)

(d) If the report is of an instance of known or suspected child abuse, abandonment, or neglect ~~which has~~ occurred out of state and the alleged perpetrator and the child alleged to be a victim live out of state, the central abuse hotline ~~may shall~~ not accept the report or call for investigation unless the child is currently being evaluated in a medical facility in this state.

1. If the child is currently being evaluated in a medical facility in this state, the central abuse hotline shall accept the report or call for investigation and transfer the information on the report or call to the appropriate state or country.

2. If the child is not currently being evaluated in a medical facility in this state, the central abuse hotline, but shall transfer the information on the report or call to the appropriate state or country.

Section 3. Paragraphs (i) and (j) are added to subsection (4) of section 39.303, Florida Statutes, to read:

39.303 Child Protection Teams and sexual abuse treatment programs; services; eligible cases.—

(4) The child abuse, abandonment, and neglect reports that must be referred by the department to Child Protection Teams of the Department of Health for an assessment and other appropriate available support services as set forth in subsection (3) must include cases involving:

(i) A child who does not live in this state who is currently being evaluated in a medical facility in this state.

Page 2 of 3

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

4-00078B-19

2019128__

59 (j) A child who was not properly restrained in a motor
60 vehicle pursuant to s. 316.613 or s. 316.614 and the improper
61 restraint exacerbated the child's injuries or resulted in the
62 child's death.

63 Section 4. This act shall take effect July 1, 2019.

THE FLORIDA SENATE
APPEARANCE RECORD

2/19/19

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

128

Bill Number (if applicable)

Topic CHILD ABUSE

Name LOUIS ST. PETERY

Job Title PEDIATRIC CARDIOLOGIST

Address 1132 LEE AVE.
Street

Phone 850-294-4309

TALLAHASSEE FL 32303
City State Zip

Email LSTPETERY@GMAIL.COM

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA CHAPTER AAP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/19

Meeting Date

128

Bill Number (if applicable)

Topic Child Abuse

Name Lisa Henning

Job Title Legislative Director

Address 242 Office Plaza Dr

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-766-8808

Email Foplegislative@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FDP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/15/19

Meeting Date

128

Bill Number (if applicable)

Topic

Child Abuse

Name

VICTORIA ZEP

Amendment Barcode (if applicable)

Job Title

Chief Officer of Research & Policy

Address

11 E. College Ave

Street

Phone

851/241-6309

City

State

Zip

33301

Email

VICTORIA@fichildren.org

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

FL Coalition for Children

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard

This form is part of the...

THE FLORIDA SENATE
APPEARANCE RECORD

2/19/2019*Meeting Date*

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

128*Bill Number (if applicable)*Topic Child Abuse*Amendment Barcode (if applicable)*Name Brian Jogerst

Job Title _____

Address PO Box 11094Phone 850.222.0191*Street*TallahasseeFL32302Email brian@bhandassociates.com*City**State**Zip*Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Wolfson Children's HospitalAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

301 5-12:30

THE FLORIDA SENATE

APPEARANCE RECORD

2/19/19

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

128

Bill Number (if applicable)

Topic Child Abuse

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Exec. Director

Address 2544 Blairstone Pines Dr

Street

Phone 878-3056

Tallahassee

City

FL

State

32301

Zip

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/19

Meeting Date

SB 128

Bill Number (if applicable)

Topic Child Abuse

Amendment Barcode (if applicable)

Name Mary-Lynn Cullen

Job Title Legislative Liaison

Address 1674 University Pkwy.

Street

Sarasota

City

Fl.

State

34243

Zip

Phone 941-928-0278

Email aichildren@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Advocacy Institute For Children

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/2019

Meeting Date

128

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 128
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, February 19, 2019
TIME: 12:30—2:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

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 318

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Montford

SUBJECT: Child Abuse, Abandonment, and Neglect

DATE: February 20, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.			ED	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 318 amends the laws relating to child abuse, neglect and abandonment reporting and confidentiality of records. Specifically the bill expands the public records exemption for certain reporters of child abuse to school personnel who contribute information to a child abuse investigation.

The bill has no fiscal impact and has an effective date of July 1, 2019.

II. Present Situation:

Reporting of Child Abuse, Abandonment and Neglect

Current law requires that any individual who knows, or who has reasonable cause to suspect, that a child is being abused, abandoned or neglected by a caregiver to report that knowledge to the department's central abuse hotline. Any known or suspected child abuse by a non-caregiver and sexual abuse of a child is also required to be reported. Reporters in a number of occupational categories are required to provide their names to the hotline, including a:

- Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
- Health or mental health professional other than one listed above;
- Practitioner who relies solely on spiritual means for healing;
- School teacher or other school official or personnel;

- Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker;
- Law enforcement officer; or
- Judge.

Confidentiality of Records

Section 39.202, F.S., currently provides that the names of reporters of known or suspected child abuse, abandonment or neglect to the central abuse hotline shall be entered into the record of the report, but shall be held confidential and exempt from disclosure. There are currently no provisions in statute for protecting the identifying information of any individual who has made a report to the central abuse hotline or is identified in an investigation.

Nonetheless, the Department of Children and Families' (DCF or department) operating procedures contain additional protections for ensuring confidentiality. In addition to redaction of the reporter's name from released records, any summary information released from the record shall be in narrative form and shall "not include the name or other identifying information with respect to any person identified in any investigation." To further prevent inadvertent disclosure of confidential information, the procedure also prohibits the department from attaching "any investigation record documents" to the narrative summary.¹

III. Effect of Proposed Changes:

Section 1 amends s. 39.202, F.S., to prevent the disclosure of the names of any school instructional personnel as defined in s. 1012.01(2), F.S., school administrator as defined in s. 1012.01(3)(c), F.S., and educational support employee as defined in s. 1012(6)(a), F.S., who has contributed information to a child abuse investigation. Shielding the identity of these employees will prevent retaliation from the parents of the abused child. Such retaliation could inhibit employees from contributing important information to a child abuse investigation. The bill does not prohibit a subpoena of such information in a criminal case. This exemption from the public records law will expire on October 2, 2024 unless reenacted by the Legislature.

Section 2 provides legislative intent that the exemption to the public records law is a public necessity. The bill further explains that without such an exemption, school personnel can experience harassment or harm from the family of the child that is subject to a child abuse investigation.

Section 3 provides an effective date of July 1, 2019.

¹Department of Children and Families Operating Procedure, CFOP 15-12, "Procedures For Releasing Selected Information Pertaining To A Report Of Abuse, Neglect, Exploitation Or Abandonment Of A Child Or Adult," available at: <http://www.dcf.state.fl.us/admin/publications/cfops/CFOP%2015-xx%20Documentation%20Management/CFOP%2015-12,%20Procedures%20for%20Releasing%20Selected%20Information%20Pertaining%20to%20a%20Report%20of%20Abuse,%20Neglect,%20Exploitation%20or%20Abandonment%20of%20a%20Child%20or%20Adult.pdf> (Last visited February 13, 2019).

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill amends s. 39.202 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 February 19, 2019:**

- The CS removes language that would define school personnel providing information to a child abuse investigation as a reporter.
- The CS removes language that would protect the identify of all reporters of child abuse.
- The CS exempts the identity of school personnel who provide information to a child abuse investigation from the public records law.
- The CS repeals the new exemption from the public records law on October 2, 2024 unless reenacted by the Legislature.
- The CS provides a statement of public necessity for the exemption.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (2) and (5) of section 39.202,
Florida Statutes, are amended to read:

39.202 Confidentiality of reports and records in cases of
child abuse or neglect.—

(2) Except as provided in subsection (4), access to such
records, excluding the name of the reporter and the names of



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11 instructional personnel as defined in s. 1012.01(2), school
12 administrators as defined in s. 1012.01(3)(c), and educational
13 support employees as described in s. 1012.01(6)(a) who have
14 provided information during a protective investigation which
15 shall be released only as provided in subsection (5), shall be
16 granted only to the following persons, officials, and agencies:

17 (a) Employees, authorized agents, or contract providers of
18 the department, the Department of Health, the Agency for Persons
19 with Disabilities, the Office of Early Learning, or county
20 agencies responsible for carrying out:

- 21 1. Child or adult protective investigations;
- 22 2. Ongoing child or adult protective services;
- 23 3. Early intervention and prevention services;
- 24 4. Healthy Start services;
- 25 5. Licensure or approval of adoptive homes, foster homes,
26 child care facilities, facilities licensed under chapter 393,
27 family day care homes, providers who receive school readiness
28 funding under part VI of chapter 1002, or other homes used to
29 provide for the care and welfare of children;
- 30 6. Employment screening for caregivers in residential group
31 homes; or
- 32 7. Services for victims of domestic violence when provided
33 by certified domestic violence centers working at the
34 department's request as case consultants or with shared clients.

35
36 Also, employees or agents of the Department of Juvenile Justice
37 responsible for the provision of services to children, pursuant
38 to chapters 984 and 985.

39 (b) Criminal justice agencies of appropriate jurisdiction.



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(c) The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred.

(d) The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings. This access must ~~shall~~ be made available no later than 60 days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt by law may ~~shall~~ not be released pursuant to this paragraph.

(e) Any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. This access must ~~shall~~ be made available no later than 60 days after the department receives the initial report of abuse, abandonment, or neglect and, when the alleged perpetrator is not a parent, must ~~shall~~ be limited to information involving the protective investigation only and may ~~shall~~ not include any information relating to subsequent dependency proceedings. However, any information otherwise made confidential or exempt by law may ~~shall~~ not be released pursuant to this paragraph.

(f) A court upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access must ~~shall~~ be limited to inspection in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.

(g) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.



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(h) Any appropriate official of the department or the Agency for Persons with Disabilities who is responsible for:

1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when carrying out his or her official function;

2. Taking appropriate administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or

3. Employing and continuing employment of personnel of the department or the agency.

(i) Any person authorized by the department who is engaged in the use of such records or information for bona fide research, statistical, or audit purposes. Such individual or entity shall enter into a privacy and security agreement with the department and shall comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such records or information shall be treated as confidential by the researcher and may ~~shall~~ not be released in any form.

(j) The Division of Administrative Hearings for purposes of any administrative challenge.

(k) Any appropriate official of an ~~a Florida~~ advocacy council in this state investigating a report of known or suspected child abuse, abandonment, or neglect; the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or



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examinations pursuant to law; or the guardian ad litem for the child.

(l) Employees or agents of an agency of another state that has comparable jurisdiction to the jurisdiction described in paragraph (a).

(m) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to s. 447.207. Records may be released only after deletion of all information which specifically identifies persons other than the employee.

(n) Employees or agents of the Department of Revenue responsible for child support enforcement activities.

(o) Any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect may ~~shall~~ not be released. Any information otherwise made confidential or exempt by law may ~~shall~~ not be released pursuant to this paragraph.

(p) An employee of the local school district who is designated as a liaison between the school district and the department pursuant to an interagency agreement required under s. 39.0016 and the principal of a public school, private school, or charter school where the child is a student. Information contained in the records which the liaison or the principal determines are necessary for a school employee to effectively provide a student with educational services may be released to that employee.

(q) An employee or agent of the Department of Education who is responsible for the investigation or prosecution of



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misconduct by a certified educator.

(r) Staff of a children's advocacy center that is established and operated under s. 39.3035.

(s) A physician licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a mental health professional licensed under chapter 491 engaged in the care or treatment of the child.

(t) Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed residential group home described in s. 39.523, an approved relative or nonrelative with whom a child is placed pursuant to s. 39.402, preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.

(5)(a) The name of any person reporting child abuse, abandonment, or neglect may not be released to any person other than employees of the department responsible for child protective services, the central abuse hotline, law enforcement, the child protection team, or the appropriate state attorney, without the written consent of the person reporting. This does not prohibit the subpoenaing of a person reporting child abuse, abandonment, or neglect when deemed necessary by the court, the state attorney, or the department, provided the fact that such person made the report is not disclosed. Any person who reports a case of child abuse or neglect may, at the time he or she makes the report, request that the department notify him or her that a child protective investigation occurred as a result of



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the report. Any person specifically listed in s. 39.201(1) who makes a report in his or her official capacity may also request a written summary of the outcome of the investigation. The department must ~~shall~~ mail such a notice to the reporter within 10 days after completing the child protective investigation.

(b) The names of instructional personnel as defined in s. 1012.01(2), school administrators as defined in s. 1012.01(3)(c), and educational support employees as described in s. 1012.01(6)(a) who provide information during a protective investigation may not be released to any person other than employees of the department responsible for child protective services, the central abuse hotline, law enforcement, the child protection team, or the appropriate state attorney without the written consent of such personnel. This does not prohibit the subpoenaing of a person contributing information to an investigation of child abuse, abandonment, or neglect when deemed necessary by the court, the state attorney, or the department. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that information that is exempt or confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution remain exempt or confidential for instructional personnel as defined in s. 1012.01(2), school administrators as defined in s. 1012.01(3)(c), and educational support employees as described in s. 1012.01(6)(a) who have provided information during a



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protective investigation. Otherwise, sensitive personal
information concerning school employees would be disclosed, and
such employees may experience harassment or harm from family,
fictive kin, or friends of the alleged victim of child abuse.
Such harassment may inhibit such employees from providing
important information to a child abuse investigation. The harm
that would result from the release of such information
substantially outweighs any public benefit that would be
achieved by disclosure.

Section 3. This act shall take effect July 1, 2019.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to child abuse, abandonment, and
neglect; amending s. 39.202, F.S.; prohibiting the
Department of Children and Families from releasing the
names of school personnel who have provided
information during a protective investigation except
under certain circumstances; providing for future
legislative review and repeal of the exemption;
conforming provisions to changes made by the act;
providing a statement of public necessity; ; providing
an effective date.

By Senator Montford

3-00582-19

2019318__

A bill to be entitled

An act relating to child abuse, abandonment, and neglect; amending s. 39.201, F.S.; specifying that instructional personnel, school administrators, and educational support employees who follow certain policies when reporting or providing information related to child abuse, abandonment, or neglect are reporters; amending s. 39.202, F.S.; providing that any information that would identify a reporter in cases of child abuse, abandonment, or neglect may be released only under certain circumstances; providing that any information contained in reports or records relating to child abuse, abandonment, or neglect which would identify specified persons may be released only to specified individuals and entities; providing an effective date.

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

Section 1. Present paragraphs (e) through (h) of subsection (1) of section 39.201, Florida Statutes, are redesignated as paragraphs (f) through (i), respectively, and a new paragraph (e) is added to that subsection, to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(1)

(e) Any instructional personnel as defined in s. 1012.01(2), school administrator as defined in s. 1012.01(3)(c), or educational support employee as defined in s. 1012.01(6)(a)

Page 1 of 7

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

3-00582-19

2019318__

who has followed a school-level or districtwide policy in reporting or providing information related to child abuse, abandonment, or neglect is a reporter for the purposes of s. 39.202.

Section 2. Subsections (2) and (5) of section 39.202, Florida Statutes, are amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter and any information that would identify the reporter, which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, or county agencies responsible for carrying out:

1. Child or adult protective investigations;
2. Ongoing child or adult protective services;
3. Early intervention and prevention services;
4. Healthy Start services;

5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, family day care homes, providers who receive school readiness funding under part VI of chapter 1002, or other homes used to provide for the care and welfare of children;

6. Employment screening for caregivers in residential group homes; or

7. Services for victims of domestic violence when provided

Page 2 of 7

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3-00582-19

2019318__

by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

(b) Criminal justice agencies of appropriate jurisdiction.

(c) The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred.

(d) The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings. This access shall be made available no later than 60 days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt by law may ~~shall~~ not be released pursuant to this paragraph.

(e) Any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. This access must ~~shall~~ be made available no later than 60 days after the department receives the initial report of abuse, abandonment, or neglect and, when the alleged perpetrator is not a parent, must ~~shall~~ be limited to information involving the protective investigation only and may not ~~shall not~~ include any information relating to subsequent dependency proceedings. However, any information otherwise made confidential or exempt by law may not ~~shall not~~ be released pursuant to this paragraph.

(f) A court upon its finding that access to such records may be necessary for the determination of an issue before the

Page 3 of 7

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

3-00582-19

2019318__

court; however, such access must ~~shall~~ be limited to inspection in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.

(g) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.

(h) Any appropriate official of the department or the Agency for Persons with Disabilities who is responsible for:

1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when carrying out his or her official function;

2. Taking appropriate administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or

3. Employing and continuing employment of personnel of the department or the agency.

(i) Any person authorized by the department who is engaged in the use of such records or information for bona fide research, statistical, or audit purposes. Such individual or entity shall enter into a privacy and security agreement with the department and shall comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such records or information shall be treated as confidential by the researcher and may ~~shall~~ not be released in any form.

Page 4 of 7

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

3-00582-19

2019318__

117 (j) The Division of Administrative Hearings for purposes of
118 any administrative challenge.

119 (k) Any appropriate official of a Florida advocacy council
120 investigating a report of known or suspected child abuse,
121 abandonment, or neglect; the Auditor General or the Office of
122 Program Policy Analysis and Government Accountability for the
123 purpose of conducting audits or examinations pursuant to law; or
124 the guardian ad litem for the child.

125 (l) Employees or agents of an agency of another state which
126 ~~that~~ has comparable jurisdiction to the jurisdiction described
127 in paragraph (a).

128 (m) The Public Employees Relations Commission for the sole
129 purpose of obtaining evidence for appeals filed pursuant to s.
130 447.207. Records may be released only after deletion of all
131 information that ~~which~~ specifically identifies persons other
132 than the employee.

133 (n) Employees or agents of the Department of Revenue
134 responsible for child support enforcement activities.

135 (o) Any person in the event of the death of a child
136 determined to be a result of abuse, abandonment, or neglect.
137 Information identifying the person reporting abuse, abandonment,
138 or neglect may ~~shall~~ not be released. Any information otherwise
139 made confidential or exempt by law may ~~shall~~ not be released
140 pursuant to this paragraph.

141 (p) An employee of the local school district who is
142 designated as a liaison between the school district and the
143 department pursuant to an interagency agreement required under
144 s. 39.0016 and the principal of a public school, private school,
145 or charter school where the child is a student. Information

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3-00582-19

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146 contained in the records which the liaison or the principal
147 determines are necessary for a school employee to effectively
148 provide a student with educational services may be released to
149 that employee.

150 (q) An employee or agent of the Department of Education who
151 is responsible for the investigation or prosecution of
152 misconduct by a certified educator.

153 (r) Staff of a children's advocacy center that is
154 established and operated under s. 39.3035.

155 (s) A physician licensed under chapter 458 or chapter 459,
156 a psychologist licensed under chapter 490, or a mental health
157 professional licensed under chapter 491 engaged in the care or
158 treatment of the child.

159 (t) Persons with whom the department is seeking to place
160 the child or to whom placement has been granted, including
161 foster parents for whom an approved home study has been
162 conducted, the designee of a licensed residential group home
163 described in s. 39.523, an approved relative or nonrelative with
164 whom a child is placed pursuant to s. 39.402, preadoptive
165 parents for whom a favorable preliminary adoptive home study has
166 been conducted, adoptive parents, or an adoption entity acting
167 on behalf of preadoptive or adoptive parents.

168 (5) Any information contained in reports or records
169 relating to child abuse, abandonment, or neglect which would
170 identify ~~The name of~~ any person reporting child abuse,
171 abandonment, or neglect may not be released to any person other
172 than employees of the department responsible for child
173 protective services, the central abuse hotline, law enforcement,
174 the child protection team, or the appropriate state attorney,

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3-00582-19

2019318

175 without the written consent of the person reporting. This does
176 not prohibit the subpoenaing of a person reporting child abuse,
177 abandonment, or neglect when deemed necessary by the court, the
178 state attorney, or the department, provided the fact that such
179 person made the report is not disclosed. Any person who reports
180 a case of child abuse or neglect may, at the time he or she
181 makes the report, request that the department notify him or her
182 that a child protective investigation occurred as a result of
183 the report. Any person specifically listed in s. 39.201(1) who
184 makes a report in his or her official capacity may also request
185 a written summary of the outcome of the investigation. The
186 department shall mail such a notice to the reporter within 10
187 days after completing the child protective investigation.

188 Section 3. This act shall take effect July 1, 2019.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

7/15/19
Meeting Date

318
~~158~~

Bill Number (if applicable)

Topic Child Abuse

Name VICTORIA ZEPP

Amendment Barcode (if applicable)

Job Title Chief Policy & Research Officer

Address 411 E. College Ave.
Street

Phone 857/561-1102

City

State

32301
Zip

Email

VICTORIA@FLCHILDREN.ORG

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Coalition for Children

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19

Meeting Date

318

Bill Number (if applicable)

Topic Child Abuse, Abandonment and Neglect

Amendment Barcode (if applicable)

Name Katia Saint-Fleur

Job Title Contract Lobbyist

Address 401 SW 81st Ave

Street

Phone 4-451 8922

P. Pines

City

FL

State

33025

Zip

Email Katia@Kstamclass.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/2019
Meeting Date

318
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S

Street

Phone 727/897-9291

St Petersburg
City

FL
State

33705
Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 318
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, February 19, 2019
TIME: 12:30—2:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

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 452

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Gibson

SUBJECT: Elder Protection

DATE: February 20, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Fav/CS
2.			JU	
3.			GO	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 452 authorizes the establishment of elder abuse fatality review teams on a voluntary basis in each judicial circuit to review fatal incidents of elder abuse, and make policy and other recommendations to help prevent future incidents of elder abuse-related fatalities. The review teams are assigned to the Department of Elder Affairs (DOEA) for administrative purposes only. The DOEA must submit a report, annually by November 1, that summarizes the findings and recommendations of the review teams to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

The bill may have an insignificant fiscal impact and has an effective date of July 1, 2019.

II. Present Situation:

The Adult Protective Services Act, chapter 415, Florida Statutes, charges the Department of Children and Families (DCF), to investigate reports of abuse or exploitation of a vulnerable adult or elderly person. The mandatory reporting requirement of persons who are required to investigate reports of abuse, neglect, or exploitation also extends to alleged deaths due to abuse or neglect.

The Florida Abuse Hotline, administered by the DCF, screens allegations of adult abuse and neglect to determine whether the information meets the criteria of an abuse report. If the criteria

are met, a protective investigation is initiated to confirm whether there is evidence that abuse has occurred; whether that is an immediate or long-term risk to the victim; and whether the victim needs additional services to safeguard his or her well-being.¹

Section 415.1034, F.S., enumerates persons that have an immediate, mandatory requirement to report to the central abuse hotline if they know, have suspicion, or have reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited. Additionally, any person required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect, or exploitation shall immediately report the suspicion to the appropriate medical examiner, the appropriate criminal justice agency and to the DCF, notwithstanding the existence of a death certificate signed by a practicing physician.²

The DCF is required, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, to begin within 24 hours a protective investigation of the matter.³ For each report it receives, the DCF shall perform an onsite investigation to determine, among other things, if the person meets the definition of a vulnerable adult and, if so, if the person is in need of services; whether there is an indication that the vulnerable adult was abused, neglected, or exploited; and if protective, treatment, and ameliorative services are necessary to safeguard and ensure the vulnerable adult's well-being.⁴

Section 415.1102, F.S., authorizes the DCF to develop, maintain, and coordinate the services of one or more multidisciplinary adult protection teams in each of its regions. A "multidisciplinary adult protection team" is defined as a team of two or more persons trained in the prevention, identification, and treatment of abuse of elderly persons.⁵ The multidisciplinary teams may be composed of, but are not limited to, psychiatrists, psychologists, or other trained counseling personnel; law enforcement officers; medical personnel with experience or training to provide health services; social workers who have experience or training in the prevention of abuse of the elderly or dependent persons; and public and professional guardians.⁶ The multidisciplinary team is convened to supplement the protective services activities of the Adult Protective Services program of the DCF.⁷

Section 415.107(3), F.S., enumerates persons and entities that may have access to records concerning reports of abuse, neglect, or exploitation of a vulnerable adult, including reports made to the central abuse hotline, otherwise held confidential and exempt from s. 119.07(1), F.S. The identity of any person reporting abuse, neglect, or exploitation of a vulnerable person shall not be released to these persons and entities.

¹Florida Department of Children and Families; Protecting Vulnerable Adults, *available at*:

<http://www.myflfamilies.com/service-programs/adult-protective-services/protecting-vulnerable-adults> (last visited Feb. 13, 2019).

² Section 415.1034(2), F.S.

³ Section 415.104(1), F.S.

⁴ Section 415.104(2), F.S.

⁵ Section 415.1102(1), F.S.

⁶ Section 415.1102(2), F.S.

⁷ Section 415.1102(3), F.S.

III. Effect of Proposed Changes:

Section 1 creates s. 415.1103, F.S., to authorize the creation of an elder abuse fatality review team on a voluntary basis in each judicial circuit⁸ to review fatal or near-fatal incidents of abuse, neglect, or violence against the elderly. The state attorney in each judicial circuit may initiate a review team. Each review team is composed of volunteers from numerous state and local agencies as well as community partners.⁹ Each volunteer serves without compensation for a two-year term. Each team will determine the number of cases it will review and must limit its review to closed cases in which an elderly person's death is verified by the state attorney to have been caused by abuse or neglect in order to avoid interference with an ongoing criminal investigation or prosecution.

The elder abuse fatality team's review may include an assessment of events leading up to the incident, available community resources, actions taken by systems and individuals related to the incident, and any other information deemed relevant to the team. The review team is directed to make policy and other recommendations, which include system improvements and necessary resources, training, or other information to prevent future incidents of elder abuse deaths. Each team is required to submit its findings and recommendations to the DOEA annually by September 1. By November 1 each year, the DOEA shall prepare a summary report of the information provided by the review teams, and submit the report to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

The bill exempts a member of a review team in the performance of his or her duties as a review team member from monetary liability. Additionally, all information and records acquired by an elder abuse fatality review team are not subject to discovery or introduction into evidence in any civil or criminal action. The elder abuse fatality review teams are assigned to the Department of Elder Affairs for administrative purposes only.

Section 2 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁸ There are currently 20 judicial circuits in Florida.

⁹ The bill provides for membership to include, but not be limited to, the following or their representatives: law enforcement agencies; the state attorney; the medical examiner; a county court judge; adult protective services; area agency on aging; the State Long-Term Care Ombudsman program; the Agency for Health Care Administration; the Office of the Attorney General; the Office of State Court Administrator; the clerk of the court; a victim services program; an elder law attorney; emergency services personnel; a certified domestic violence center; an advocacy organization for victims of sexual violence; a funeral home director; a forensic pathologist; a geriatrician; a geriatric nurse; a geriatric psychiatrist or other individual licensed to offer behavioral health services; a hospital discharge planner; a public guardian; and other persons with relevant expertise who are recommended by the review team.

B. Public Records/Open Meetings Issues:

Any public records or open meetings issues are addressed in SB 454.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Elder Affairs may incur additional costs associated with providing administrative support to the various elder abuse fatality review teams, and submitting the required annual report.

VI. Technical Deficiencies:

The bill does not specify the appointing authority for the members of the review team. The bill does however, allow for the state attorney to initiate a review team.

VII. Related Issues:

The bill does not define the term “elder,” specifically the age at which a person is deemed to be an elder, which may lead to inconsistency in the cases a team chooses to review.

VIII. Statutes Affected:

The bill creates section 415.1103 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 February 19, 2019:

- The CS removes language amending s. 415.101, F.S., the Adult Protective Services Act that would have expressed the intent of the Legislature that all adult protective service investigators be certified by a third-party credentialing agency selected by the Department of Children and Families.
- The CS removes language amending s. 415.107, F.S., that would have granted access to confidential records of an adult protective service investigation to the elder abuse fatality review team.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 415.1103, Florida Statutes, is created
to read:

415.1103 Elder abuse fatality review teams.—

(1) (a) An elder abuse fatality review team may be
established in each judicial circuit to review deaths of elderly
persons alleged or found to have been caused by, or related to,



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abuse or neglect. The review teams are housed, for administrative purposes only, in the Department of Elderly Affairs.

(b) An elder abuse fatality review team may include, but is not limited to, representatives from the following entities in the review team's judicial circuit:

1. Law enforcement agencies;
2. The state attorney;
3. The medical examiner;
4. A county court judge;
5. Adult protective services;
6. The area agency on aging;
7. The State Long-Term Care Ombudsman Program;
8. The Agency for Health Care Administration;
9. The Office of the Attorney General;
10. The Office of the State Courts Administrator;
11. The clerk of the court;
12. A victim services program;
13. An elder law attorney;
14. Emergency services personnel;
15. A certified domestic violence center;
16. An advocacy organization for victims of sexual violence;
17. A funeral home director;
18. A forensic pathologist;
19. A geriatrician;
20. A geriatric nurse;
21. A geriatric psychiatrist or other individual licensed to offer behavioral health services;



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40 22. A hospital discharge planner;

41 23. A public guardian; or

42 24. Any other persons who have knowledge regarding fatal
43 incidents of elder abuse, domestic violence, or sexual violence,
44 including knowledge of research, policy, law, and other matters
45 connected with such incidents involving elders, or who are
46 recommended for inclusion by the review team.

47 (c) A state attorney, or his or her designee, may initiate
48 the establishment of a review team in his or her judicial
49 circuit and may call the first organizational meeting of the
50 team. At the initial meeting, members of the review team shall
51 choose two members to serve as co-chairs and shall establish a
52 schedule for future meetings.

53 (d) Participation in a review team is voluntary. Members of
54 the review team shall serve without compensation and may not be
55 reimbursed for per diem or travel expenses.

56 (e) Members shall serve for terms of 2 years, to be
57 staggered as determined by the co-chairs. Chairs may be
58 reelected by a majority vote of the review team but not for more
59 than two consecutive terms.

60 (f) A review team shall determine the local operations of
61 the team, including, but not limited to, the process for case
62 selection. Reviews must be limited to closed cases in which an
63 elderly person's death is verified by the state attorney to have
64 been caused by abuse or neglect. All identifying information
65 concerning the person must be redacted in documents received for
66 review. The review team shall meet at least once each fiscal
67 year.

68 (g) Administrative costs of operating the review team must



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be borne by the team members or entities that they represent.

(2) An elder abuse fatality review team in existence on July 1, 2019, may continue to exist and shall comply with the requirements created in this section.

(3) An elder abuse fatality review team shall do all of the following:

(a) Review deaths of elderly persons in its judicial circuit alleged or found to have been caused by, or related to, abuse or neglect.

(b) Consider the events leading up to a fatal incident, available community resources, current law and policies, and the actions taken by systems or individuals related to the fatal incident.

(c) Identify potential gaps, deficiencies, or problems in the delivery of services to elderly persons by public and private agencies which may be related to deaths reviewed by the review team.

(d) Whenever possible, develop communitywide approaches to address causes of, and contributing factors to, deaths reviewed by the review team.

(e) Develop recommendations and potential changes in law, rules, and policies to support the care of elderly persons and to prevent elder abuse deaths.

(4) (a) Review teams in this state may share with each other any relevant information that pertains to the review of the death of an elderly person.

(b) A review team member may not contact, interview, or obtain information by request directly from a member of the deceased elder's family as part of the review unless a team



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member is authorized to do so in the course of his or her employment duties. A member of the deceased elder's family may voluntarily provide information or records to a review team.

(5)(a) Annually by September 1, each elder abuse fatality review team shall submit a summary report to the Department of Elderly Affairs which includes, but is not limited to:

1. Descriptive statistics regarding cases reviewed by the review team, including demographic information on victims and the causes and nature of deaths;

2. Current policies, procedures, rules, or statutes that the review team identified as contributing to the incidence of elder abuse and elder deaths, and recommendations for system improvements and needed resources, training, or information dissemination to address those identified issues;

3. Any other recommendations to prevent deaths from elder abuse or neglect, based on an analysis of the data and information presented in the report; and

(b) Annually by November 1, the Department of Elderly Affairs shall prepare a summary report of the review team information required under paragraph (a). The department shall provide the summary report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

(6) Information and records acquired by an elder abuse fatality review team are not subject to discovery or introduction into evidence in any civil or criminal action or administrative or disciplinary proceeding by any state or local government department or agency if the information or records arose out of the matters that are the subject of review by a



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review team, unless the information and records are not discoverable from any other source. Information and records that are available from other sources are not immune from discovery or introduction into evidence solely because the information, documents, or records were presented to or reviewed by a review team.

(7) A person who has attended a meeting of an elder abuse fatality review team or who has otherwise participated in the activities authorized by this section may not be allowed or required to testify in any civil, criminal, administrative, or disciplinary proceeding as to any information or records produced or presented to the review team during a meeting or other activity authorized by this section, unless such testimony is necessary to determine the information or records that were available to the review team. However, this paragraph does not prevent any person who testifies before the team or who is a member of the team from testifying as to matters otherwise within his or her knowledge.

(8) There is no monetary liability on the part of, and a cause of action for damages may not arise against, any member of an elder abuse fatality review team due to the performance of his or her duties as a review team member in regard to any discussions by, or deliberations or recommendations of, the team or the member, unless such member acted in bad faith, with wanton and willful disregard of human rights, safety, or property.

(9) Elder abuse fatality review teams and their members may not disclose any information that is confidential pursuant to law.



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Section 2. This act shall take effect July 1, 2019.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to elder abuse fatality review teams;
creating s. 415.1103, F.S.; authorizing the
establishment of elder abuse fatality review teams in
each judicial circuit and housing the review teams,
for administrative purposes only, in the Department of
Elderly Affairs; providing conditions for review team
membership, establishment, and organization;
specifying requirements for the review team operations
and meeting schedules; assigning responsibility for
paying the administrative costs of review team
operations to the team members or the entities they
represent; authorizing elder abuse fatality review
teams in existence on a certain date to continue;
requiring such existing teams to comply with specified
requirements; specifying review team duties; requiring
each review team to submit annually a summary report
by a certain date to the Department of Elderly Affairs
containing specified information; requiring the
department to prepare annually a summary report on the
review teams' information and submit the summary to
the Governor, the Legislature, and the Department of
Children and Families; exempting certain information



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185 and records from discovery; providing an exception;
186 restricting the testimony of certain persons about
187 information or records presented during meetings or
188 activities of the review teams; providing immunity
189 from monetary liability for review team members under
190 certain conditions; prohibiting review teams and
191 review team members from disclosing confidential
192 information; providing an effective date.

By Senator Gibson

6-00126B-19

2019452__

1 A bill to be entitled
 2 An act relating to elder protection; amending s.
 3 415.101, F.S.; revising legislative intent; amending
 4 s. 415.107, F.S.; requiring that elder abuse fatality
 5 review teams be granted access to certain records;
 6 creating s. 415.1103, F.S.; authorizing the
 7 establishment of elder abuse fatality review teams in
 8 each judicial circuit and housing the review teams,
 9 for administrative purposes only, in the Department of
 10 Elderly Affairs; providing conditions for review team
 11 membership, establishment, and organization;
 12 specifying requirements for the review team operations
 13 and meeting schedules; assigning responsibility for
 14 paying the administrative costs of review team
 15 operations to the team members or the entities they
 16 represent; authorizing elder abuse fatality review
 17 teams in existence on a certain date to continue;
 18 requiring such existing teams to comply with specified
 19 requirements; specifying review team duties; allowing
 20 review teams access to and use of certain information
 21 and records; requiring each review team to submit an
 22 annual report by a certain date to the Department of
 23 Elderly Affairs containing specified information;
 24 requiring the department to prepare annually a summary
 25 report on the review teams' information and submit the
 26 summary to the Governor, the Legislature, and the
 27 Department of Children and Families; exempting certain
 28 information and records from discovery; providing an
 29 exception; restricting the testimony of certain

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

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30 persons about information or records presented during
 31 meetings or activities of the review teams; providing
 32 immunity from monetary liability for review team
 33 members under certain conditions; prohibiting review
 34 teams and review team members from disclosing
 35 confidential information; providing an effective date.
 36
 37 Be It Enacted by the Legislature of the State of Florida:
 38
 39 Section 1. Section 415.101, Florida Statutes, is amended to
 40 read:
 41 415.101 Adult Protective Services Act; legislative intent.-
 42 (1) Sections 415.101-415.113 may be cited as the "Adult
 43 Protective Services Act."
 44 (2) The Legislature recognizes that there are many persons
 45 in this state who, because of age or disability, are in need of
 46 protective services. Such services should allow such an
 47 individual the same rights as other citizens and, at the same
 48 time, protect the individual from abuse, neglect, and
 49 exploitation. It is the intent of the Legislature to provide for
 50 the detection and correction of abuse, neglect, and exploitation
 51 through social services and criminal investigations and to
 52 establish a program of protective services for all vulnerable
 53 adults in need of them. It is intended that the mandatory
 54 reporting of such cases will cause the protective services of
 55 the state to be brought to bear in an effort to prevent further
 56 abuse, neglect, and exploitation of vulnerable adults. In taking
 57 this action, the Legislature intends to place the fewest
 58 possible restrictions on personal liberty and the exercise of

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

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constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation. Further, the Legislature intends to encourage the constructive involvement of families in the care and protection of vulnerable adults or elderly persons. The Legislature further intends that each protective investigator, as defined in s. 415.102, earn and maintain a valid certification as a protective investigator through a third-party credentialing entity approved under s. 402.40(3).

Section 2. Paragraph (m) is added to subsection (3) of section 415.107, Florida Statutes, to read:

415.107 Confidentiality of reports and records.—

(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(m) An elder abuse fatality review team established under s. 415.1103(1) which is reviewing the death of an elderly person.

Section 3. Section 415.1103, Florida Statutes, is created to read:

415.1103 Elder abuse fatality review teams.—

(1) (a) An elder abuse fatality review team may be established in each judicial circuit to review deaths of elderly persons alleged or found to have been caused by, or related to, abuse or neglect. The review teams are housed, for administrative purposes only, in the Department of Elderly Affairs.

(b) An elder abuse fatality review team may include, but is

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not limited to, representatives from the following entities in the review team's judicial circuit:

1. Law enforcement agencies;

2. The state attorney;

3. The medical examiner;

4. A county court judge;

5. Adult protective services;

6. The area agency on aging;

7. The State Long-Term Care Ombudsman Program;

8. The Agency for Health Care Administration;

9. The Office of the Attorney General;

10. The Office of the State Courts Administrator;

11. The clerk of the court;

12. A victim services program;

13. An elder law attorney;

14. Emergency services personnel;

15. A certified domestic violence center;

16. An advocacy organization for victims of sexual violence;

17. A funeral home director;

18. A forensic pathologist;

19. A geriatrician;

20. A geriatric nurse;

21. A geriatric psychiatrist or other individual licensed to offer behavioral health services;

22. A hospital discharge planner;

23. A public guardian; or

24. Any other persons who have knowledge regarding fatal incidents of elder abuse, domestic violence, or sexual violence,

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including knowledge of research, policy, law, and other matters connected with such incidents involving elders, or who are recommended for inclusion by the review team.

(c) A state attorney, or his or her designee, may initiate the establishment of a review team in his or her judicial circuit and may call the first organizational meeting of the team. At the initial meeting, members of the review team shall choose two members to serve as co-chairs.

(d) Participation in a review team is voluntary. Members of the review team shall serve without compensation and may not be reimbursed for per diem or travel expenses.

(e) Members shall serve for terms of 2 years, to be staggered as determined by the co-chairs. Chairs may be reelected by a majority vote of the review team but not for more than two consecutive terms.

(f) A review team shall determine the local operations of the team, including, but not limited to, the process for case selection, which must be limited to closed cases in which an elderly person's death is verified to have been caused by abuse or neglect, and the review team meeting schedule, which must include at least one meeting in each fiscal year.

(g) Administrative costs of operating the review team must be borne by the team members or entities that they represent.

(2) An elder abuse fatality review team in existence on July 1, 2019, may continue to exist and shall comply with the requirements created in this section.

(3) An elder abuse fatality review team shall do all of the following:

(a) Review deaths of elderly persons in its judicial

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circuit alleged or found to have been caused by, or related to, abuse or neglect.

(b) Consider the events leading up to a fatal incident, available community resources, current law and policies, and the actions taken by systems and individuals related to the fatal incident.

(c) Identify gaps, deficiencies, or problems in the delivery of services to elderly persons by public and private agencies which may be related to deaths reviewed by the review team.

(d) Whenever possible, develop communitywide approaches to address causes of, and contributing factors to, deaths reviewed by the review team.

(e) Develop practice standards and recommend changes in law, rules, and policies to support the care of elderly persons and to prevent elder abuse deaths.

(4) (a) Upon a written request from a co-chair of an elder abuse fatality review team, the following information or records pertaining to an elderly person whose death is being reviewed by the team must be disclosed to the team:

1. Information and records held by a criminal justice agency, as defined in s. 119.011(4), not including active criminal intelligence information or criminal investigative information, as defined in s. 119.011(3).

2. Information and records from Adult Protective Services, pursuant to s. 415.107(3)(m).

3. An autopsy report from the medical examiner's office, but not including materials protected under s. 406.135.

(b) Review teams may share with each other any relevant

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information that pertains to the review of the death of an elderly person.

(c) A review team member may not contact, interview, or obtain information by request directly from a member of the deceased elder's family as part of the review unless a team member is authorized to do so in the course of his or her employment duties. A member of the deceased elder's family may voluntarily provide information or records to a review team.

(5) (a) Annually by September 1, each elder abuse fatality review team shall submit a report to the Department of Elderly Affairs which includes, but is not limited to:

1. Descriptive statistics regarding cases reviewed by the review team, including demographic information on victims and caregivers and the causes and nature of deaths;

2. Current policies, procedures, rules, or statutes that the review team identified as contributing to the incidence of elder abuse and elder deaths, and recommendations for system improvements and needed resources, training, or information dissemination to address those identified issues;

3. Any other recommendations to prevent deaths from elder abuse or neglect, based on an analysis of the data and information presented in the report; and

4. Any steps taken by the review team and public and private agencies to implement necessary changes and to improve the coordination of services and review of cases.

(b) Annually by November 1, the Department of Elderly Affairs shall prepare a summary report of the review team information required under paragraph (a). The department shall provide the summary report to the Governor, the President of the

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Senate, the Speaker of the House of Representatives, and the Department of Children and Families.

(6) Information and records acquired by an elder abuse fatality review team are not subject to discovery or introduction into evidence in any civil or criminal action or administrative or disciplinary proceeding by any state or local government department or agency if the information or records arose out of the matters that are the subject of review by a review team, unless the information and records are not discoverable from any other source. Information and records that are available from other sources are not immune from discovery or introduction into evidence solely because the information, documents, or records were presented to or reviewed by a review team.

(7) A person who has attended a meeting of an elder abuse fatality review team or who has otherwise participated in the activities authorized by this section may not be allowed or required to testify in any civil, criminal, administrative, or disciplinary proceeding as to any information or records produced or presented to the review team during a meeting or other activity authorized by this section, unless such testimony is necessary to determine the information or records that were available to the review team. However, this paragraph does not prevent any person who testifies before the team or who is a member of the team from testifying as to matters otherwise within his or her knowledge.

(8) There is no monetary liability on the part of, and a cause of action for damages may not arise against, any member of an elder abuse fatality review team due to the performance of

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233 his or her duties as a review team member in regard to any
234 discussions by, or deliberations or recommendations of, the team
235 or the member, unless such member acted in bad faith, with
236 wanton and willful disregard of human rights, safety, or
237 property.

238 (9) Elder abuse fatality review teams and their members may
239 not disclose any information that is confidential pursuant to
240 law.

241 Section 4. This act shall take effect July 1, 2019.

APPEARANCE RECORD

2/19/2019

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 452

*Bill Number (if applicable)*Topic Elder ProtectionName Zayne Smith*Amendment Barcode (if applicable)*Job Title Associate State DirectorAddress 200 W. College Ave*Street*Tallahassee*City*FL*State*32301*Zip*Phone 850-228-4243Email zsmith@aarp.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing AARP FloridaAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/2019

Meeting Date

452

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg
City

FL
State

33705
Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 452
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, February 19, 2019
TIME: 12:30—2:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

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 454

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Gibson

SUBJECT: Public Records and Public Meetings/Elder Abuse Fatality Review Team

DATE: February 21, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Fav/CS
2.			GO	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 454 creates a public records exemption for certain information obtained by an elder abuse fatality review team as created by SB 452. The bill repeals the exemption on October 2, 2024, unless reenacted by the Legislature.

The bill has no fiscal impact and has an effective date contingent upon, passage of SB 452.

II. Present Situation:

Public Records Law

The Florida Constitution provides the public the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act. The Public Records Act states:

[I]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or the method of transmission.⁵ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁶ A violation of the Public Records Act may result in civil or criminal liability.⁷

The Legislature may create an exemption to public records requirements.⁸ An exemption must pass by a two-thirds vote of the House and the Senate.⁹ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹² Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Section 119.01(1), F.S.

⁵ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁸ FLA. CONST., art. I, s. 24(c).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹³

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting where official acts are taken or public business is transacted or discussed.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

Section 286.011, F.S., which is known as the “Government in the Sunshine Law,”¹⁷ or the “Sunshine Law,”¹⁸ requires all meetings of any board or commission of any state or local agency or authority where official acts are to be taken be open to the public.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or operates in a manner that unreasonably restricts the public’s access to the facility.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.²⁵ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption that does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

¹³ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ *Id.*

¹⁶ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ *Id.*

²⁷ See *supra* note 12.

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.²⁸ The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment. The Legislature must reenact an exemption in order to save the exemption from repeal.²⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary to accomplish the stated purpose of the exemption.³⁰ The Legislature must find that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption. An exemption serves an identifiable purpose if it meets one of the following criteria:

- Allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³¹
- Release of sensitive personal information would be defamatory or would jeopardize an individual's safety;^{32,33} or
- Protects trade or business secrets.³⁴

The OGSR requires specific questions be considered during the review process.³⁵ The OGSR asks the Legislature to question carefully the purpose and necessity of reenacting the exemption.

A public necessity statement and a two-thirds vote of the members present and voting in each house of the Legislature are required for final passage if the Legislature expands an exemption.³⁶ A public necessity statement and a two-thirds vote of the members present and voting in each house of the Legislature are not required for final passage if the exemption is reenacted without substantive changes or if the exemption is narrowed. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.³⁷

²⁸ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²⁹ Section 119.15(3), F.S.

³⁰ Section 119.15(6)(b), F.S.

³¹ Section 119.15(6)(b)1., F.S.

³² Section 119.15(6)(b)2., F.S.

³³ Only personal identifying information is exempt if this public purpose is cited as the basis of an exemption.

³⁴ Section 119.15(6)(b)3., F.S.

³⁵ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

³⁶ FLA. CONST., art. I, s. 24(c).

³⁷ Section 119.15(7), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 415.1103, F.S., to provide that any information that is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution obtained by an elder abuse fatality review team when conducting a review retains its confidential or exempt status when held by the review team. The bill creates a public records exemption for information contained in a record created by an elder abuse fatality review team that reveals the identity of a victim of elder abuse as authorized in SB 452.

This section provides that portions of meetings of a review team where confidential or exempt information or the identity of a victim of elder abuse is discussed are exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

The exemption is subject to the OGSR and stands repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill creates a new public records exemption, and therefore requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

Section 2 provides a statement of public necessity as required by the Florida Constitution. It states that sensitive personal information concerning victims of elder abuse would be disclosed and open communication and coordination between the parties involved in the elder abuse fatality review would be hampered without the exemption.

Section 3 provides an effective date that is contingent upon, and concurrent with, passage of SB 452, which has an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for a public records exemption to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill provides that information that is confidential and exempt from s. 119.07(1), F.S., remain confidential and exempt when held by an elder abuse fatality review team. The bill allows a record created by a review team that identifies the victim

of elder abuse to remain confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

Portions of meetings of an elder abuse fatality review team at which confidential or exempt information or the identity of a victim of elder abuse is discussed would be exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 415.1103 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 February 19, 2019:

- The CS adds the bill number SB 452 in two places to reference the substantive bill tied to this public records exemption bill.

B. Amendments:

None.

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



802868

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2019	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 21
and insert:
section 415.1103, Florida Statutes, as created by SB 452, to



709012

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2019	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 71
and insert:
SB 452 or similar legislation takes effect, if such legislation

By Senator Gibson

6-00127B-19

2019454__

A bill to be entitled

An act relating to public records and public meetings; amending s. 415.1103, F.S.; specifying that information obtained by an elder abuse fatality review team which is exempt or confidential and exempt from public records requirements retains its protected status; providing an exemption from public records requirements for identifying information of an elder abuse victim in records created by a review team; providing an exemption from public meetings requirements for portions of review team meetings at which exempt or confidential and exempt information or the identity of an elder abuse victim is discussed; providing for future legislative review and repeal; providing statements of public necessity; providing a contingent effective date.

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

Section 1. Subsections (10), (11), and (12) are added to section 415.1103, Florida Statutes, as created by SB ____, to read:

415.1103 Elder abuse fatality review teams.—

(10)(a) Any information that is exempt or confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and that is obtained by an elder abuse fatality review team conducting a review under this section retains its exempt or confidential and exempt status when held by that team.

(b) Any information contained in a record created by an

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

6-00127B-19

2019454__

elder abuse fatality review team which reveals the identity of a victim of elder abuse is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(11) Those portions of meetings of an elder abuse fatality review team at which exempt or confidential and exempt information or the identity of a victim of elder abuse is discussed are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(12) Subsections (10) and (11) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that information that is exempt or confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution remain exempt or confidential and exempt when held by an elder abuse fatality review team and that any information contained in a record created by an elder abuse fatality review team which reveals the identity of a victim of elder abuse be confidential and exempt from public records requirements. Otherwise, sensitive personal information concerning victims of elder abuse would be disclosed, and open communication and coordination among the parties involved in elder abuse fatality review teams would be hampered. The harm that would result from the release of such information substantially outweighs any public benefit that would be achieved by disclosure.

(2) The Legislature further finds that it is a public necessity that portions of meetings of an elder abuse fatality

Page 2 of 3

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

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2019454__

59 review team at which exempt or confidential and exempt
60 information or the identity of a victim of elder abuse is
61 discussed be exempt from s. 286.011, Florida Statutes, and s.
62 24(b), Article I of the State Constitution. The failure to close
63 portions of meetings at which exempt or confidential and exempt
64 information or the identity of a victim of elder abuse is
65 discussed would defeat the purpose of the public records
66 exemption. Further, the Legislature finds that the exemption is
67 narrowly tailored to apply to only certain portions of meetings
68 of elder abuse fatality review teams to allow for public
69 oversight.

70 Section 3. This act shall take effect on the same date that
71 SB ____ or similar legislation takes effect, if such legislation
72 is adopted in the same legislative session or an extension
73 thereof and becomes a law.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/2019
Meeting Date

454
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 454
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, February 19, 2019
TIME: 12:30—2:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

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 528

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Rouson

SUBJECT: Mental Health and Substance Use Disorders

DATE: February 20, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 528 promotes the use of peer specialists in behavioral health care and revises requirements for recovery residences (also known as “sober homes”). Peer specialists are persons who have recovered from a substance use disorder or mental illness who support a person with a current substance use disorder or mental illness. The bill revises background screening requirements and codifies existing training and certification requirements for peer specialists.

The bill also modifies requirements for licensed substance abuse service providers offering treatment to individuals living in recovery residences, which are alcohol and drug-free living environments where individuals with substance use disorder reside while they receive treatment services on an outpatient basis. The bill allows these providers to accept referrals from noncertified recovery residences when it appears that the resident may benefit from such services. It also requires certified recovery residences to comply with relevant provisions of the Florida Fire Prevention Code.

The bill addresses individuals who have been disqualified for employment with substance abuse service providers following a failed background screening and adds offenses for which individuals may seek an exemption from such disqualification. It also modifies background screening requirements for owners, directors, chief financial officers, and clinical supervisors, and for service provider personnel and some volunteers, who have direct contact with individuals receiving treatment.

The bill will likely have an indeterminate fiscal impact on the state. The bill is effective July 1, 2019.

II. Present Situation:

Behavioral Health Workforce Shortage

Workforce issues for providers of substance use disorder and mental illness services, which have been of concern for decades, have taken on a greater sense of urgency with the passage of recent parity and health reform legislation.¹ The Affordable Care Act increased the number of people who are eligible for health care coverage including behavioral health services. In addition, as screening for mental illness and substance abuse becomes more frequent in primary care, more people will need behavioral health services. Furthermore, workforce shortages will be impacted by additional demands that result from: (1) a large number of returning veterans in need of services; and (2) new state re-entry initiatives to reduce prison populations, a large majority of whom have mental or substance use disorders.²

Shortages of qualified behavioral health workers, recruitment and retention of staff and an aging workforce have long been cited as problems. Lack of workers in rural/frontier areas and the need for a workforce more reflective of the racial and ethnic composition of the U.S. population create additional barriers to accessing care for many. Recruitment and retention efforts are hampered by inadequate compensation, which discourages many from entering or remaining in the field. In addition, the misunderstanding and prejudice of persons with mental and substance use disorders can negatively affect the use of peer specialists.

Use of Peer Specialists

Research has shown that recovery from a substance use disorder or mental illness is facilitated by the use of social support provided by peers.³ The most recognized form of peer support is the 12-step programs of Alcoholics Anonymous and Narcotics Anonymous. More recently, peers or peer specialists, have been used to assist persons with serious mental illnesses.⁴

Research has identified four types of social support provided by peers:

- Emotional - where a peer demonstrates empathy, caring or concern to bolster a person's self-esteem. This is often provided by peer mentoring or peer-led support groups.

¹ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. Report to Congress on the Nation's Substance Abuse and Mental Health Workforce Issues. January 24, 2013. *Available at:* <https://store.samhsa.gov/shin/content/PEP13-RTC-BHWORK/PEP13-RTC-BHWORK.pdf> (last visited on Feb. 12, 2019).

² *Id.*

³ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment. What Are Peer Recovery Support Services? *Available at* <https://store.samhsa.gov/shin/content/SMA09-4454/SMA09-4454.pdf> (last visited on Feb. 12, 2019).

⁴ National Public Radio. In Texas, People with Mental Illness Are Finding Work Helping Peers. July 11, 2017. <http://www.npr.org/sections/health-shots/2017/07/11/536501069/in-texas-people-with-mental-illness-are-finding-work-helping-peers> (last visited on Feb. 12, 2019).

- Informational - where a peer shares knowledge and information to provide life or vocational skills training. Examples include parenting classes, job readiness training, or wellness seminars.
- Instrumental - where a peer provides concrete assistance to help others accomplish tasks. Examples include child care, transportation and help accessing health and human services.
- Affiliational - where a peer facilitates contacts with other people to promote learning of social skills, create a sense of community, and acquire a sense of belonging. Examples include staffing recovery centers, sports league participation, and alcohol or drug free socialization.⁵

The Department of Children and Families (department) Florida Peer Services Handbook, defines a peer as an individual who has life experience with a mental health and/or substance use condition.⁶ Current department guidelines recommend that an individual be in recovery for at least two years to be considered for peer training. In Florida, family members or caregivers can also work and be certified as peer specialists.⁷

The Florida Certification Board currently offers certification with three distinct endorsements for individuals with lived experience who wish to become certified as Peer Specialists. General requirements for certification include being age 18 or older, minimum education of high school diploma or equivalent, background screening, completion of a minimum of 40 hours of training, and passing a competency exam.

Barriers to the Use of Peer Specialists

Currently, there is a shortage of peers working within behavioral health services. As of June 2017, there are 418 individuals with active certification through the Florida Certification Board.⁸ There are two principal barriers to the use of peer specialists.

First, peer specialists often cannot pass background screening requirements in ss. 435.04 and 408.809, F.S. Persons who have recovered from a substance use disorder or mental illness often have a criminal history. Common offenses would include using and selling illegal substances, prostitution, or financial fraud. Section 435.04, F.S., allows persons with disqualifying offenses identified through background screening to apply to the respective state agency head (the Secretary of the Department of Children and Families or the Secretary of the Agency for Health Care Administration) for an exemption if it has been three or more years since their conviction. The applicant must produce all court records regarding their convictions, letters of recommendation, evidence of their rehabilitation, education documents, evidence of employment, and fill out a questionnaire. The requirements of this exemption often deter persons from becoming peer specialists.

⁵ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment. What Are Peer Recovery Support Services? Available at <https://store.samhsa.gov/shin/content/SMA09-4454/SMA09-4454.pdf> (last visited on Feb. 12, 2019).

⁶ Department of Children and Families, Florida Peer Services Handbook. Available at <http://www.myflfamilies.com/service-programs/substance-abuse/publications> (last visited Feb. 12, 2019).

⁷ *Id.*

⁸ *Id.*

Second, peer specialists have only recently been reimbursed as a behavioral health care service. Medicaid billing for peer support services began in Georgia in 1999, and quickly expanded nationally in 2007 after the Center for Medicare and Medicaid Services (CMS) sent guidelines to states on how to be reimbursed for services delivered by peer providers.⁹ In 2012, Georgia was approved as the first state to bill for a peer whole health and wellness service delivered by peer providers. CMS' Clarifying Guidance on Peer Services Policy from May 2013 states that any peer provider must "complete training and certification as defined by the state" before providing billable services. Beginning January 1, 2014, CMS expanded the type of practitioners who can provide Medicaid prevention services beyond physicians and other licensed practitioners, at a state's discretion, which can include peer providers. Florida's Medicaid program currently covers peer recovery services. The department also allows the state's behavioral health managing entities to reimburse for these services.

Background Screening Requirements and Process Under Ch. 435, F.S.

Chapter 435, F.S., addresses background screening requirements for persons seeking employment or for employees in positions that require a background screening. An employer¹⁰ may not hire, select, or otherwise allow an employee to have contact with a vulnerable person¹¹ that would place the employee in a role that requires a background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for disqualification by the agency¹² as provided under s. 435.07, F.S.¹³

If an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person that places the employee in a role that requires a background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment under ch. 435, F.S.¹⁴ The employer must terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of ch. 435, F.S., or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to s. 435.07, F.S.¹⁵

⁹ U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services. SMDL #07-011. Aug. 15, 2007. Available at <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD081507A.pdf> (last visited Feb. 12, 2019).

¹⁰ "Employer" means any person or entity required by law to conduct screening of employees pursuant to ch. 435, F.S. Section 435.02(3), F.S.

¹¹ Vulnerable persons are defined as minors in s. 1.01, F.S., or as vulnerable adults in s. 415.102, F.S.

¹² "Agency" means any state, county, or municipal agency that grants licenses or registration permitting the operation of an employer or is itself an employer or that otherwise facilitates the screening of employees pursuant to ch. 435, F.S. If there is no state agency or the municipal or county agency chooses not to conduct employment screening, "agency" means the DCF. Section 435.02(1), F.S.

¹³ Section 435.06(2)(a), F.S.

¹⁴ Section 435.06(2)(b), F.S.

¹⁵ Section 435.06(2)(c), F.S.

An employer may hire an employee to a position that requires a background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is completed and the employee demonstrates that he or she exhibits no behaviors that warrant the denial or termination of employment.¹⁶

Sections 435.03 and 435.04, F.S., outline the screening requirements. 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,¹⁷ and may include criminal records checks through local law enforcement agencies.¹⁸
- Level 2 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.¹⁹

The security background investigations under s. 435.04, F.S., for level 2 screening must ensure that no persons subject to this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent, and the record has not been sealed or expunged for, any offense listed in s. 435.04(2), F.S., or a similar law of another jurisdiction.²⁰

Additionally, such investigations must ensure that no person subject to s. 435.04, F.S., has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any offense that constitutes domestic violence in s. 741.28, F.S., whether such act was committed in this state or another jurisdiction.²¹

For both levels of screening, the person required to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening under ch. 435, F.S.,²² and 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.²³ Every employee must attest, subject to penalty of perjury, to meeting the requirements for qualifying for employment pursuant ch. 435, F.S., and agreeing to inform the employer immediately if arrested for any of the disqualifying offenses while employed by the employer.²⁴

For level 1 screening, the employer must submit the information necessary for screening to the Florida Department of Law Enforcement (FDLE) within 5 working days after receiving it. The

¹⁶ Section 435.06(2)(d), F.S.

¹⁷ 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 on Feb. 12, 2019).

¹⁸ Section 435.03(1), F.S.

¹⁹ Section 435.04(1)(a), F.S.

²⁰ Section 435.04(2), F.S.

²¹ Section 435.04(3), F.S.

²² Section 435.05(1)(a), F.S.

²³ Section 435.05(1)(d), F.S.

²⁴ Section 435.05(2), F.S.

FDLE must conduct a search of its records and respond to the employer or agency. The employer must inform the employee whether screening has revealed any disqualifying information.²⁵

For level 2 screening, the employer or agency must submit the information necessary for screening to the FDLE within 5 working days after receiving it. The FDLE must perform a criminal history record check of its records and request that the FBI perform a national criminal history record check of its records for each employee for whom the request is made. The FDLE must respond to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information.²⁶

Each employer licensed or registered with an agency must conduct level 2 screening and must submit to the agency annually or at the time of license renewal, under penalty of perjury, a signed attestation attesting to compliance with the provisions of ch. 435, F.S.²⁷

Individuals Requiring Background Screening Under Ch. 397, F.S.

Only certain individuals affiliated with substance abuse treatment providers require background screening. Section 397.4073, F.S., requires all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services to undergo level 2 background screening.

Regarding recovery residences, s. 397.487(6), F.S., and s. 397.4871(5), F.S., each require level 2 background screening for all recovery residence owners, directors, and chief financial officers, and for administrators seeking certification.

Exemptions from Disqualification for Employment

Section 435.07(1), F.S., authorizes the head of the appropriate agency to grant to any employee otherwise disqualified from employment due to disqualifying offenses revealed pursuant to a background screening required under ch. 435, F.S., an exemption from such disqualification. For a felony, three years must have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed. No waiting period applies to misdemeanors.

Additionally, s. 435.07(2), F.S., provides that persons employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 817.563, F.S. (sale of imitation controlled substance), s. 893.13, F.S. (controlled substances offenses, excluding drug trafficking), or s. 893.147, F.S. (drug paraphernalia offenses) may be exempted from disqualification from employment pursuant to ch. 435, F.S., without application of the 3-year waiting period for felony offenses in s. 435.07(1)(a)1., F.S.

²⁵ Section 435.05(1)(b), F.S.

²⁶ Section 435.05(1)(c), F.S.

²⁷ Section 435.05(3), F.S.

Section 397.4073(4), F.S., authorizes the DCF to grant any service provider personnel an exemption from disqualification as provided in s. 435.07, F.S. The DCF may grant exemptions from disqualification to service provider personnel whose backgrounds checks indicate crimes under s. 817.563, F.S., s. 893.13, F.S. (controlled substances offenses, excluding drug trafficking), or s. 893.147, F.S., or grant exemptions from disqualification which would limit service provider personnel to working with adults in substance abuse treatment facilities.

Section 397.4872(1), F.S., provides that the individual exemptions to staff disqualification or administrator ineligibility may be requested if a recovery residence deems the decision will benefit the program. Requests for exemptions must be submitted in writing to the DCF within 20 days after the denial by the credentialing entity and must include a justification for the exemption. Subsection (2) provides, with some exceptions, the DCF may exempt a person from ss. 397.487(6), and 397.4871(5), F.S., if it has been at least 3 years since the person has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense.

As previously noted, substance abuse services are governed by ch. 394, F.S., and ch. 397, F.S. “The system of care provides services to children and adults with or at-risk of substance misuse/abuse problems or co-occurring substance abuse and mental health problems[.]”²⁸ Section 394.4572(1)(a), F.S., requires a level 2 screening for mental health personnel,²⁹ and s. 394.4572(1)(a), F.S., authorizes the DCF and the Agency for Health Care Administration (AHCA) to grant exemptions from disqualification as provided in ch. 435, F.S. However, s. 394.4572, F.S., does not specifically authorize the DCF or the AHCA to grant exemptions from disqualification for service provider personnel to work solely in mental health treatment programs or facilities or in programs or facilities that treat co-occurring substance use and mental health disorders.

Recovery Residences

Recovery residences function under the premise that individuals benefit in their recovery by residing in an alcohol and drug-free environment. Recovery residences are designed to be financially self-sustaining through rent and fees paid by residents, and there is no limit on the length of stay for those who abide by the rules.³⁰

Section 397.311(37), F.S., defines a recovery residence as a residential dwelling unit, or other form of group housing, 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. A 2009 Connecticut study notes: “Sober houses do not provide treatment, just a place where people in similar circumstances can

²⁸ Department of Children and Families, *Substance Abuse and Mental Health Services Plan 2014-2016*, p. 3, available at <http://www.dcf.state.fl.us/programs/samh/publications/2014-2016%20SAMH%20Services%20Plan.pdf> (last visited on Feb. 12, 2019).

²⁹ “Mental health personnel” includes all program directors, professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals held for examination or admitted for mental health treatment. Section 394.4572(1)(a), F.S.

³⁰ Department of Children and Families, *Recovery Residence Report* (Oct. 1, 2013), available at <http://www.dcf.state.fl.us/programs/samh/docs/SoberHomesPR/DCFProvisoRpt-SoberHomes.pdf> (last visited on Feb. 12, 2019).

support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation.”³¹

III. Effect of Proposed Changes:

Section 1 amends s. 394.455, F.S., to define “peer specialist,” as a person who has been in recovery from a substance use disorder or mental illness for the past 2 years or a family member or caregiver of such a person and is certified or is seeking certification under s. 397.417, F.S. This is consistent with the department’s definition for peer specialists and recommended recovery time, and is consistent with national standards.

Section 2 amends s. 394.4572, F.S., relating to background screening of mental health personnel. The bill conforms this statute to the requirements of the bill to background screen peer specialists through the newly created s. 397.417, F.S.

Section 3 amends s. 394.4573, F.S., to add use of peer specialists to the list of recovery supports as an essential element of a coordinated system of behavioral health care.

Section 4 amends s. 397.311, F.S., providing definitions to Chapter 397 on Substance Abuse Services to include a definition for “peer specialist.”

Section 5 amends s. 397.4073, F.S., relating to background screening for persons working with persons with substance use disorders. The bill removes provisions authorizing agency heads to exempt persons who have recovered from a substance use disorder from drug offenses that would otherwise disqualify them from providing recovery services. This language is no longer needed as the bill revises background requirements in the newly created s. 397.417, F.S. The bill also provides that those service provider personnel who request an exemption after 5 or more years have elapsed since their most recent disqualifying offense may work under appropriate supervision with adults with a mental health or substance abuse disorder, or co-occurring disorders, during the pendency of their exemption request.

Section 6 creates s. 397.417, F.S., to specify legislative findings that there is a shortage of behavioral health care employees; that the state is experiencing an opioid epidemic; and that peers are often an effective support for persons with substance use disorders or mental illness because the peer shares the same life experience. The bill intends to expand the use of peer specialists as a cost-effective behavioral health care service.

The bill sets qualifications for peer specialists and responsibilities of the department. A peer specialist must be certified and meet the background screening requirements, as well as complete a training program approved by the department. Background screening requirements include that a peer specialist applying for employment with DCF submit fingerprints to the department and pay for state and national fingerprint checks DCF must forward fingerprints received to FDLE, who must then forward them to the FBI. FDLE must retain the fingerprints and enroll them in

³¹ Office of Legislative Services, Connecticut General Assembly, *Sober Homes*, 2009-R-0316 (Sept. 2, 2009), available at <https://www.cga.ct.gov/2009/rpt/2009-R-0316.htm> (last visited on Feb. 12, 2019).

the national retained fingerprint arrest notification program once FDLE begins participation in the program, and they must identify and report and arrest record to DCF. The department must develop a training program for peer specialists—with preference given to trainers who are certified peer specialists—and certify peer specialists via an approved, designated certification organization. The bill also requires peer specialists that are providing services be supervised by a licensed behavioral health care professional or certified peer specialist.

In addition, the bill also provides that peer specialist services may be reimbursed as a recovery service through the department, behavioral health managing entity, or Medicaid.

The bill specifies revised background screening requirements. Under current law and department rule, peers working with persons suffering from substance use disorders must meet background screening requirements in s. 435.04, F.S. Peers working with persons suffering from mental illness must meet the screening requirements in s. 435.04 F.S., as well as those in s. 408.409, F.S. The new screening requirements of the bill eliminate the following disqualifying offenses from current law for peer specialists:

- misdemeanor assault, or battery (Ch. 784, F.S.),
- prostitution (Ch. 796, F.S.),
- lower level burglary offenses (s. 810.02, F.S.),
- lower level theft and robbery offenses (Ch. 812, F.S.),
- lower level drug abuse offenses (s. 817.563 and Ch. 893, F.S.),
- mail or wire fraud (s. 817.034, F.S.),
- insurance fraud (s. 817.234, F.S.),
- credit card fraud (ss. 817.481, 817.60, and 817.61, F.S.),
- identification fraud (s. 817.568, F.S.), and
- forgery (ss. 831.01, 831.02, 831.07 and 831.09, F.S.).

The bill allows individuals who wish to become peer specialists but have a disqualifying offense in their background to request an exemption from disqualification pursuant to s. 435.07, F.S., from the department or the Agency for Health Care Administration, as applicable.

Finally, the bill offers a grandfather clause to allow all peer specialists certified as of July 1, 2019 to be recognized as having met the requirements of this bill.

Section 7 amends s. 397.487, F.S., relating to recovery residences, to require that all certified recovery residences comply with the provisions of the Florida Fire Prevention Code which apply to one-family and two-family dwellings, public lodging establishments or rooming houses, or other housing facilities as applicable. The bill also expands staff and volunteers who are subject to a level 2 background screening to include anyone with direct contact with individuals receiving treatment, and requires these personnel to undergo a background screening under s. 408.809, F.S.

Section 8 amends s. 397.4873, F.S., relating to referrals to or from recovery residences, to modify existing restrictions on referrals to or from recovery residences to allow referrals by a recovery residence to a licensed service provider when a resident has experienced a recurrence of substance use and, in the best judgment of the recovery residence administrator, it appears that

the resident may benefit from clinical treatment services. The bill also provides that a recovery residence or its owners, directors, operators, employees, or volunteers may not benefit from referrals made pursuant to provisions of s. 397.4873, F.S.

Section 9 amends s. 435.07, F.S., relating to exemptions from employment disqualification, to modify current requirements relating to background screening and exemptions from disqualification from employment to add the following crimes for which service provider personnel may be exempted from employment disqualification:

- Prostitution-related offenses under s. 796.07(2)(e), F.S.;
- Unarmed burglary of a conveyance or structure under s. 810.02(4), F.S.;
- Third degree grand theft under s. 812.014(2)(c), F.S.;
- Forgery under s. 831.01, F.S.;
- Offenses involving uttering or publishing a forged instrument under s. 832.02, F.S.; and
- Any attempt, solicitation, or conspiracy to commit any of these offenses or any offense currently listed in the section.

Section 10 amends s. 212.055, F.S., relating to the county public hospital surtax to correct a cross reference to a definition in chapter 397, F.S. relating to substance abuse.

Section 11 amends s. 394.495, F.S., relating to children's mental health care to correct a cross reference to definitions.

Section 12 amends s. 394.496, F.S., relating to mental health service planning to correct a cross reference to definitions.

Section 13 amends s. 394.9085, F.S., relating to behavioral health service provider liability to correct a cross reference to definitions.

Section 14 amends s. 397.416, F.S., relating to substance use disorder treatment services to correct a cross reference to a definition.

Section 15 amends s. 409.972, F.S., relating to enrollment in Medicaid to correct a cross reference to a definition.

Section 16 amends s. 440.102, F.S., relating to the drug-free workplace program to correct a cross reference to a definition.

Section 17 amends s. 464.012, F.S., relating to the scope of practice for advanced registered nurse practitioners to correct a cross reference to a definition.

Section 18 amends s. 744.2007, F.S., relating to public guardians to correct a cross reference to a definition.

Section 19 provides an effective date of July 1, 2019.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

The bill will allow additional peers to be employed to provide recovery services to persons suffering from substance use disorder to mental illnesses. Private insurers and Medicaid managed care plans may see a reduction in the cost of behavioral health care services if more health insurance providers make use of peer specialists. This would be due to the effectiveness of peer specialists in assisting persons recovering from substance use disorders or mental illnesses and the lower cost of peer recovery services compared to other behavioral health care services.

The bill may have an impact on recovery residences which need to modify features of existing physical structures or move to new locations in order to comply with relevant provisions of the Florida Fire Prevention Code. This impact is indeterminate.

C. Government Sector Impact:

The bill may result in additional background screenings if more persons apply to be peer specialists. The employee or behavioral health care provider are charged a fee to cover the cost of the background screening.

The state may see a reduction in the cost of behavioral health care services if more health insurance providers make use of peer specialists. This would be due to the effectiveness of peer specialists in assisting persons recovering from substance use disorders or mental illnesses and the lower cost of peer recovery services compared to other behavioral health care services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.455, 394.4572, 394.4573, 397.311, 397.4073, 397.487, 397.4873, 435.07, 212.055, 394.495, 394.496, 394.9085, 397.416, 409.972, 440.102, 464.012, and 744.2007.

This bill creates the section 397.417 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 February 19, 2019:

- The CS requires a peer specialist applying for employment with DCF to submit a full set of fingerprints to DCF or an authorized vendor or entity, who must then forward them to the Florida Department of Law Enforcement (FDLE); FDLE must then forward them to the FBI for background screening.
- The CS specifies that the applicant must bear the state and federal costs of fingerprint processing.
- The CS requires that FDLE retain the fingerprints and enroll them in the national retained fingerprint arrest notification program once FDLE begins participation in the program.
- The CS directs FDLE to identify and report any arrest record to DCF.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2019	.	
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	.	

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

Senate Amendment (with title amendment)

Delete lines 234 - 243
and insert:
and continued employment. The applicant must submit a full set
of fingerprints to the department or to a vendor, entity, or
agency authorized by s. 943.053(13). The department, vendor,
entity, or agency shall forward the fingerprints to the
Department of Law Enforcement for state processing and the
Department of Law Enforcement shall forward the fingerprints to



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the Federal Bureau of Investigation for national processing.
Fees for state and federal fingerprint processing and retention
shall be borne by the applicant. The state cost for fingerprint
processing shall be as provided in s. 943.053(3)(e) for records
provided to persons or entities other than those specified as
exceptions therein. Fingerprints submitted to the Department of
Law Enforcement pursuant to this paragraph shall be retained as
provided by s. 435.12 and, when the Department of Law
Enforcement begins participation in the program, enrolled in the
Federal Bureau of Investigation's national retained fingerprint
arrest notification program, as provided in s. 943.05(4). Any
arrest record identified shall be reported to the department.

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

And the title is amended as follows:

Delete lines 38 - 42

and insert:

of employment and continued employment; requiring the
department to forward fingerprints to the Department
of Law Enforcement; requiring that fees for state and
federal fingerprint processing be borne by the peer
specialist applying for employment; providing that any
arrest record identified through background screening
be forwarded to the department; authorizing the
Department of Children

By Senator Rouson

19-00604-19

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1 A bill to be entitled
 2 An act relating to mental health and substance use
 3 disorders; amending s. 394.455, F.S.; defining the
 4 term "peer specialist"; amending s. 394.4572, F.S.;
 5 requiring a specific level of screening for peer
 6 specialists working in mental health programs and
 7 facilities; amending s. 394.4573, F.S.; specifying
 8 that the use of peer specialists for recovery support
 9 is an essential element of a coordinated system of
 10 behavioral health care; amending s. 397.311, F.S.;
 11 defining the term "peer specialist"; amending s.
 12 397.4073, F.S.; conforming provisions to changes made
 13 by the act; creating s. 397.417, F.S.; providing
 14 legislative findings and intent; authorizing a person
 15 to seek certification as a peer specialist if he or
 16 she meets specified qualifications; requiring a
 17 background screening, completion of a training
 18 program, and a passing score on a competency exam for
 19 a qualified person to obtain certification as a peer
 20 specialist; requiring the Department of Children and
 21 Families to develop a training program for peer
 22 specialists and to give preference to trainers who are
 23 certified peer specialists; requiring the training
 24 program to coincide with a competency exam and to be
 25 based on current practice standards; requiring the
 26 department to certify peer specialists directly or by
 27 designating a nonprofit certification organization;
 28 requiring that a person providing peer specialist
 29 services be certified or supervised by a licensed

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30 behavioral health care professional or a certified
 31 peer specialist; authorizing the department, a
 32 behavioral health managing entity, or the Medicaid
 33 program to reimburse a peer specialist service as a
 34 recovery service; encouraging Medicaid managed care
 35 plans to use peer specialists in providing recovery
 36 services; requiring peer specialists to meet the
 37 requirements of a background screening as a condition
 38 of employment and continued employment; authorizing
 39 the department or the Agency for Health Care
 40 Administration to require by rule that fingerprints be
 41 submitted electronically to the Department of Law
 42 Enforcement; authorizing the Department of Children
 43 and Families or the agency to contract with certain
 44 vendors for fingerprinting; specifying requirements
 45 for vendors; specifying offenses to be considered in
 46 the background screening of a peer specialist;
 47 authorizing a person who does not meet background
 48 screening requirements to request an exemption from
 49 disqualification from the department or the agency;
 50 providing that all peer specialists certified as of
 51 the effective date of this act are recognized as
 52 having met the requirements of this act; amending s.
 53 397.487, F.S.; revising legislative findings relating
 54 to voluntary certification of recovery residences;
 55 requiring recovery residences to comply with specified
 56 Florida Fire Prevention Code provisions; revising
 57 background screening requirements for owners,
 58 directors, and chief financial officers of recovery

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residences; amending s. 397.4873, F.S.; providing exceptions to limitations on referrals by recovery residences to licensed service providers; prohibiting recovery residences and specified affiliated individuals from benefiting from certain referrals; amending s. 435.07, F.S.; authorizing the exemption of certain persons from disqualification from employment; amending ss. 212.055, 394.495, 394.496, 394.9085, 397.416, 409.972, 440.102, 464.012, and 744.2007, F.S.; conforming cross-references; making technical changes; providing an effective date.

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

Section 1. Present subsections (32) through (48) of section 394.455, Florida Statutes, are redesignated as subsections (33) through (49), respectively, and a new subsection (32) is added to that section, to read:

394.455 Definitions.—As used in this part, the term:

(32) “Peer specialist” means a person who has been in recovery from a substance use disorder or mental illness for the past 2 years or a family member or caregiver of a person with a substance use disorder or mental illness and who is certified under s. 397.417.

Section 2. Paragraph (a) of subsection (1) of section 394.4572, Florida Statutes, is amended to read:

394.4572 Screening of mental health personnel.—

(1)(a) The department and the Agency for Health Care Administration shall require level 2 background screening

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pursuant to chapter 435 for mental health personnel. “Mental health personnel” includes all program directors, professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals held for examination or admitted for mental health treatment. For purposes of this chapter, employment screening of mental health personnel also includes, but is not limited to, employment screening as provided under chapter 435 and s. 408.809. The department and the Agency for Health Care Administration shall require a level 2 background screening pursuant to s. 397.417(5) for persons working as peer specialists in public or private mental health programs or facilities and who have direct contact with individuals held for involuntary examination or admitted for mental health treatment.

Section 3. Paragraph (1) of subsection (2) of section 394.4573, Florida Statutes, is amended to read:

394.4573 Coordinated system of care; annual assessment; essential elements; measures of performance; system improvement grants; reports.—On or before December 1 of each year, the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an assessment of the behavioral health services in this state. The assessment shall consider, at a minimum, the extent to which designated receiving systems function as no-wrong-door models, the availability of treatment and recovery services that use recovery-oriented and peer-involved approaches, the availability of less-restrictive services, and the use of evidence-informed practices. The department’s assessment shall consider, at a minimum, the needs assessments conducted by the managing

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entities pursuant to s. 394.9082(5). Beginning in 2017, the department shall compile and include in the report all plans submitted by managing entities pursuant to s. 394.9082(8) and the department's evaluation of each plan.

(2) The essential elements of a coordinated system of care include:

(1) Recovery support, including, but not limited to, the use of peer specialists as described in s. 397.417 to assist in the individual's recovery from a substance use disorder or mental illness, support for competitive employment, educational attainment, independent living skills development, family support and education, wellness management and self-care, and assistance in obtaining housing that meets the individual's needs. Such housing may include mental health residential treatment facilities, limited mental health assisted living facilities, adult family care homes, and supportive housing. Housing provided using state funds must provide a safe and decent environment free from abuse and neglect.

Section 4. Present subsections (30) through (49) of section 397.311, Florida Statutes, are redesignated as subsections (31) through (50), respectively, and a new subsection (30) is added to that section, to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(30) "Peer specialist" means a person who has been in recovery from a substance use disorder or mental illness for the past 2 years or a family member or caregiver of a person with a substance use disorder or mental illness and who is certified under s. 397.417.

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Section 5. Paragraph (f) of subsection (1) and paragraphs (b) and (c) of subsection (4) of section 397.4073, Florida Statutes, are amended to read:

397.4073 Background checks of service provider personnel.—

(1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND EXCEPTIONS.—

(f) Service provider personnel who request an exemption from disqualification must submit the request within 30 days after being notified of the disqualification. If 5 years or more have elapsed since the most recent disqualifying offense, service provider personnel may work with adults with mental health or substance use disorders or co-occurring disorders under the supervision of a qualified professional licensed under chapter 490 or chapter 491 or a master's-level-certified addictions professional until the agency makes a final determination regarding the request for an exemption from disqualification.

(4) EXEMPTIONS FROM DISQUALIFICATION.—

(b) ~~Since rehabilitated substance abuse impaired persons are effective in the successful treatment and rehabilitation of individuals with substance use disorders, for service providers which treat adolescents 13 years of age and older, service provider personnel whose background checks indicate crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from disqualification from employment pursuant to this paragraph.~~

~~(e)~~ The department may grant exemptions from disqualification which would limit service provider personnel to working with adults in substance use disorder ~~abuse~~ treatment facilities.

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175 Section 6. Section 397.417, Florida Statutes, is created to
 176 read:
 177 397.417 Behavioral health peer specialists.—
 178 (1) LEGISLATIVE FINDINGS AND INTENT.—
 179 (a) The Legislature finds that:
 180 1. The ability to provide adequate behavioral health
 181 services is limited by a shortage of professionals and
 182 paraprofessionals.
 183 2. The state is experiencing an increase in opioid
 184 addictions, which prove fatal to persons in many cases.
 185 3. Peer specialists provide effective support services
 186 because they share common life experiences with the persons they
 187 assist.
 188 4. Peer specialists promote a sense of community among
 189 those in recovery.
 190 5. Research has shown that peer support facilitates
 191 recovery and reduces health care costs.
 192 6. Peer specialists may have a criminal history that
 193 prevents them from meeting background screening requirements.
 194 (b) The Legislature intends to expand the use of peer
 195 specialists as a cost-effective means of providing services by
 196 ensuring that peer specialists meet specified qualifications,
 197 meet modified background screening requirements, and are
 198 adequately reimbursed for their services.
 199 (2) QUALIFICATIONS.—
 200 (a) A person may seek certification as a peer specialist if
 201 he or she has been in recovery from a substance use disorder or
 202 mental illness for the past 2 years or if he or she is a family
 203 member or caregiver of a person with a substance use disorder or

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204 mental illness.
 205 (b) To obtain certification as a peer specialist, a person
 206 must meet the background screening requirements of subsection
 207 (5), complete the training program, and achieve a passing score
 208 on the competency exam described in paragraph (3) (a).
 209 (3) DUTIES OF THE DEPARTMENT.—
 210 (a) The department shall develop a training program for
 211 persons seeking certification as peer specialists. The
 212 department must give preference to trainers who are certified
 213 peer specialists. The training program must coincide with a
 214 competency exam and be based on current practice standards.
 215 (b) The department shall certify peer specialists. The
 216 department may certify peer specialists directly or may
 217 designate a private, nonprofit certification organization to
 218 certify peer specialists, implement the training program, and
 219 administer the competency exam.
 220 (c) The department must require that a person providing
 221 peer specialist services be certified or be supervised by a
 222 licensed behavioral health care professional or a certified peer
 223 specialist.
 224 (4) PAYMENT.—Peer specialist services may be reimbursed as
 225 a recovery service through the department, a behavioral health
 226 managing entity, or the Medicaid program. Medicaid managed care
 227 plans are encouraged to use peer specialists in providing
 228 recovery services.
 229 (5) BACKGROUND SCREENING.—
 230 (a) A peer specialist must have completed or have been
 231 lawfully released from confinement, supervision, or any
 232 nonmonetary condition imposed by the court for any felony and

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233 must undergo a background screening as a condition of employment
 234 and continued employment. The background screening must include
 235 fingerprinting for statewide criminal history records checks
 236 through the Department of Law Enforcement and national criminal
 237 history records checks through the Federal Bureau of
 238 Investigation. The background screening may include local
 239 criminal records checks through local law enforcement agencies.

240 (b) The department or the Agency for Health Care
 241 Administration, as applicable, may require by rule that
 242 fingerprints submitted pursuant to this section be submitted
 243 electronically to the Department of Law Enforcement.

244 (c) The department or the Agency for Health Care
 245 Administration, as applicable, may contract with one or more
 246 vendors to perform all or part of the electronic fingerprinting
 247 pursuant to this section. Such contracts must ensure that the
 248 owners and personnel of the vendor performing the electronic
 249 fingerprinting are qualified and will ensure the integrity and
 250 security of all personal identifying information.

251 (d) Vendors who submit fingerprints on behalf of employers
 252 must:

253 1. Meet the requirements of s. 943.053; and
 254 2. Have the ability to communicate electronically with the
 255 department or the Agency for Health Care Administration, as
 256 applicable, and to accept screening results from the Department
 257 of Law Enforcement and provide the applicant's full first name,
 258 middle initial, and last name; social security number or
 259 individual taxpayer identification number; date of birth;
 260 mailing address; sex; and race.

261 (e) The background screening under this section must ensure

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262 that a peer specialist has not, during the previous 3 years,
 263 been arrested for and is awaiting final disposition of, been
 264 found guilty of, regardless of adjudication, or entered a plea
 265 of nolo contendere or guilty to, or been adjudicated delinquent
 266 and the record has not been sealed or expunged for, any felony.

267 (f) The background screening under this section must ensure
 268 that a peer specialist has not been found guilty of, regardless
 269 of adjudication, or entered a plea of nolo contendere or guilty
 270 to, or been adjudicated delinquent and the record has not been
 271 sealed or expunged for, any offense prohibited under any of the
 272 following state laws or similar laws of another jurisdiction:

273 1. Section 393.135, relating to sexual misconduct with
 274 certain developmentally disabled clients and reporting of such
 275 sexual misconduct.

276 2. Section 394.4593, relating to sexual misconduct with
 277 certain mental health patients and reporting of such sexual
 278 misconduct.

279 3. Section 409.9201, relating to Medicaid fraud.

280 4. Section 415.111, relating to adult abuse, neglect, or
 281 exploitation of aged persons or disabled adults.

282 5. Section 741.28, relating to domestic violence.

283 6. Section 777.04, relating to attempts, solicitation, and
 284 conspiracy to commit an offense listed in this section.

285 7. Section 782.04, relating to murder.

286 8. Section 782.07, relating to manslaughter, aggravated
 287 manslaughter of an elderly person or disabled adult, aggravated
 288 manslaughter of a child, or aggravated manslaughter of an
 289 officer, a firefighter, an emergency medical technician, or a
 290 paramedic.

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- 291 9. Section 782.071, relating to vehicular homicide.
 292 10. Section 782.09, relating to killing of an unborn child
 293 by injury to the mother.
 294 11. Chapter 784, relating to assault, battery, and culpable
 295 negligence, if the offense was a felony.
 296 12. Section 787.01, relating to kidnapping.
 297 13. Section 787.02, relating to false imprisonment.
 298 14. Section 787.025, relating to luring or enticing a
 299 child.
 300 15. Section 787.04(2), relating to leading, taking,
 301 enticing, or removing a minor beyond the state limits, or
 302 concealing the location of a minor, with criminal intent pending
 303 custody proceedings.
 304 16. Section 787.04(3), relating to leading, taking,
 305 enticing, or removing a minor beyond the state limits, or
 306 concealing the location of a minor, with criminal intent pending
 307 dependency proceedings or proceedings concerning alleged abuse
 308 or neglect of a minor.
 309 17. Section 790.115(1), relating to exhibiting firearms or
 310 weapons within 1,000 feet of a school.
 311 18. Section 790.115(2)(b), relating to possessing an
 312 electric weapon or device, destructive device, or other weapon
 313 on school property.
 314 19. Section 794.011, relating to sexual battery.
 315 20. Former s. 794.041, relating to prohibited acts of
 316 persons in familial or custodial authority.
 317 21. Section 794.05, relating to unlawful sexual activity
 318 with certain minors.
 319 22. Section 794.08, relating to female genital mutilation.

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- 320 23. Section 798.02, relating to lewd and lascivious
 321 behavior.
 322 24. Chapter 800, relating to lewdness and indecent
 323 exposure.
 324 25. Section 806.01, relating to arson.
 325 26. Section 810.02, relating to burglary, if the offense
 326 was a felony of the first degree.
 327 27. Section 810.14, relating to voyeurism, if the offense
 328 was a felony.
 329 28. Section 810.145, relating to video voyeurism, if the
 330 offense was a felony.
 331 29. Section 812.13, relating to robbery.
 332 30. Section 812.131, relating to robbery by sudden
 333 snatching.
 334 31. Section 812.133, relating to carjacking.
 335 32. Section 812.135, relating to home-invasion robbery.
 336 33. Section 817.50, relating to fraudulently obtaining
 337 goods or services from a health care provider and false reports
 338 of a communicable disease.
 339 34. Section 817.505, relating to patient brokering.
 340 35. Section 825.102, relating to abuse, aggravated abuse,
 341 or neglect of an elderly person or disabled adult.
 342 36. Section 825.1025, relating to lewd or lascivious
 343 offenses committed upon or in the presence of an elderly person
 344 or disabled person.
 345 37. Section 825.103, relating to exploitation of an elderly
 346 person or disabled adult, if the offense was a felony.
 347 38. Section 826.04, relating to incest.
 348 39. Section 827.03, relating to child abuse, aggravated

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child abuse, or neglect of a child.

40. Section 827.04, relating to contributing to the delinquency or dependency of a child.

41. Former s. 827.05, relating to negligent treatment of children.

42. Section 827.071, relating to sexual performance by a child.

43. Section 831.30, relating to fraud in obtaining medicinal drugs.

44. Section 831.31, relating to sale, manufacture, delivery, possession with intent to sell, manufacture, or deliver any counterfeit controlled substance if the offense was a felony.

45. Section 843.01, relating to resisting arrest with violence.

46. Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer of the means of protection or communication.

47. Section 843.12, relating to aiding in an escape.

48. Section 843.13, relating to aiding in the escape of juvenile inmates of correctional institutions.

49. Chapter 847, relating to obscene literature.

50. Section 874.05, relating to encouraging or recruiting another to join a criminal gang.

51. Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.

52. Section 895.03, relating to racketeering and collection of unlawful debts.

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53. Section 896.101, relating to the Florida Money Laundering Act.

54. Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

55. Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.

56. Section 944.40, relating to escape.

57. Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

58. Section 944.47, relating to introduction of contraband into a correctional facility.

59. Section 985.701, relating to sexual misconduct in juvenile justice programs.

60. Section 985.711, relating to contraband introduced into detention facilities.

(6) EXEMPTION REQUESTS.—A person who wishes to become a peer specialist and is disqualified under subsection (5) may request an exemption from disqualification pursuant to s. 435.07 from the department or the Agency for Health Care Administration, as applicable.

(7) GRANDFATHER CLAUSE.—All peer specialists certified as of the effective date of this act are recognized as having met the requirements of this act.

Section 7. Subsection (1), paragraph (m) of subsection (3), and subsection (6) of section 397.487, Florida Statutes, are amended to read:

397.487 Voluntary certification of recovery residences.—

(1) The Legislature finds that a person suffering from

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addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence while receiving treatment or after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(m) Proof of satisfactory fire, safety, and health inspections. A recovery residence must comply with the provisions of the Florida Fire Prevention Code which apply to one-family and two-family dwellings, public lodging establishments, rooming houses, or other housing facilities, as applicable.

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435 and s. 408.809. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 408.809(4) or s. 435.04(2) unless the department has issued an exemption under s. 397.4073 or s. 397.4872. In accordance with s. 435.04, the department shall notify the

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credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

Section 8. Section 397.4873, Florida Statutes, is amended to read:

397.4873 Referrals to or from recovery residences; prohibitions; penalties.—

(1) A service provider licensed under this part may not make a referral of a prospective, current, or discharged patient to, or accept a referral of such a patient from, a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in s. 397.4871.

(2) Subsection (1) does not apply to:

(a) A licensed service provider under contract with a managing entity as defined in s. 394.9082.

(b) Referrals by a recovery residence to a licensed service provider when a resident has experienced a recurrence of substance use and, in the best judgment of the recovery residence administrator, it appears that the resident may benefit from clinical treatment services ~~the recovery residence or its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral.~~

(c) Referrals made before January 1, 2020 ~~July 1, 2018~~, by a licensed service provider to that licensed service provider's wholly owned subsidiary, if applications and associated fees are submitted by July 1, 2019.

(3) A recovery residence or its owners, directors,

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465 operators, employees, or volunteers may not receive a pecuniary
 466 benefit, directly or indirectly, from a licensed service
 467 provider for a referral made pursuant to subsection (1) or
 468 subsection (2).

469 ~~(4)(3)~~ For purposes of this section, a licensed service
 470 provider or recovery residence shall be considered to have made
 471 a referral if the provider or recovery residence has informed a
 472 patient by any means about the name, address, or other details
 473 of a recovery residence or licensed service provider, or
 474 informed a licensed service provider or a recovery residence of
 475 any identifying details about a patient.

476 ~~(5)(4)~~ A licensed service provider shall maintain records
 477 of referrals to or from recovery residences as may be prescribed
 478 by the department in rule.

479 ~~(6)(5)~~ After June 30, 2019, a licensed service provider
 480 violating this section shall be subject to an administrative
 481 fine of \$1,000 per occurrence. Repeat violations of this section
 482 may subject a provider to license suspension or revocation
 483 pursuant to s. 397.415.

484 ~~(7)(6)~~ Nothing in this section requires a licensed service
 485 provider to refer a patient to or to accept a referral of a
 486 patient from a recovery residence.

487 Section 9. Subsection (2) of section 435.07, Florida
 488 Statutes, is amended to read:

489 435.07 Exemptions from disqualification.—Unless otherwise
 490 provided by law, the provisions of this section apply to
 491 exemptions from disqualification for disqualifying offenses
 492 revealed pursuant to background screenings required under this
 493 chapter, regardless of whether those disqualifying offenses are

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494 listed in this chapter or other laws.

495 (2) Persons employed, or applicants for employment, by
 496 treatment providers who treat adolescents 13 years of age and
 497 older, and who are disqualified from employment solely because
 498 of crimes under s. 796.07(2)(e), s. 810.02(4), s. 812.014(2)(c),
 499 s. 817.563, s. 831.01, s. 831.02, s. 893.13, or s. 893.147, and
 500 any related criminal attempt, solicitation, or conspiracy under
 501 s. 777.04, may be exempted from disqualification from employment
 502 pursuant to this chapter without application of the waiting
 503 period in subparagraph (1)(a)1.

504 Section 10. Paragraph (e) of subsection (5) of section
 505 212.055, Florida Statutes, is amended to read:

506 212.055 Discretionary sales surtaxes; legislative intent;
 507 authorization and use of proceeds.—It is the legislative intent
 508 that any authorization for imposition of a discretionary sales
 509 surtax shall be published in the Florida Statutes as a
 510 subsection of this section, irrespective of the duration of the
 511 levy. Each enactment shall specify the types of counties
 512 authorized to levy; the rate or rates which may be imposed; the
 513 maximum length of time the surtax may be imposed, if any; the
 514 procedure which must be followed to secure voter approval, if
 515 required; the purpose for which the proceeds may be expended;
 516 and such other requirements as the Legislature may provide.
 517 Taxable transactions and administrative procedures shall be as
 518 provided in s. 212.054.

519 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
 520 s. 125.011(1) may levy the surtax authorized in this subsection
 521 pursuant to an ordinance either approved by extraordinary vote
 522 of the county commission or conditioned to take effect only upon

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approval by a majority vote of the electors of the county voting in a referendum. In a county as defined in s. 125.011(1), for the purposes of this subsection, "county public general hospital" means a general hospital as defined in s. 395.002 which is owned, operated, maintained, or governed by the county or its agency, authority, or public health trust.

(e) A governing board, agency, or authority shall be chartered by the county commission upon this act becoming law. The governing board, agency, or authority shall adopt and implement a health care plan for indigent health care services. The governing board, agency, or authority shall consist of no more than seven and no fewer than five members appointed by the county commission. The members of the governing board, agency, or authority shall be at least 18 years of age and residents of the county. A ~~No~~ member may not be employed by or affiliated with a health care provider or the public health trust, agency, or authority responsible for the county public general hospital. The following community organizations shall each appoint a representative to a nominating committee: the South Florida Hospital and Healthcare Association, the Miami-Dade County Public Health Trust, the Dade County Medical Association, the Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade County. This committee shall nominate between 10 and 14 county citizens for the governing board, agency, or authority. The slate shall be presented to the county commission and the county commission shall confirm the top five to seven nominees, depending on the size of the governing board. Until such time as the governing board, agency, or authority is created, the funds provided for in subparagraph (d)2. shall be placed in a

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restricted account set aside from other county funds and not disbursed by the county for any other purpose.

1. The plan shall divide the county into a minimum of four and maximum of six service areas, with no more than one participant hospital per service area. The county public general hospital shall be designated as the provider for one of the service areas. Services shall be provided through participants' primary acute care facilities.

2. The plan and subsequent amendments to it shall fund a defined range of health care services for both indigent persons and the medically poor, including primary care, preventive care, hospital emergency room care, and hospital care necessary to stabilize the patient. For the purposes of this section, "stabilization" means stabilization as defined in s. 397.311 ~~s. 397.311(45)~~. Where consistent with these objectives, the plan may include services rendered by physicians, clinics, community hospitals, and alternative delivery sites, as well as at least one regional referral hospital per service area. The plan shall provide that agreements negotiated between the governing board, agency, or authority and providers shall recognize hospitals that render a disproportionate share of indigent care, provide other incentives to promote the delivery of charity care to draw down federal funds where appropriate, and require cost containment, including, but not limited to, case management. From the funds specified in subparagraphs (d)1. and 2. for indigent health care services, service providers shall receive reimbursement at a Medicaid rate to be determined by the governing board, agency, or authority created pursuant to this paragraph for the initial emergency room visit, and a per-member

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 581 per-month fee or capitation for those members enrolled in their
 582 service area, as compensation for the services rendered
 583 following the initial emergency visit. Except for provisions of
 584 emergency services, upon determination of eligibility,
 585 enrollment shall be deemed to have occurred at the time services
 586 were rendered. The provisions for specific reimbursement of
 587 emergency services shall be repealed on July 1, 2001, unless
 588 otherwise reenacted by the Legislature. The capitation amount or
 589 rate shall be determined before program implementation by an
 590 independent actuarial consultant. In no event shall such
 591 reimbursement rates exceed the Medicaid rate. The plan must also
 592 provide that any hospitals owned and operated by government
 593 entities on or after the effective date of this act must, as a
 594 condition of receiving funds under this subsection, afford
 595 public access equal to that provided under s. 286.011 as to any
 596 meeting of the governing board, agency, or authority the subject
 597 of which is budgeting resources for the retention of charity
 598 care, as that term is defined in the rules of the Agency for
 599 Health Care Administration. The plan shall also include
 600 innovative health care programs that provide cost-effective
 601 alternatives to traditional methods of service and delivery
 602 funding.

3. The plan's benefits shall be made available to all
 county residents currently eligible to receive health care
 services as indigents or medically poor as defined in paragraph
 (4) (d).

4. Eligible residents who participate in the health care
 plan shall receive coverage for a period of 12 months or the
 period extending from the time of enrollment to the end of the

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 610 current fiscal year, per enrollment period, whichever is less.

5. At the end of each fiscal year, the governing board,
 agency, or authority shall prepare an audit that reviews the
 budget of the plan, delivery of services, and quality of
 services, and makes recommendations to increase the plan's
 efficiency. The audit shall take into account participant
 hospital satisfaction with the plan and assess the amount of
 poststabilization patient transfers requested, and accepted or
 denied, by the county public general hospital.

Section 11. Subsection (3) of section 394.495, Florida
 Statutes, is amended to read:

394.495 Child and adolescent mental health system of care;
 programs and services.—

(3) Assessments must be performed by:

(a) A professional as defined in s. 394.455(5), (7), (33)
~~(32)~~, (36) ~~(35)~~, or (37) ~~(36)~~;

(b) A professional licensed under chapter 491; or

(c) A person who is under the direct supervision of a
 qualified professional as defined in s. 394.455(5), (7), (33)
~~(32)~~, (36) ~~(35)~~, or (37) ~~(36)~~ or a professional licensed under
 chapter 491.

Section 12. Subsection (5) of section 394.496, Florida
 Statutes, is amended to read:

394.496 Service planning.—

(5) A professional as defined in s. 394.455(5), (7), (33)
~~(32)~~, (36) ~~(35)~~, or (37) ~~(36)~~ or a professional licensed under
 chapter 491 must be included among those persons developing the
 services plan.

Section 13. Subsection (6) of section 394.9085, Florida

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Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the ~~term terms~~ "detoxification services," has the same meaning as detoxification in s. 397.311(26)(a), "addictions receiving facility," has the same meaning as provided in s. 397.311(26)(a), and "receiving facility" has ~~have~~ the same ~~meaning meanings as those~~ provided in s. 394.455 ss- ~~397.311(26)(a)4., 397.311(26)(a)1., and 394.455(39),~~ respectively.

Section 14. Section 397.416, Florida Statutes, is amended to read:

397.416 Substance use disorder ~~abuse~~ treatment services; qualified professional.—Notwithstanding any other provision of law, a person who was certified through a certification process recognized by the former Department of Health and Rehabilitative Services before January 1, 1995, may perform the duties of a qualified professional with respect to substance use ~~abuse~~ treatment services as defined in this chapter, and need not meet the certification requirements contained in s. 397.311(35) s- ~~397.311(34).~~

Section 15. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment

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facilities operated through the Department of Juvenile Justice or in a treatment facility as defined in s. 394.455 s- ~~394.455(47).~~

Section 16. Paragraphs (d) and (g) of subsection (1) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(d) "Drug rehabilitation program" means a service provider as defined in s. 397.311 which, ~~established pursuant to s. 397.311(43),~~ that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(g) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and followup services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by service providers as defined in s. 397.311 ~~pursuant to s. 397.311(43).~~

Section 17. Paragraph (e) of subsection (4) of section 464.012, Florida Statutes, is amended to read:

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697 464.012 Licensure of advanced practice registered nurses;
698 fees; controlled substance prescribing.—

699 (4) In addition to the general functions specified in
700 subsection (3), an advanced practice registered nurse may
701 perform the following acts within his or her specialty:

702 (e) A psychiatric nurse, who meets the requirements in s.
703 394.455(36) ~~s. 394.455(35)~~, within the framework of an
704 established protocol with a psychiatrist, may prescribe
705 psychotropic controlled substances for the treatment of mental
706 disorders.

707 Section 18. Subsection (7) of section 744.2007, Florida
708 Statutes, is amended to read:

709 744.2007 Powers and duties.—

710 (7) A public guardian may not commit a ward to a treatment
711 facility, as defined in s. 394.455 ~~s. 394.455(47)~~, without an
712 involuntary placement proceeding as provided by law.

713 Section 19. This act shall take effect July 1, 2019.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/19
Meeting Date

528
Bill Number (if applicable)

Topic Certified Peer Specialist
Recovery Resident Advisor

Amendment Barcode (if applicable)

Name Neal McGarry

Job Title CEO

Address 1715 S. Gadsden St
Street

Phone 850-222-6314

Tall FL 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Certification Board

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/19
Meeting Date

528
Bill Number (if applicable)

Topic _____

Name Carey Cook

Job Title Legislative Advocate

Address Po Box 1757

Street

City

Tallahassee

FL

State

32302

Zip

Phone _____

Email ccook@flcities.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19

Meeting Date

528

Bill Number (if applicable)

Topic Mental Health and Substance

Amendment Barcode (if applicable)

Name Kara Samfleur

Job Title Contract Lobbyist

Address 401 SW 86th Ave

Phone 4-4578902

Street

P. Pines

City

FL

State

33025

Zip

Email Kara@Kstandasson.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/19
Meeting Date

528
Bill Number (if applicable)

Topic Peer Specialists
Name Alisa LaPolT (ah LEE sa La POLT)

Amendment Barcode (if applicable)

Job Title Lobbyist

Address PO Box 1344
Street

Phone 850-443-1319

TLH FL 3230
City State Zip

Email alisa@go40psail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NAMI Palm Beach & state wide affiliates

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 528
Bill Number (if applicable)

Meeting Date _____

Topic Substance Abuse

Amendment Barcode (if applicable) _____

Name MARK FONTAINE

Job Title Director

Address 2868 Mahan Drive
Street

Phone 878-2196

DALL 32308
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Alcohol + Drug Abuse Assoc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-19-19

Meeting Date

528

DCF Bill D-3A

Bill Number (if applicable)

Topic Mental Health Clubhouses

Amendment Barcode (if applicable)

Name Brett Buell

Job Title Director

Address 102 NE 20th Ave

Street

Phone _____

Coconut Creek FL 32601

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Mental Health Clubhouses

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/2019

Meeting Date

528

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S.
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SB 528
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, February 19, 2019
TIME: 12:30—2:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

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: _____

BILL: SPB 7048

INTRODUCER: Committee on Children, Families, and Elder Affairs

SUBJECT: Disclosure of Confidential Records

DATE: February 20, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon		CF Submitted as Comm. Bill/Fav.
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7048 requires that when a patient communicates a specific threat against an identifiable individual to a mental health service provider, the provider must release information from the clinical record of the patient sufficient to inform the threatened individual. The provider must also inform law enforcement of the threat.

The bill provides immunity from civil or criminal liability to the administrator of a mental health facility, psychiatrists, psychologists, social workers, and other treatment providers who disclose information conveyed to them by a patient communicating a threat to a specific, readily identifiable third party.

The fiscal impact on the state is indeterminate, and the bill has an effective date of July 1, 2019.

II. Present Situation:

Clinical Records and Confidentiality

Clinical records maintained by mental health facilities in Florida “include[] all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by facility staff which pertains to the patient’s hospitalization or treatment¹.” Clinical records are confidential and exempt by statute.² Instances in which clinical records must be disclosed to certain individuals include:

¹ Section 394.4615, F.S.

² *Id.*

- Authorization from patient or guardian
- Authorization from patient's attorney needed "for adequate representation"
- Court order
- The Department of Corrections, if the patient is committed to, or is to be returned to, the Department of Corrections from the Department of Children and Families.³

Therapist-Client Privilege

In 1996, the U.S. Supreme Court established a federal psychotherapist-patient privilege protecting a patient's confidential communication with a psychotherapist in the course of treatment or diagnosis.⁴ The privilege protects a patient's confidential communication from compelled disclosure.⁵ The majority of states have laws that either permit or require mental health professionals to disclose otherwise confidential information received from patients who the professional reasonably believes may become violent.⁶

Tarasoff and the Duty to Protect

In *Tarasoff v. Regents of the University of California*,⁷ a University of California (UC) Berkeley student, Prosenjit Poddar, told his therapist of his plan to purchase a gun and murder another student, Tatiana Tarasoff.⁸ The therapist informed the campus police of the threat but neither the police nor the therapist warned Tarasoff directly.⁹ Poddar proceeded to carry out his plan and murder Tarasoff roughly two months later. Tarasoff's parents sued the UC Regents and the Supreme Court of California ultimately developed what is now known as a *Tarasoff* duty: "The general formulation is that a mental health worker is obligated promptly to notify either the potential victim or the police when a patient makes an explicit threat of serious physical harm against a readily identifiable third party"¹⁰

The *Tarasoff* duty has expanded into many different forms and requirements among the different states.¹¹ There is no blanket federal duty to warn or protect; instead, there is substantial state-by-state variation in whether and how the duties are defined and codified. There are three general categories of states: those that mandate some duty to warn or protect (and that often specify whether law enforcement, the victim, or a combination should be "warned," generally considered 'mandatory' states); those that allow therapists to warn by protecting them from liability for breach of confidentiality if they do so, but do not require them to issue a warning (permissive states); and those that offer no statutory or case law guidance.¹²

³ Section 394.4615(2), F.S.

⁴ See *Jaffee v. Redmond*, 518 U.S. 1 (1996).

⁵ *Id.*

⁶ Edwards, Griffin Sims, Database of State Tarasoff Laws (February 11, 2010), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1551505 (last visited February 16, 2019).

⁷ 551 P.2d 334 (Cal. 1976).

⁸ *Id.*

⁹ *Id.*

¹⁰ Paul B. Herbert & Kathryn A. Young, *Tarasoff at Twenty-Five*, 30 J. Am. Acad. Psychiatry L. 275, 277 (2002).

¹¹ *supra* at Note 6.

¹² *Id.*

Duties of Mental Health Professionals in Florida

Florida is considered a ‘permissive’ duty to warn/protect state: mental health providers are given discretion to breach confidentiality with patients and warn of a threat to a third party where a patient has “declared an intention to harm other persons.”¹³ The Legislature first added a dangerous patient exception to the confidentiality requirement for psychiatrists,¹⁴ and later for psychologists¹⁵ and for social workers and other mental health professionals.¹⁶ Communications between a licensed or certified mental health worker and the patient or client are confidential, and may be waived, only when “there is a clear and immediate probability of physical harm to the patient or client, to other individuals, or to society...” and the licensed professional communicates the information “only to the potential victim, appropriate family member, or ...other appropriate authorities.”¹⁷

III. Effect of Proposed Changes:

Section 1 amends section 394.4615, F.S., requiring the release of confidential information from a patient’s clinical record sufficient to inform a third party of a specific threat to cause serious bodily injury or death to the individual. The threat must be communicated to both law enforcement and the threatened individual by the administrator of a mental health treatment facility or hospital once the patient has made the threat to a service provider at the facility or hospital.

Section 2 amends section 456.059, F.S., requiring a psychiatrist to disclose patient communications to the extent necessary to warn law enforcement and a potential victim of a threat of serious bodily injury or death made by the patient of the threat. The bill provides that such disclosure of confidential communications may not be the basis of legal action or any civil or criminal liability against the psychiatrist.

Section 3 amends section 490.0147, F.S., requiring a psychologist to disclose patient communications to the extent necessary to warn law enforcement and a potential victim of a threat of serious bodily injury or death made by the patient of the threat. The bill provides that such disclosure of confidential communications may not be the basis of legal action or any civil or criminal liability against the psychologist.

Section 4 amends section 491.0147, F.S., requiring a health care professional licensed under Chapter 491, Florida Statutes, to disclose patient communications to the extent necessary to warn law enforcement and a potential victim of a threat of serious bodily injury or death made by the patient of the threat. The bill provides that such disclosure of confidential communications may not be the basis of legal action or any civil or criminal liability against the health care professional.

¹³ Section 394.4615, F.S.

¹⁴ Section 456.059, F.S.

¹⁵ Section 490.0147, F.S.

¹⁶ Section 491.0147, F.S.

¹⁷ *Id.*

Section 5 reenacts paragraph (u) of section 490.009(1), F.S., for the purpose of incorporating changes made by the bill to s. 490.0147.

Section 6 reenacts paragraph (u) of section 491.009(1), F.S., for the purpose of incorporating changes made by the bill to s. 491.0147.

Section 7 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local law enforcement offices may need additional training and/or to add personnel to handle what may be an increased threat response from mandatory reporting, however the impact of these potential needs cannot be determined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 394.4615, 456.059, 490.0147, and 491.0147 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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



897740

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/19/2019	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 103 - 111
and insert:
~~shall be~~ confidential. This privilege may be waived under the
following conditions:

(a) ~~(1)~~ When the psychologist ~~person licensed under this~~
~~chapter~~ is a party defendant to a civil, criminal, or
disciplinary action arising from a complaint filed by the
patient or client, in which case the waiver shall be limited to



897740

11 that action; or.

12 (b) ~~(2)~~ When the patient or client agrees to the waiver, in

FOR CONSIDERATION By the Committee on Children, Families, and Elder Affairs

586-02187-19

20197048pb

A bill to be entitled

An act relating to disclosure of confidential records; amending s. 394.4615, F.S.; requiring service providers to disclose information from a clinical record under certain circumstances relating to threats to cause seriously bodily injury or death; amending s. 456.059, F.S.; requiring, rather than authorizing, psychiatrists to disclose certain patient communications for purposes of notifying potential victims and law enforcement agencies of certain threats; amending s. 490.0147, F.S.; requiring, rather than authorizing, psychologists to disclose certain patient and client communications for purposes of notifying potential victims and law enforcement agencies of certain threats; providing psychologists with immunity from specified liability and actions under certain circumstances; amending s. 491.0147, F.S.; requiring, rather than authorizing, certain license holders and certificate holders to disclose certain patient and client communications for purposes of notifying potential victims and law enforcement agencies of certain threats; providing such persons with immunity from specified liability and actions; reenacting s. 490.009, F.S., relating to discipline of psychiatrists; reenacting s. 491.009, F.S., relating to discipline of psychologists; providing an effective date.

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

Page 1 of 7

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

586-02187-19

20197048pb

Section 1. Present subsections (4) through (11) of section 394.4615, Florida Statutes, are redesignated as subsections (5) through (12), respectively, a new subsection (4) is added to that section, and subsection (3) of that section is amended, to read:

394.4615 Clinical records; confidentiality.-

(3) Information from the clinical record must ~~may~~ be released ~~in the following circumstances:~~

~~(a)~~ when a patient has communicated to a service provider a specific threat to cause serious bodily injury or death to an identified or a readily available person, if the service provider reasonably believes, or should reasonably believe according to the standards of his or her profession, that the client has the apparent intent and ability to imminently or immediately carry out such threat ~~declared an intention to harm other persons~~. When such communication declaration has been made, the administrator must ~~may~~ authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient and communicate the threat to law enforcement.

(4) (a) (b) Information from the clinical record may be released when the administrator of the facility or secretary of the department deems release to a qualified researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.

Page 2 of 7

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

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20197048pb

(b) For the purpose of determining whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan pursuant to s. 394.4655, the clinical record may be released to the state attorney, the public defender or the patient's private legal counsel, the court, and to the appropriate mental health professionals, including the service provider identified in s.

394.4655(7)(b)2., in accordance with state and federal law.

Section 2. Section 456.059, Florida Statutes, is amended to read:

456.059 Communications confidential; exceptions.—

Communications between a patient and a psychiatrist, as defined in s. 394.455, shall be held confidential and ~~may~~ shall not be disclosed except upon the request of the patient or the patient's legal representative. Provision of psychiatric records and reports are ~~shall be~~ governed by s. 456.057. Notwithstanding any other provision of this section or s. 90.503, when ~~where~~:

(1) A patient is engaged in a treatment relationship with a psychiatrist;

(2) Such patient has communicated to the psychiatrist a specific threat to cause serious bodily injury or death to an identified or a readily available person ~~made an actual threat to physically harm an identifiable victim or victims~~; and

(3) The treating psychiatrist makes a clinical judgment that the patient has the apparent intent and ability to imminently or immediately carry out such threat ~~capability to commit such an act and that it is more likely than not that in the near future the patient will carry out that threat~~,

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the psychiatrist shall ~~may~~ disclose patient communications to the extent necessary to warn any potential victim or to communicate the threat to a law enforcement agency. A psychiatrist's disclosure of confidential communications when communicating a threat pursuant to this section may not be the basis of any legal action or criminal or civil liability against the psychiatrist ~~No civil or criminal action shall be instituted, and there shall be no liability on account of disclosure of otherwise confidential communications by a psychiatrist in disclosing a threat pursuant to this section.~~

Section 3. Section 490.0147, Florida Statutes, is amended to read:

490.0147 Confidentiality and privileged communications.—

(1) Any communication between a psychologist ~~any person licensed under this chapter~~ and her or his patient or client is ~~shall be~~ confidential.

(a) This privilege may be waived under the following conditions:

1. ~~(1)~~ When the psychologist ~~person licensed under this chapter~~ is a party defendant to a civil, criminal, or disciplinary action arising from a complaint filed by the patient or client, in which case the waiver shall be limited to that action; or—

2. ~~(2)~~ When the patient or client agrees to the waiver, in writing, or when more than one person in a family is receiving therapy, when each family member agrees to the waiver, in writing.

(2) Such privilege must be waived, and the psychologist shall disclose patient and client communications to the extent

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117 necessary to warn any potential victim and to communicate the
 118 threat to a law enforcement agency, if a patient or client has
 119 communicated to the psychologist a specific threat to cause
 120 serious bodily injury or death to an identified or readily
 121 available person, and the psychologist makes a clinical judgment
 122 that the patient or client has the apparent intent and ability
 123 to imminently or immediately carry out such threat. A
 124 psychologist's disclosure of confidential communications when
 125 communicating a threat pursuant to this subsection may not be
 126 the basis of any legal action or criminal or civil liability
 127 against the psychologist

128 ~~(3) When there is a clear and immediate probability of~~
 129 ~~physical harm to the patient or client, to other individuals, or~~
 130 ~~to society and the person licensed under this chapter~~
 131 ~~communicates the information only to the potential victim,~~
 132 ~~appropriate family member, or law enforcement or other~~
 133 ~~appropriate authorities.~~

134 Section 4. Section 491.0147, Florida Statutes, is amended
 135 to read:

136 491.0147 Confidentiality and privileged communications.—Any
 137 communication between any person licensed or certified under
 138 this chapter and her or his patient or client is ~~shall be~~
 139 confidential.

140 (1) This privilege ~~secrecy~~ may be waived under the
 141 following conditions:

142 (a) ~~(1)~~ When the person licensed or certified under this
 143 chapter is a party defendant to a civil, criminal, or
 144 disciplinary action arising from a complaint filed by the
 145 patient or client, in which case the waiver shall be limited to

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20197048pb

146 that action.

147 (b) ~~(2)~~ When the patient or client agrees to the waiver, in
 148 writing, or, when more than one person in a family is receiving
 149 therapy, when each family member agrees to the waiver, in
 150 writing.

151 (2) This privilege must be waived, and the person licensed
 152 or certified under this chapter shall disclose patient and
 153 client communications to the extent necessary to warn any
 154 potential victim and to communicate the threat to a law
 155 enforcement agency, if a patient or client has communicated to
 156 such person a specific threat to cause serious bodily injury or
 157 death to an identified or readily available person, and the
 158 person licensed or certified under this chapter makes a clinical
 159 judgment that the patient or client has the apparent intent and
 160 ability to imminently or immediately carry out such threat. A
 161 disclosure of confidential communications by a person licensed
 162 or certified under this chapter when communicating a threat
 163 pursuant to this subsection may not be the basis of any legal
 164 action or criminal or civil liability against such person

165 ~~(3) When, in the clinical judgment of the person licensed~~
 166 ~~or certified under this chapter, there is a clear and immediate~~
 167 ~~probability of physical harm to the patient or client, to other~~
 168 ~~individuals, or to society and the person licensed or certified~~
 169 ~~under this chapter communicates the information only to the~~
 170 ~~potential victim, appropriate family member, or law enforcement~~
 171 ~~or other appropriate authorities. There shall be no liability on~~
 172 ~~the part of, and no cause of action of any nature shall arise~~
 173 ~~against, a person licensed or certified under this chapter for~~
 174 ~~the disclosure of otherwise confidential communications under~~

586-02187-19

20197048pb

175 ~~this subsection.~~

176 Section 5. For the purpose of incorporating the amendment
177 made by this act to section 490.0147, Florida Statutes, in a
178 reference thereto, paragraph (u) of subsection (1) of section
179 490.009, Florida Statutes, is reenacted to read:

180 490.009 Discipline.—

181 (1) The following acts constitute grounds for denial of a
182 license or disciplinary action, as specified in s. 456.072(2):

183 (u) Failing to maintain in confidence a communication made
184 by a patient or client in the context of such services, except
185 as provided in s. 490.0147.

186 Section 6. For the purpose of incorporating the amendment
187 made by this act to section 491.0147, Florida Statutes, in a
188 reference thereto, paragraph (u) of subsection (1) of section
189 491.009, Florida Statutes, is reenacted to read:

190 491.009 Discipline.—

191 (1) The following acts constitute grounds for denial of a
192 license or disciplinary action, as specified in s. 456.072(2):

193 (u) Failure of the licensee, registered intern, or
194 certificateholder to maintain in confidence a communication made
195 by a patient or client in the context of such services, except
196 as provided in s. 491.0147.

197 Section 7. This act shall take effect July 1, 2019.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/19/2019

Meeting Date

7048

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justree2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Children, Families, and Elder Affairs
ITEM: SPB 7048
FINAL ACTION: Submitted and Reported Favorably as Committee Bill
MEETING DATE: Tuesday, February 19, 2019
TIME: 12:30—2:00 p.m.
PLACE: 301 Senate Building

[illegible]

CODES: FAV=Favorable
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