

<b>Tab 1</b>	<b>SB 1120 by Rodriguez;</b> (Identical to H 00893) Child Welfare					
398718	A	S	WD	CF, Book	Before L.23:	01/24 04:32 PM
689834	A	S		CF, Rodriguez	Delete L.63 - 83:	01/24 09:39 AM
<b>Tab 2</b>	<b>SB 1262 by Burgess;</b> (Identical to H 01277) Mental Health and Substance Abuse					
453624	D	S		CF, Burgess	Delete everything after	01/23 04:11 PM
<b>Tab 3</b>	<b>SB 1358 by Rouson;</b> (Similar to H 01011) Task Force on the Monitoring of Children in Out-of-Home Care					
<b>Tab 4</b>	<b>SB 1452 by Book;</b> (Similar to H 00963) Funding for Sheriffs Providing Child Protective Investigative Services					
733026	A	S		CF, Book	Delete L.29 - 33:	01/21 04:56 PM
<b>Tab 5</b>	<b>SB 1550 by Perry;</b> (Identical to H 01513) Public Records/Autopsy Reports of Minors					
550368	A	S	L	CF, Perry	Before L.25:	01/25 08:13 AM
<b>Tab 6</b>	<b>SB 1560 by Bean;</b> (Similar to H 01179) Voluntary Admissions for Mental Illness					
<b>Tab 7</b>	<b>SB 1598 by Garcia;</b> Domestic Violence Task Force					
<b>Tab 8</b>	<b>SB 1710 by Bradley (CO-INTRODUCERS) Brandes, Brodeur;</b> (Similar to H 01349) Guardianship					
276626	D	S		CF, Bradley	Delete everything after	01/24 09:52 AM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CHILDREN, FAMILIES, AND ELDER AFFAIRS**  
**Senator Garcia, Chair**  
**Senator Book, Vice Chair**

**MEETING DATE:** Tuesday, January 25, 2022  
**TIME:** 10:00 a.m.—12:00 noon  
**PLACE:** *Mallory Horne Committee Room, 37 Senate Building*

**MEMBERS:** Senator Garcia, Chair; Senator Book, Vice Chair; Senators Albritton, Brodeur, Harrell, Rouson, Torres, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1120</b> Rodriguez (Identical H 893)	Child Welfare; Authorizing the Department of Children and Families, under certain circumstances, to place children in its custody in therapeutic group homes for residential mental health treatment without prior court approval; providing that the department, rather than the Agency for Health Care Administration, shall appoint qualified evaluators to conduct suitability assessments of certain children in the department's custody; revising requirements for suitability assessments, etc.	CF      01/25/2022 AHS AP
2	<b>SB 1262</b> Burgess (Identical H 1277)	Mental Health and Substance Abuse; Revising the conditions under which a patient's communication with persons outside of a receiving facility may be restricted; requiring a receiving facility to notify specified emergency contacts of individuals who are being involuntarily held for examination; requiring receiving facilities to document that an option to authorize the release of specified information has been provided, within a specified timeframe, to individuals admitted on a voluntary basis; requiring that reports issued by law enforcement officers when delivering a person to a receiving facility contain certain information related to emergency contacts, etc.	CF      01/25/2022 AHS AP

**COMMITTEE MEETING EXPANDED AGENDA**

Children, Families, and Elder Affairs

Tuesday, January 25, 2022, 10:00 a.m.—12:00 noon

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>SB 1358</b> Rouson (Similar H 1011)	Task Force on the Monitoring of Children in Out-of-Home Care; Creating the task force adjunct to the Department of Law Enforcement; requiring the department to provide certain services; requiring the Florida Institute for Child Welfare to conduct certain focus groups and submit its findings to the task force by a specified date; requiring the Department of Children and Families to submit certain monthly reports to the task force through a specified date; requiring the task force to submit a report to the Governor and Legislature by a specified date; providing for future repeal, etc.	
		CF      01/25/2022 ACJ AP	
4	<b>SB 1452</b> Book (Similar H 963)	Funding for Sheriffs Providing Child Protective Investigative Services; Authorizing sheriffs who provide child protective investigative services to carry forward a certain percentage of unexpended state funds each fiscal year; requiring certain funds to be returned to the Department of Children and Families; prohibiting funds carried forward from being used in certain ways; requiring that certain expenditures be reported to the department; authorizing unexpended funds to be retained through contract or grant agreement renewals under certain circumstances, etc.	
		CF      01/25/2022 AHS AP	
5	<b>SB 1550</b> Perry (Identical H 1513)	Public Records/Autopsy Reports of Minors; Creating an exemption from public records requirements for autopsy reports of minors whose deaths were related to acts of domestic violence; requiring that certain surviving parents of a minor child whose death was related to domestic violence be given notice of petitions to view or copy the minor child's autopsy report and of the opportunity to be present and heard at the related hearings under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.	
		CF      01/25/2022 GO RC	

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**COMMITTEE MEETING EXPANDED AGENDA**

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	<b>SB 1560</b> Bean (Similar H 1179)	Voluntary Admissions for Mental Illness; Revising voluntary admission requirements for minors, etc.  CF 01/25/2022 JU RC	
7	<b>SB 1598</b> Garcia	Domestic Violence Task Force; Creating the Domestic Violence Task Force adjunct to the Department of Children and Families; requiring the department to provide certain services to the task force; providing purposes of the task force; specifying the composition of the task force; providing for the appointment of task force members and requirements for meetings; specifying duties of the task force; requiring state departments and agencies to provide requested assistance to the task force; requiring the task force to submit reports to the Governor and the Legislature by certain dates; providing for dissolution of the task force; providing for future repeal, unless saved by the Legislature through reenactment, etc.  CF 01/25/2022 AHS AP	
8	<b>SB 1710</b> Bradley (Similar H 1349, Compare H 1351)	Guardianship; Specifying circumstances under which the Office of Public and Professional Guardians' executive director's monitoring tool for ensuring compliance by professional guardians may include a certain financial audit; requiring the Department of Elderly Affairs to collect, compile, maintain, and manage certain data submitted by clerks of the court; requiring the department to create and maintain a publicly available dashboard containing certain information; requiring a guardian, in an initial guardianship report, an initial guardianship plan, a verified inventory, or an annual guardianship report, respectively, to submit certain information to the clerk of the court in a certain format, etc.  CF 01/25/2022 AP RC	

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Other Related Meeting Documents

By Senator Rodriguez

39-00587A-22

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1                   A bill to be entitled  
2       An act relating to child welfare; amending s. 39.407,  
3       F.S.; authorizing the Department of Children and  
4       Families, under certain circumstances, to place  
5       children in its custody in therapeutic group homes for  
6       residential mental health treatment without prior  
7       court approval; revising definitions; defining the  
8       term "therapeutic group home"; providing that the  
9       department, rather than the Agency for Health Care  
10      Administration, shall appoint qualified evaluators to  
11      conduct suitability assessments of certain children in  
12      the department's custody; specifying qualifications  
13      for evaluators conducting suitability assessments for  
14      placement in a therapeutic group home; revising  
15      requirements for suitability assessments; specifying  
16      when the department must provide a copy of the  
17      assessment to the guardian ad litem and the court;  
18      revising the department's and the agency's rulemaking  
19      authority; providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23       Section 1. Subsection (6) of section 39.407, Florida  
24       Statutes, is amended to read:

25       39.407 Medical, psychiatric, and psychological examination  
26       and treatment of child; physical, mental, or substance abuse  
27       examination of person with or requesting child custody.—

28       (6) Children ~~who are~~ in the legal custody of the department  
29       may be placed by the department, without prior approval of the

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30 court, in a residential treatment center licensed under s.  
31 394.875, a therapeutic group home, or a hospital licensed under  
32 chapter 395 for residential mental health treatment only  
33 pursuant to this section or may be placed by the court in  
34 accordance with an order of involuntary examination or  
35 involuntary placement entered pursuant to s. 394.463 or s.  
36 394.467. All children placed in a residential treatment program  
37 under this subsection must have a guardian ad litem appointed.

38 (a) As used in this subsection, the term:

39 ~~2.1.~~ "Residential treatment" or "residential treatment  
40 program" means a placement for observation, diagnosis, or  
41 treatment of an emotional disturbance in a residential treatment  
42 center licensed under s. 394.875, a therapeutic group home, or a  
43 hospital licensed under chapter 395.

44 ~~1.2.~~ "Least restrictive alternative" means the treatment  
45 and conditions of treatment that, separately and in combination,  
46 are no more intrusive or restrictive of freedom than reasonably  
47 necessary to achieve a substantial therapeutic benefit or to  
48 protect the child or adolescent or others from physical injury.

49 3. "Suitable for residential treatment" or "suitability"  
50 means a determination concerning a child or adolescent with an  
51 emotional disturbance as defined in s. 394.492(5) or a serious  
52 emotional disturbance as defined in s. 394.492(6) that each of  
53 the following criteria is met:

54 a. The child requires residential treatment.

55 b. The child is in need of a residential treatment program  
56 and is expected to benefit from mental, emotional, or behavioral  
57 health treatment.

58 c. An appropriate, less restrictive alternative to

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59 residential treatment is unavailable.

60 4. "Therapeutic group home" means a 24-hour residential  
61 program providing community-based mental health treatment and  
62 mental health support services to children who meet the criteria  
63 in s. 394.492(5) or (6) in a nonsecure, homelike setting that  
64 meets the requirements of a single-family unit or a community  
65 residential home as defined in s. 419.001. Notwithstanding s.  
66 419.001(1)(a), a therapeutic group home may provide a living  
67 environment for up to 16 unrelated residents.

68 (b) Whenever the department believes that a child in its  
69 legal custody is emotionally disturbed and may need residential  
70 treatment, an examination and suitability assessment must be  
71 conducted by a qualified evaluator ~~who is~~ appointed by the  
72 ~~department~~ Agency for Health Care Administration. This  
73 suitability assessment must be completed before the placement of  
74 the child in a residential treatment program ~~center for~~  
75 ~~emotionally disturbed children and adolescents or a hospital.~~

76 1. The qualified evaluator for placement in a residential  
77 treatment center or a hospital must be a psychiatrist or a  
78 psychologist licensed in this state ~~Florida~~ who has at least 3  
79 years of experience in the diagnosis and treatment of serious  
80 emotional disturbances in children and adolescents and who has  
81 no actual or perceived conflict of interest with any inpatient  
82 facility or residential treatment center or program.

83 2. The qualified evaluator for placement in a therapeutic  
84 group home must be a psychiatrist licensed under chapter 458, a  
85 psychologist licensed under chapter 490, or a mental health  
86 counselor licensed under chapter 491 who has at least 2 years of  
87 experience in the diagnosis and treatment of serious emotional

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88 or behavioral disturbance in children and adolescents and who  
89 has no actual or perceived conflict of interest with any  
90 residential treatment center or program.

91 (c) Consistent with the requirements of this section ~~Before~~  
92 ~~a child is admitted under this subsection,~~ the child shall be  
93 assessed for suitability for ~~residential~~ treatment by a  
94 qualified evaluator who has conducted an ~~a personal~~ examination  
95 and assessment of the child and has made written findings that:

96 1. The child appears to have an emotional disturbance  
97 serious enough to require treatment in a residential treatment  
98 program and is reasonably likely to benefit from the treatment.

99 2. The child has been provided with a clinically  
100 appropriate explanation of the nature and purpose of the  
101 treatment.

102 3. All available modalities of treatment less restrictive  
103 than residential treatment have been considered, and a less  
104 restrictive alternative that would offer comparable benefits to  
105 the child is unavailable.

106  
107 A copy of the written findings of the evaluation and suitability  
108 assessment must be provided to the department, to the guardian  
109 ad litem, and, if the child is a member of a Medicaid managed  
110 care plan, to the plan that is financially responsible for the  
111 child's care in residential treatment, all of whom must be  
112 provided with the opportunity to discuss the findings with the  
113 evaluator.

114 (d) Immediately upon placing a child in a residential  
115 treatment program under this section, the department must notify  
116 the guardian ad litem and the court having jurisdiction over the



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117 child. Within 5 days after the department's receipt of the  
118 assessment, the department shall ~~and must~~ provide the guardian  
119 ad litem and the court with a copy of the assessment by the  
120 qualified evaluator.

121 (e) Within 10 days after the admission of a child to a  
122 residential treatment program, the director of the residential  
123 treatment program or the director's designee must ensure that an  
124 individualized plan of treatment has been prepared by the  
125 program and has been explained to the child, to the department,  
126 and to the guardian ad litem, and submitted to the department.  
127 The child must be involved in the preparation of the plan to the  
128 maximum feasible extent consistent with his or her ability to  
129 understand and participate, and the guardian ad litem and the  
130 child's foster parents must be involved to the maximum extent  
131 consistent with the child's treatment needs. The plan must  
132 include a preliminary plan for residential treatment and  
133 aftercare upon completion of residential treatment. The plan  
134 must include specific behavioral and emotional goals against  
135 which the success of the residential treatment may be measured.  
136 A copy of the plan must be provided to the child, to the  
137 guardian ad litem, and to the department.

138 (f) Within 30 days after admission, the residential  
139 treatment program must review the appropriateness and  
140 suitability of the child's placement in the program. The  
141 residential treatment program must determine whether the child  
142 is receiving benefit toward the treatment goals and whether the  
143 child could be treated in a less restrictive treatment program.  
144 The residential treatment program shall prepare a written report  
145 of its findings and submit the report to the guardian ad litem

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146 and to the department. The department must submit the report to  
147 the court. The report must include a discharge plan for the  
148 child. The residential treatment program must continue to  
149 evaluate the child's treatment progress every 30 days thereafter  
150 and must include its findings in a written report submitted to  
151 the department. The department may not reimburse a facility  
152 until the facility has submitted every written report that is  
153 due.

154 (g)1. The department must submit, at the beginning of each  
155 month, to the court having jurisdiction over the child, a  
156 written report regarding the child's progress toward achieving  
157 the goals specified in the individualized plan of treatment.

158 2. The court must conduct a hearing to review the status of  
159 the child's residential treatment plan no later than 60 days  
160 after the child's admission to the residential treatment  
161 program. An independent review of the child's progress toward  
162 achieving the goals and objectives of the treatment plan must be  
163 completed by a qualified evaluator and submitted to the court  
164 before its 60-day review.

165 3. For any child in residential treatment at the time a  
166 judicial review is held pursuant to s. 39.701, the child's  
167 continued placement in residential treatment must be a subject  
168 of the judicial review.

169 4. If at any time the court determines that the child is  
170 not suitable for continued residential treatment, the court  
171 shall order the department to place the child in the least  
172 restrictive setting that is best suited to meet his or her  
173 needs.

174 (h) After the initial 60-day review, the court must conduct

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175 a review of the child's residential treatment plan every 90  
176 days.

177 (i) The department may adopt rules to administer this  
178 subsection ~~must adopt rules for implementing timeframes for the~~  
179 ~~completion of suitability assessments by qualified evaluators~~  
180 ~~and a procedure that includes timeframes for completing the 60-~~  
181 ~~day independent review by the qualified evaluators of the~~  
182 ~~child's progress toward achieving the goals and objectives of~~  
183 ~~the treatment plan which review must be submitted to the court.~~  
184 ~~The Agency for Health Care Administration must adopt rules for~~  
185 ~~the registration of qualified evaluators, the procedure for~~  
186 ~~selecting the evaluators to conduct the reviews required under~~  
187 ~~this section, and a reasonable, cost-efficient fee schedule for~~  
188 ~~qualified evaluators.~~

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



## 2022 AGENCY LEGISLATIVE BILL ANALYSIS

### Department of Children and Families

<b><u>BILL INFORMATION</u></b>	
<b>BILL NUMBER:</b>	SB 1120
<b>BILL TITLE:</b>	<u>Child Welfare</u>
<b>BILL SPONSOR:</b>	Senator A.M. Rodriguez
<b>EFFECTIVE DATE:</b>	Upon becoming law.

<b><u>COMMITTEES OF REFERENCE</u></b>
1) Children, Families, and Elder Affairs
2) Appropriations Subcommittee on Health and Human Services
3) Appropriations
4)
5)

<b><u>CURRENT COMMITTEE</u></b>
Children, Families, and Elder Affairs

<b><u>SIMILAR BILLS</u></b>	
<b>BILL NUMBER:</b>	N/A
<b>SPONSOR:</b>	N/A

<b><u>PREVIOUS LEGISLATION</u></b>	
<b>BILL NUMBER:</b>	N/A
<b>SPONSOR:</b>	N/A
<b>YEAR:</b>	N/A
<b>LAST ACTION:</b>	N/A

<b><u>IDENTICAL BILLS</u></b>	
<b>BILL NUMBER:</b>	HB 893
<b>SPONSOR:</b>	Representative Melo

<b><u>Is this bill part of an agency package?</u></b>
Yes

<b><u>BILL ANALYSIS INFORMATION</u></b>	
<b>DATE OF ANALYSIS:</b>	January 21, 2022. For further information, please contact John Paul Fiore at (850) 488-9410.
<b>LEAD AGENCY ANALYST:</b>	Vanessa Snoddy
<b>ADDITIONAL ANALYST(S):</b>	Tyler Tuszynski
<b>LEGAL ANALYST:</b>	Laura Battaglia
<b>FISCAL ANALYST:</b>	Sue Zwirz

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## **POLICY ANALYSIS**

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### **1. EXECUTIVE SUMMARY**

The proposal recognizes a new therapeutic setting (group home type) for youth that was created in the federal Family First Prevention Services Act (FFPSA) and implemented in Florida in May 2021. The goal of the bill is to align Florida law with FFPSA requirements, maximize federal funding available through title IV-E funding, and increase placement capacity.

As the Department of Children and Families (Department) continues to ensure placements are aligned with the best interests of youth, it is imperative to reduce systemic barriers that prevent immediate treatment for children in need of intensive services. The bill aims to facilitate the transition of traditional group care homes and pre-existing residential treatment facilities to this new therapeutic setting and allow the state to increase federal title IV-E funding by:

- Differentiating between Psychiatric Residential Treatment Facilities (PRTF)/Statewide Inpatient Psychiatric Program (SIPP) and Specialized Therapeutic Group Home (STGH)/Qualified Residential Treatment Program (QRTP) to allow different requirements for assessors to place children.
- Allowing a qualified evaluator for STGH and QRTP to be a licensed clinician with at least two years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents, as opposed to a psychiatrist or a psychologist licensed in Florida with three years of experience, as required for residential treatment. This will increase the pool of qualified evaluators beyond the 18 currently used for PRTF/SIPP suitability assessments.
- Giving the Department broad rulemaking authority to regulate the qualified evaluator network.
- Allowing more beds in Community Residential Home/QRTP settings (from 14 to 16 bed maximum). This keeps the Department within the federal Institute for Mental Disease (IMD) rule, while maximizing our ability to place and claim title IV-E dollars.

### **2. SUBSTANTIVE BILL ANALYSIS**

#### **1. PRESENT SITUATION:**

##### ***Family First Prevention Services Act (FFPSA)***

The FFPSA was signed into law as part of the Bipartisan Budget Act on February 9, 2018. This act reforms the federal child welfare financing streams, Title IV-E and Title IV-B of the Social Security Act, to provide services to families who are at risk of entering the child welfare system. The bill aims to prevent children from entering foster care by allowing federal reimbursement for mental health services, substance use treatment, and in-home parenting skill training. It also seeks to improve the well-being of children already in foster care by incentivizing states to reduce the placement of children in residential group care. States can now receive 50% reimbursement for evidence-based prevention services.

In order to pay for the increased funding for prevention services, funding was limited for children in group care. Specifically, Title IV-E reimbursement is only available for the first 14 days in group care unless a child is in a specified setting. These settings include the newly federally defined Qualified Residential Treatment Programs (QRTP).

##### **Section 1**

##### ***Qualified Evaluator and Suitability Assessments***

Section 39.407(6), Florida Statutes (F.S.), requires the Department to conduct an examination and suitability assessment if it is believed that a child needs residential treatment. The suitability assessment must be conducted by a qualified evaluator appointed by Agency for Health Care Administration (AHCA).

The Department must conduct a suitability assessment prior to placing children in a Psychiatric Residential Treatment Facility (PRTF/SIPP) and Specialized Therapeutic Group Homes (STGH). The Department contracts with the Qualified Evaluator Network (QEN) who is responsible for recruiting qualified evaluators (QE) to conduct

suitability assessments and render a recommendation within eleven (11) business days from receipt of the referral. At this time there are only 18 qualified evaluators statewide who are completing assessments on an average of six (6) business days. Through the implementation of teleconference, the QEN was able to reduce the time it takes to complete an assessment with final submission by the QEN to the Community-Based Care lead agency.

The requirements to be a qualified evaluator are that they must be a psychiatrist or a psychologist licensed in Florida who has at least three years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents, and no perceived conflict of interest with any inpatient facility or residential treatment center or program.

QRTPs are a new placement setting created by the FFPSA and implemented in Florida in May 2021. Florida currently has five (5) licensed QRTP with a total capacity of 50 beds. A QRTP must obtain a residential treatment center license through the Agency for Health Care Administration (AHCA) and a credential from the Department, which aligns the QRTP with all federal requirements. Through the state agency collaborative approach to license and credential a QRTP, reimbursement for the service delivery is available for children placed in the QRTP through the bundled specialized therapeutic group home fee.

The FFPSA requires an assessment using an evidence-based tool within 30 days of placement. The Department has identified the Child and Adolescent Needs and Strengths (CANS) – Trauma version as the evidence-based tool which has been incorporated into the suitability assessment. Although Florida law does not contemplate QRTP assessments, any child in need of placement in a QRTP would be required to submit to a suitability assessment to align with s. 39.407, F.S.

Under s. 39.407(6)(d), F.S., the timeframe to provide the assessments to the guardian ad litem and the court is "immediately" upon placement.

Currently, a therapeutic group home is not defined in statute.

The Department does not currently have broad rule-writing authority in this chapter.

### ***Institution for Mental Disease (IMD)***

When Medicaid was signed into Federal law in 1965, there were large nationwide attempts to "deinstitutionalize" mental health treatment to address concerns of warehousing mentally ill individuals in large institutions (asylums and sanitariums). To help address this concern, federal regulations prohibit Medicaid from paying for "Institutions for Mental Disease." This is Federally defined as a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

To claim Title IV-E payment for group care beyond 14 days, the FFPSA restricts the Department to specified placement settings. These settings include the newly federally defined QRTP. These QRTPs will serve a population that, in part, meets the definition of the population captured in the IMD exclusion and may be considered an IMD for Medicaid purposes if they have more than 16 beds.

Some QRTPs may be subject to the requirements of section 419.001(1)(a), F.S., regarding community residential homes, which may limit capacity of a community residential home to 14.

## **2. EFFECT OF THE BILL:**

### **Section 1**

#### ***Qualified Evaluator and Suitability Assessments***

This section amends the definition of "residential treatment" or "residential treatment program" in s. 39.407(6)(a), F.S., to include "therapeutic group home" and distinguish it from a residential treatment center licensed under s. 394.875, or a hospital licensed under chapter 395. This section defines "therapeutic group home" as a 24-hour residential program providing community-based mental health treatment and mental health support services to children who meet the criteria in s. 394.492(5) or (6) in a nonsecure, homelike setting that meets the requirements of a single-family unit or a community residential home as defined in s. 419.001. Distinguishing therapeutic group homes from other types of residential treatment will allow for a separate and less intensive assessment. The

change in definition will allow for the other types of “residential treatment” to align with the federal PRTF/SIPP and “therapeutic group home” with a QRTP.

This section amends s. 39.407(6)(b), F.S., to require the Department, as opposed to AHCA, to appoint the qualified evaluator. This is a technical change—the Department is the oversight entity.

The section also requires the qualified evaluator for STGH and QRTP to be a psychiatrist, psychologist or a mental health counselor licensed in this state with at least two years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents, as opposed to the stricter requirements for a PRTF/SIPP which requires the evaluator to be a psychiatrist or a psychologist licensed in Florida with three years of experience. This will increase the pool of qualified evaluators beyond the 18 currently used for PRTF/SIPP suitability assessments and create a larger recruitment pool for STGH and QRTP assessors. The third-party vendor contracted by the Department for the management of the qualified evaluator network estimates that this change in requirements will increase the pool of potentially qualified evaluators by approximately 2,000. The Department will need to amend the contract with the third-party manager of the Qualified Evaluator network to incorporate the requirements of the bill.

This section amends s. 39.407(6)(d), F.S., to require the Department to provide the guardian ad litem and the court a copy of the assessment within five days of the Department’s receipt of the assessment.

The section amends s. 39.407(6)(i), F.S., to grant the Department rule-making authority over the entire section and not just time frames for completion of suitability, as this rulemaking authority is currently split between the Department and AHCA. This expanded authority will allow the Department to better regulate certain group care settings more efficiently and maximize the ability to stay current with Federal law.

***Institution for Mental Disease (IMD)***

This section amends s. 39.407(6)(a), F.S., to define therapeutic group home and allow for up to 16 unrelated residents in that specific living environment. This language increases the number of allowable beds for placement in this group home setting without increasing or reducing the requirement for other community residential homes under s. 419.001, F.S. This keeps the Department within the federal IMD rule to maximize Medicaid claiming, but also maximizes capacity of title IV-E funded QRTP placements.

**3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? YES**

If yes, explain:	The bill grants the Department broad rule-making authority within s. 39.407, F.S.
What is the expected impact to the agency’s core mission?	This expanded authority allows the Department to better regulate certain group care settings more efficiently and maximize the ability to stay current with Federal law.
Rule(s) impacted (provide references to F.A.C., etc.):	65C-27, F.A.C, 65C-28, F.A.C., 65E-9, F.A.C

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS? UNKNOWN**

List any known proponents and opponents:	Unknown
Provide a summary of the proponents’ and opponents’ positions:	Unknown

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? NO**

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

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**6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? NO**

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Appointee Term:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

**FISCAL ANALYSIS**

**1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?**

Revenues:	None.
Expenditures:	None.
Does the legislation increase local taxes or fees?	No.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

**2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?**

Revenues:	None.
Expenditures:	None.
Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	N/A

**3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?**

Revenues:	None.
Expenditures:	None.
Other:	N/A

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?**



Does the bill increase taxes, fees or fines?	No.
Does the bill decrease taxes, fees or fines?	No.
What is the impact of the increase or decrease?	N/A
Bill Section Number:	N/A

**TECHNOLOGY IMPACT**

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	No.
If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A

**FEDERAL IMPACT**

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	Yes.
If yes, describe the anticipated impact including any fiscal impact.	The bill maximizes capacity of federally IV-E funded QRTP placements.

**ADDITIONAL COMMENTS**

Keeping the majority of QRTP requirements in rule allows the Department flexibility to adapt to the different needs of children being served, the needs of the provider community, and the ability to make changes in response to federal policy shifts.

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**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

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Issues/concerns/comments  
and recommended action:

None.

**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.)

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

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BILL: SB 1120

INTRODUCER: Senator Rodriguez

SUBJECT: Child Welfare

DATE: January 24, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Berger</u>	<u>Cox</u>	<u>CF</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AHS</u>	_____
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1120 authorizes the Department of Children and Families (DCF) to place children who meet the definition of a “child or adolescent who has an emotional disturbance” or a “child or adolescent who has a serious emotional disturbance or mental illness” in therapeutic group homes for mental health treatment without prior court approval under certain circumstances.

The DCF has established a process for credentialing an existing licensed therapeutic group home as a qualified residential treatment program (QRTP) in accordance with rule and in compliance with federal requirements for QRTPs. The bill ensures that the process the DCF has established for credentialing an existing licensed therapeutic group home as a qualified residential treatment program (QRTP) will result in placements that only occur in accordance with rule and in compliance with federal requirements for QRTPs.

The bill makes a number of changes to definitions that apply to s. 39.407, F.S., relating, in part, to medical, psychiatric, and psychological examination and treatment of child, to:

- Add the term “therapeutic group home” and define such term to mean a 24-hour residential program providing community-based mental health treatment and mental health support services to children who meet the criteria in s. 394.492(5) or (6), F.S., in a nonsecure, homelike setting that meets the requirements of a single-family unit or a community residential home as defined in s. 419.001, F.S., that may provide a living environment for up to 16 unrelated residents.
- Amend the definition of a “residential treatment center” or “residential treatment program” to include a therapeutic group home as defined above.
- Clarify the definition of “suitable for residential treatment” or “suitability” to apply when the criteria is met for a child to be placed if the child is expected to benefit from emotional, or behavioral health treatment, in addition to mental health treatment.

The bill also statutorily updates the qualified evaluators' process to reflect current practices providing that the DCF, rather than the Agency for Health Care Administration (ACHA), must appoint qualified evaluators to conduct suitability assessments. Further, the bill outlines specific statutory qualifications for evaluators conducting suitability assessments for children and codifies suitability assessments requirements.

The bill also provides specific time frames for providing a copy of the suitability assessment to a child's guardian ad litem and the court.

Lastly, the bill authorizes the DCF to adopt rules to administer the provisions of the bill.

The bill will likely have an insignificant fiscal impact on state and local government. See Section V. Fiscal Impact Statement.

This act shall take effect upon becoming a law.

## II. Present Situation:

### Family First Prevention Services Act

The federal Family First Prevention Services Act (FFPSA), included in the 2018 Bipartisan Budget Act,<sup>1</sup> focuses on evidence-based services to prevent children from entering foster care; limits reimbursement for congregate (group home) care; and makes changes affecting adoption subsidies, reunification, and extended foster care supports. The FFPSA reformed the federal child welfare funding streams. Unlike the previous Title IV-E provisions which primarily funded out-of-home care for families with very low incomes, the FFPSA gives states the ability to earn federal Title IV-E matching funds in support of certain prevention services provided on a time-limited basis that avoid an out-of-home placement for children without regard to family income. In providing for children and their families meeting eligibility requirements, the FFPSA provides for the reimbursement of specific federally approved, evidence-based services that address mental health, substance abuse, family counseling, and parent skills training. The FFPSA also limits federal funding for group homes placements.<sup>2</sup>

The Title IV- E Prevention Services Clearinghouse was established by the U.S. Department of Health and Human Services Administration for Children and Families (ACF) to conduct an objective and transparent review of research on programs and services intended to provide enhanced support to children and families and prevent foster care placements. The Prevention Services Clearinghouse, developed in accordance with the FFPSA and codified in Title IV-E of the Social Security Act, rates programs and services as well-supported, supported, promising, or does not currently meet criteria.<sup>3</sup>

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<sup>1</sup> H.R. 1862 of 2018. Pub.L. 115-123

<sup>2</sup> The DCF, *The Florida Center for Child Welfare FFPSA Updates*, available at [Florida's Center for Child Welfare | FFPSA Updates \(usf.edu\)](https://www.usf.edu/research/human-services/family-first-prevention-services-act-ffpsa); see also the National Conference of State Legislatures (NCSL), *Family First Prevention Services Act*, available at <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx> (all sites last visited January 18, 2022).

<sup>3</sup> See the U.S. Department of Health and Human Services, Office of Planning, Research, and Evaluation, *Title IV-E Prevention Services Clearinghouse*, 2018 – 2023, available at <https://www.acf.hhs.gov/opre/project/title-iv-e-prevention-services-clearinghouse-2018-2023> (last visited January 18, 2022).

Congress made the FFPSA effective October 1, 2018, but gave states the opportunity to delay implementation of select provisions of the law.<sup>4</sup> Florida received approval to delay the implementation of the FFPSA until October 1, 2021.<sup>5</sup>

### **Mental Health Residential Treatment Programs**

Residential Treatment Centers for Children and Adolescents (RTC) are 24 hour residential programs, including therapeutic group homes, licensed by the ACHA.<sup>6</sup> These centers were designed to provide mental health treatment and services to children under the age of 18 who have been diagnosed as having mental, emotional, or behavioral disorders.<sup>7</sup> All providers rendering Florida Medicaid therapeutic group care services to recipients must be in compliance with the provisions of the Florida Medicaid Therapeutic Group Care Services Coverage Policy, July 2017.<sup>8</sup>

Section 394.4781, F.S., authorizes the DCF to pay a portion of the costs associated with residential care for children who have been diagnosed with severe emotional disturbance, who are recommended to need a residential level of mental health treatment by a Florida licensed psychologist or psychiatrist, and who are not eligible for public or private insurance.<sup>9</sup> Due to limited funds, the DCF must review applications monthly to approve or deny applications for treatment according to criteria:<sup>10</sup>

- The severity level of the child's mental health;
- The financial means of the child's family;
- The availability of the needed residential care; and
- The funds available to the DCF.<sup>11</sup>

Mental health treatment is aimed to assist children to live successfully in their community and with their families. Placement into a residential mental health treatment center is made only after careful consideration and assessments. Before a placement, all other avenues of less restrictive treatment are weighed and must be deemed non appropriate.<sup>12</sup> Only if the needed services cannot be provided in a less restrictive environment, a residential mental health treatment program is then considered for the child.<sup>13</sup>

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<sup>4</sup> The NCSL, *Family First Prevention Services Act*, available at <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx> (last visited January 18, 2022).

<sup>5</sup> The DCF, *Agency Analysis for SB 900 (2021)*, p. 4, (on file with Senate Committee on Children, Families, and Elder Affairs).

<sup>6</sup> See the ACHA, *Residential Treatment Centers for Children and Adolescents*, available at [https://ahca.myflorida.com/mchq/health\\_facility\\_regulation/hospital\\_outpatient/rtc.shtml](https://ahca.myflorida.com/mchq/health_facility_regulation/hospital_outpatient/rtc.shtml) (last visited January 20, 2022)

<sup>7</sup> *Id.*

<sup>8</sup> Rule 59G-4.295, F.A.C.

<sup>9</sup> Section 394.4781, F.S.

<sup>10</sup> See the DCF, *Children's Mental Health Residential Treatment*, available at <https://www.myflfamilies.com/service-programs/samh/childrens-mental-health/residential-treatment.shtml> (last visited January 18, 2022).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

### ***Qualified Residential Treatment Programs***

Qualified Residential Treatment Programs (QRTP) are a new placement setting created by the FFPSA which were implemented in Florida in May 2021.<sup>14</sup> Placement of a child in a QRTP is for the specific purpose of addressing the child's emotional and behavioral health needs through observation, diagnosis, and treatment in a treatment setting.<sup>15</sup>

Florida currently has five licensed QRTPs with a total capacity of 50 beds. A QRTP must obtain a residential treatment center license through the AHCA and a credential from the DCF, which aligns the QRTP with all federal requirements.<sup>16</sup> Each facility that aims to be a QRTP must meet the licensing requirements set forth in s. 394.875, F.S., and the credentialing standards set forth in Rule 65C-46.021, F.A.C., in addition to, in part:

- Completing an application for credential as a QRTP;
- Providing a copy of their active Florida license issued by the ACHA;
- Completing a background screening as specified in rule;
- Working in conjunction with a qualified evaluator to conduct all assessments;
- Completing training in trauma-informed care, including to submit to the regional licensing authority a staff roster outlining the dates of completion for the trauma-informed care training;
- Employing registered or licensed nursing staff and other licensed clinical staff that, in part, are onsite in accordance with the QRTP trauma-informed treatment model and who are available 24 hours a day, 7 days a week to respond;
- Becoming accredited by one of the approved organizations;
- Providing high level supportive services for youth;
- Developing treatment plans, discharge, and aftercare plans; and
- Informing the DCF regional licensing authority within one business day of any disciplinary actions executed by the AHCA.<sup>17</sup>

The DCF states that reimbursement for the service delivery is available for children placed in the QRTP through the bundled specialized therapeutic group home fee as a result of the state agency collaborative approach to license and credential a QRTP.<sup>18</sup>

The FFPSA requires an assessment using an evidence-based tool within 30 days of placement. The DCF states it has identified the Child and Adolescent Needs and Strengths (CANS) – Trauma version as the evidence-based tool which has been incorporated into the suitability assessment.<sup>19</sup> Although Florida law does not contemplate QRTP assessments, any child in need of placement in a QRTP is required to submit to a suitability assessment to align with s. 39.407, F.S.

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<sup>14</sup> The DCF, *Agency Analysis for SB 1120*, January 21, 2022, p. 2-3 (on file with Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited “The DCF SB 1120 Analysis”). Florida has defined QRTPs through rulemaking authority under Rule 65C-28.021, F.A.C.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Rule 65C-46.021, F.A.C.

<sup>18</sup> The DCF SB 1120 Analysis, p. 3.

<sup>19</sup> *Id.*

### ***Specific Children In Need of Placement in a RTC or Q RTP***

RTCs and Q RTPS serve children and adolescents with emotional disturbance or serious emotional disturbance or mental illness. Section 394.492(5), F.S., defines a “child or adolescent who has an emotional disturbance” to mean a person under 18 years of age who is diagnosed with a mental, emotional, or behavioral disorder of sufficient duration to meet one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association, but who does not exhibit behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community.<sup>20</sup>

Additionally, s. 394.492(6), F.S., defines a “child or adolescent who has a serious emotional disturbance or mental illness” to mean a person under 18 years of age who:

- Is diagnosed as having a mental, emotional, or behavioral disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association; and
- Exhibits behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community, which behaviors are not considered to be a temporary response to a stressful situation.

Both of these terms do not include a child or adolescent who meets the criteria for involuntary placement under s. 394.467(1), F.S., also known as the Baker Act.<sup>21</sup>

### **Licensure of Mental Health Residential Treatment Facilities**

Under Rule 65E-4.016 of the Florida Administrative Code (FAC), to be licensed as a mental health residential treatment facility an applicant must provide a long term, homelike residential environment that provides care, support, assistance and limited supervision in daily living to adults diagnosed with a serious and persistent major mental illness who do not have another primary residence.<sup>22</sup> Any facility licensed as a residential treatment facility must sustain a 60 day average or greater length of stay of residents, except as specifically provided for in s. 394.875(11), F.S.<sup>23</sup>

### **Qualified Evaluators and Suitability Assessments for Placement**

Section 39.407(6), F.S., requires the DCF to conduct an examination and suitability assessment if it is believed that a child needs residential treatment.<sup>24</sup> The DCF must conduct a suitability assessment prior to placing children in a Psychiatric Residential Treatment Facility (PRTF/SIPP) and Specialized Therapeutic Group Homes (STGH).<sup>25</sup>

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<sup>20</sup> The definition further provides that that the emotional disturbance must not be considered to be a temporary response to a stressful situation.

<sup>21</sup> The Baker Act is contained in ch. 394, F.S.

<sup>22</sup> Rule 65E-4.016, F.A.C.

<sup>23</sup> *Id.*

<sup>24</sup> Section 39.407(6), F.S.

<sup>25</sup> See the DCF, *Suitability for Residential Placement Guidelines*, available at <https://www.myflfamilies.com/service-programs/community-based-care/docs/SuitabilityAssessmentGuidance.pdf> (last visited January 20, 2022).

The suitability assessment must be conducted by a qualified evaluator who meets the following requirements:

- Is a psychiatrist or a psychologist licensed in Florida who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents;
- Has at least 2 years' experience working with children or adolescents involved in the child welfare system of care;
- Has no actual or perceived conflict of interest with an in-patient or STGH facility; and
- Has completed training pertaining to the population of children in the child welfare system.<sup>26</sup>

The Qualified Evaluator Network (QEN) was established by Magellan in July, 2001 to provide assessment services for children in the care and custody of the DCF. The DCF contracts with the QEN who is responsible for recruiting qualified evaluators to conduct suitability assessments. Each assessment must provide an independent, professional assessment of suitability for residential treatment for mental health.<sup>27</sup> QENs are intended to prevent premature or inappropriate referrals to residential psychiatric placements and utilizing the QEN results in a return to community-based services as soon as clinically possible.<sup>28</sup>

Once a qualified evaluator receives a referral, the contract requires that a recommendation be rendered within 11 business days from receipt of the referral.<sup>29</sup> The DCF states that at this time there are only 18 qualified evaluators statewide who are completing assessments on an average of six business days. Through the implementation of teleconference, the QEN was able to reduce the time it takes to complete an assessment with final submission by the QEN to the Community-Based Care lead agency.<sup>30</sup>

Initially, the suitability assessment was conducted by a qualified evaluator appointed through a contract with Magellan procured by the AHCA. During this time, the DCF was the primary executor the contract, but the AHCA held the rule making authority, set the fee schedule for the evaluators, and maintained the list of providers. However, in 2016, the contract under Magellan was transferred entirely to the DCF to determine the qualified evaluator requirements.<sup>31</sup> This contract transfer allotted for a more cohesive execution of services. The DCF currently continues to contract with this third-party vendor for the management of the QEN.<sup>32</sup>

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<sup>26</sup> Section 39.407(6), F.S.

<sup>27</sup> See Magellan Healthcare, *Qualified Evaluator Network*, available at <https://www.magellancompletecareoffl.com/documents/2019/09/florida-qen-overview.pdf/#:~:text=All%20Qualified%20Evaluators%20are%20required,in%2Dpatient%20or%20STGH%20facility> (last visited January 21, 2022).

<sup>28</sup> *Id.*

<sup>29</sup> The DCF SB 1120 Analysis, p. 2-3.

<sup>30</sup> *Id.*, p. 3.

<sup>31</sup> See Magellan Complete Care, *Am I Eligible*, available at <https://www.magellancompletecareoffl.com/enrollment-and-renewal/are-you-eligible/>; see also Magellan Complete Care; *Qualified Evaluator Network (QEN)*, p. 7, available at [PowerPoint Presentation \(magellanoffl.com\)](#) (all sites last visited January 20, 2022).

<sup>32</sup> See Magellan of Florida, *QEN Training Manual*, available at <https://www.magellanoffl.com/documents/2019/09/2019-florida-qen-training-manual.pdf/> (last visited January 20, 2022).



Under s. 39.407(6)(d), F.S., the timeframe to provide the assessments to the guardian ad litem and the court is “immediately” upon placement.<sup>33</sup>

### ***Rulemaking Authority***

The DCF does not currently have broad rulemaking authority, as the rulemaking authority for suitability assessments is currently split between the DCF and AHCA, specifically requiring the:

- DCF to adopt rules for implementing timeframes for the completion of suitability assessments by qualified evaluators and a procedure that includes timeframes for completing the 60-day independent review by the qualified evaluators of the child’s progress toward achieving the goals and objectives of the treatment plan.
- ACHA to adopt rules for the registration of qualified evaluators, the procedure for selecting the evaluators to conduct the reviews required under s. 39.407, F.S., and a reasonable, cost-efficient fee schedule for qualified evaluators.<sup>34</sup>

### **Florida Medicaid Program**

The Medicaid program is a joint federal-state program that finances health coverage for individuals, including eligible low-income adults, children, pregnant women, elderly adults, and persons with disabilities.<sup>35</sup> The Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS) is responsible for administering the federal Medicaid program. Florida Medicaid is the health care safety net for low-income Floridians. Florida’s program is administered by the AHCA and financed through state and federal funds.<sup>36</sup>

A Medicaid state plan is an agreement between a state and the federal government describing how the state administers its Medicaid programs. The state plan establishes groups of individuals covered under the Medicaid program, services that are provided, payment methodologies, and other administrative and organizational requirements.

In order to participate in Medicaid, federal law requires states to cover certain population groups (mandatory eligibility groups) and gives states the flexibility to cover other population groups (optional eligibility groups). States set individual eligibility criteria within federal minimum standards. The AHCA may seek an amendment to the state plan as necessary to comply with federal or state laws or to implement program changes. States send state plan amendments to the federal CMS for review and approval.<sup>37</sup>

Florida Medicaid enrollees generally receive benefits through one of two service-delivery systems: fee-for-service (FFS) or managed care. Under FFS, health care providers are paid by the state Medicaid program for each service provided to a Medicaid enrollee. Under managed care, the AHCA contracts with private managed care plans for the coordination and payment of

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<sup>33</sup> Section 39.407(6)(d), F.S.

<sup>34</sup> Section 39.407(6)(i), F.S.

<sup>35</sup> Medicaid.gov, *Medicaid*, available at <https://www.medicare.gov/medicaid/index.html> (last visited January 23, 2022).

<sup>36</sup> Section 20.42, F.S.

<sup>37</sup> Medicaid.gov, *Medicaid State Plan Amendments*, available at <https://www.medicare.gov/medicaid/medicaid-state-plan-amendments/index.html> (last visited January 23, 2022).

services for Medicaid enrollees. The state pays the managed care plans a capitation payment, or fixed monthly payment, per recipient enrolled in the managed care plan.

In Florida, the majority of Medicaid recipients receive their services through a managed care plan contracted with the AHCA under the Statewide Medicaid Managed Care (SMMC) program. The SMMC program has two components, the Managed Medical Assistance (MMA) program and the Long-term Care program. Florida's SMMC offers a health care package covering both acute and long-term care. The SMMC benefits are authorized by federal authority and are specifically required in ss. 409.973 and 409.98, F.S.

The AHCA contracts with managed care plans on a regional basis to provide services to eligible recipients. The MMA program, which covers most medical and acute care services for managed care plan enrollees, was fully implemented in August 2014 and was re-procured for a period beginning December 2018 and ending in 2023.

### **III. Effect of the Bill**

The bill amends s. 39.407, F.S., authorizing the DCF to place a child or adolescent who meet the definition of a "child or adolescent who has an emotional disturbance" or a "child or adolescent who has a serious emotional disturbance or mental illness" in therapeutic group homes for mental health treatment without prior court approval under certain circumstances.

The bill makes a number of changes to definitions that apply to s. 39.407, F.S., relating, in part, to medical, psychiatric, and psychological examination and treatment of child, to:

- Add the term "therapeutic group home", which is not currently defined in ch. 39, F.S., and define such term to mean a 24-hour residential program providing community-based mental health treatment and mental health support services to children who meet the criteria in s. 394.492(5) or (6), F.S., in a nonsecure, homelike setting that meets the requirements of a single-family unit or a community residential home as defined in s. 419.001, F.S., that may provide a living environment for up to 16 unrelated residents;
- Amend the definition of a "residential treatment center" or "residential treatment program" to include a therapeutic group home as defined above; and
- Expanding the definition of "suitable for residential treatment" or "suitability" to include if the child is expected to benefit from emotional, or behavioral health treatment, in addition to mental health treatment.

Through the above definitions and the application of such terms throughout s. 39.407, F.S., the bill ensures that the process the DCF has established for credentialing an existing licensed therapeutic group home as a QRTP will result in placements that only occur in accordance with rule and in compliance with federal requirements for QRTPs.

The bill also statutorily updates the qualified evaluators' process to reflect current practices providing that the DCF, rather than the ACHA, must appoint qualified evaluators to conduct suitability assessments. Further, the bill amends the qualifications of qualified evaluators to include a person who:

- Is a psychiatrist licensed under ch. 458, F.S., a psychologist licensed under ch. 490, F.S., or a mental health counselor licensed under ch. 491, F.S.; and

- Has at least 2 years of experience, instead of 3 years as is required in current law, in the diagnosis and treatment of serious emotional or behavioral disturbance in children and adolescents.

These changes to the qualifications will expand the pool of qualified evaluators for conducting suitability assessments for STGH and QRTP placements to more than the 18 currently used for PRTE/SIPP suitability assessments.<sup>38</sup>

The bill maintains the current requirement that the qualified evaluator must not have any actual or perceived conflict of interest with any residential treatment center or program.

The bill also amends s. 39.407, F.S., requiring the DCF to provide the guardian ad litem and the court with a copy of the assessment by the qualified evaluator within five days after the DCF's receipt of the assessment, rather than immediately upon placement as required in current law.

The bill authorizes the DCF to adopt rules to administer the provisions of s. 39.407, F.S., rather than just the time frames for completion of suitability as is provided for in current law.

This act shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

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<sup>38</sup> The DCF states that the third-party vendor contracted for the management of the QEN estimates that this change in requirements will increase the pool of potentially qualified evaluators to approximately 2,000. The DCF SB 1120 Analysis, p. 4.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill will likely have an indeterminate impact on the DCF due to the additional licensing and evaluator requirements. The bill also maximizes Medicaid claiming as well as capacity of federally Title IV-E funded QRTP placements.<sup>39</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 39.407 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.

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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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<sup>39</sup> The DCF SB 1120 Analysis, p. 6.



398718

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/24/2022	.	
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	.	
	.	

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

**Senate Amendment (with title amendment)**

Before line 23

insert:

Section 1. Paragraphs (m) and (n) are added to subsection (34) of section 39.01, Florida Statutes, to read:

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

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



398718

11 (m) Violates s. 316.613 or s. 316.614, resulting in the  
12 death of a child or the injury of a child which requires  
13 treatment at a medical facility, if substantiated by a licensed  
14 physician's opinion that the violation exacerbated the child's  
15 injuries or resulted in the child's death.

16 (n) Violates s. 316.6135, resulting in the death of a child  
17 or the injury of a child.

18 Section 2. Paragraphs (j), (k), and (l) are added to  
19 subsection (4) of section 39.303, Florida Statutes, to read:

20 39.303 Child Protection Teams and sexual abuse treatment  
21 programs; services; eligible cases.—

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

27 (j) A child who was not properly restrained in a motor  
28 vehicle pursuant to s. 316.613 or s. 316.614, and the improper  
29 restraint exacerbated the child's injuries or resulted in the  
30 child's death.

31 (k) A child who was left unattended or unsupervised in a  
32 motor vehicle pursuant to s. 316.6135, and such action resulted  
33 in an injury to the child or in the child's death.

34 (l) Reports from emergency room physicians.

35  
36 ===== T I T L E A M E N D M E N T =====

37 And the title is amended as follows:

38 Delete line 2

39 and insert:



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40 An act relating to child welfare; amending s. 39.01,  
41 F.S.; expanding the list of incidents that constitute  
42 harm to a child's health or welfare; amending s.  
43 39.303, F.S.; expanding the list of child abuse,  
44 abandonment, and neglect reports that the Department  
45 of Children and Families must refer to Child  
46 Protection Teams of the Department of Health; amending  
47 s. 39.407,



689834

LEGISLATIVE ACTION

Senate

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. .

House

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

**Senate Amendment**

Delete lines 63 - 83  
and insert:  
in s. 394.492(5) or (6) in a nonsecure, homelike setting.

(b) Whenever the department believes that a child in its  
legal custody is emotionally disturbed and may need residential  
treatment, an examination and suitability assessment must be  
conducted by a qualified evaluator ~~who is~~ appointed by the  
department ~~Agency for Health Care Administration~~. This





689834

11 suitability assessment must be completed before the placement of  
12 the child in a residential treatment program ~~center for~~  
13 ~~emotionally disturbed children and adolescents or a hospital.~~

14 1. The qualified evaluator for placement in a residential  
15 treatment center or a hospital must be a psychiatrist or a  
16 psychologist licensed in this state ~~Florida~~ who has at least 3  
17 years of experience in the diagnosis and treatment of serious  
18 emotional disturbances in children and adolescents and who has  
19 no actual or perceived conflict of interest with any inpatient  
20 facility or residential treatment center or program.

21 2. The qualified evaluator for placement in a therapeutic  
22 group home must be a psychiatrist licensed under chapter 458 or  
23 chapter 459, a

By Senator Burgess

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1                   A bill to be entitled  
2           An act relating to mental health and substance abuse;  
3           amending s. 394.455, F.S.; defining the term  
4           "telehealth"; amending s. 394.459, F.S.; revising the  
5           conditions under which a patient's communication with  
6           persons outside of a receiving facility may be  
7           restricted; revising the conditions under which a  
8           patient's sealed and unopened incoming or outgoing  
9           correspondence may be restricted; revising the  
10          conditions under which a patient's visitation with  
11          persons outside of a receiving facility may be  
12          restricted; revising the frequency with which the  
13          restriction on a patient's right to receive visitors  
14          must be reviewed; amending s. 394.4599, F.S.;  
15          requiring a receiving facility to notify specified  
16          emergency contacts of individuals who are being  
17          involuntarily held for examination; amending s.  
18          394.4615, F.S.; requiring receiving facilities to  
19          document that an option to authorize the release of  
20          specified information has been provided, within a  
21          specified timeframe, to individuals admitted on a  
22          voluntary basis; amending s. 394.463, F.S.; requiring  
23          that reports issued by law enforcement officers when  
24          delivering a person to a receiving facility contain  
25          certain information related to emergency contacts;  
26          requiring the Department of Children and Families to  
27          receive and maintain reports relating to the  
28          transportation of patients; authorizing receiving  
29          facility discharge examinations to be conducted

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30 through telehealth; requiring a facility administrator  
31 to file a petition for involuntary placement by a  
32 specified time; authorizing a receiving facility to  
33 postpone the release of a patient if certain  
34 requirements are met; requiring that discharge and  
35 planning procedures include and document the  
36 consideration of specified factors and actions;  
37 prohibiting certain activities relating to examination  
38 and treatment; providing a criminal penalty; amending  
39 s. 397.601, F.S.; requiring service providers to  
40 document that an option to authorize the release of  
41 specified information has been provided, within a  
42 specified timeframe, to individuals admitted on a  
43 voluntary basis; amending s. 397.6772, F.S.; requiring  
44 law enforcement officers to include certain  
45 information relating to emergency contacts in reports  
46 relating to the delivery of a person to a receiving  
47 facility; amending ss. 409.972 and 744.2007, F.S.;  
48 conforming cross-references; providing an effective  
49 date.

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

52  
53 Section 1. Present subsections (47), (48), and (49) of  
54 section 394.455, Florida Statutes, are redesignated as  
55 subsections (48), (49), and (50), respectively, and a new  
56 subsection (47) is added to that section, to read:

57 394.455 Definitions.—As used in this part, the term:  
58 (47) "Telehealth" has the same meaning as provided in s.

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59 456.47.

60 Section 2. Paragraphs (a), (b), and (c) of subsection (5)  
61 of section 394.459, Florida Statutes, are amended to read:

62 394.459 Rights of patients.—

63 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

64 (a) Each person receiving services in a facility providing  
65 mental health services under this part has the right to  
66 communicate freely and privately with persons outside the  
67 facility unless a qualified professional determines ~~it is~~  
68 ~~determined~~ that such communication is likely to be harmful to  
69 the person or others in a manner directly related to the  
70 person's clinical well-being or to the well-being of others.  
71 Each facility shall make available as soon as reasonably  
72 possible to persons receiving services a telephone that allows  
73 for free local calls and access to a long-distance service. A  
74 facility is not required to pay the costs of a patient's long-  
75 distance calls. The telephone shall be readily accessible to the  
76 patient and shall be placed so that the patient may use it to  
77 communicate privately and confidentially. The facility may  
78 establish reasonable rules for the use of this telephone,  
79 provided that the rules do not interfere with a patient's access  
80 to a telephone to report abuse pursuant to paragraph (e).

81 (b) Each patient admitted to a facility under the  
82 provisions of this part shall be allowed to receive, send, and  
83 mail sealed, unopened correspondence; and no patient's incoming  
84 or outgoing correspondence shall be opened, delayed, held, or  
85 censored by the facility unless a qualified professional  
86 determines that such correspondence is likely to be harmful to  
87 the patient or others in a manner directly related to the

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88 patient's clinical well-being or to the well-being of others, or  
89 there is reason to believe that such correspondence ~~it~~ contains  
90 items or substances which may be harmful to the patient or  
91 others, in which case the administrator may direct reasonable  
92 examination of such mail and may regulate the disposition of  
93 such items or substances.

94 (c) Each facility must permit immediate access to any  
95 patient, subject to the patient's right to deny or withdraw  
96 consent at any time, by the patient's family members, guardian,  
97 guardian advocate, representative, Florida statewide or local  
98 advocacy council, or attorney, unless a qualified professional  
99 determines that such access would be detrimental to the patient  
100 in a manner directly related to the patient's clinical well-  
101 being. If a patient's right to communicate or to receive  
102 visitors is restricted by the facility, written notice of such  
103 restriction and the reasons for the restriction shall be served  
104 on the patient, the patient's attorney, and the patient's  
105 guardian, guardian advocate, or representative; and such  
106 restriction shall be recorded on the patient's clinical record  
107 with the reasons therefor. The restriction of a patient's right  
108 to communicate or to receive visitors shall be reviewed at least  
109 every 4 ~~7~~ days. The right to communicate or receive visitors  
110 shall not be restricted as a means of punishment. Nothing in  
111 this paragraph shall be construed to limit the provisions of  
112 paragraph (d).

113 Section 3. Paragraph (b) of subsection (2) of section  
114 394.4599, Florida Statutes, is amended to read:

115 394.4599 Notice.—

116 (2) INVOLUNTARY ADMISSION.—

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117 (b) A receiving facility shall give prompt notice of the  
118 whereabouts of an individual who is being involuntarily held for  
119 examination to the individual's guardian, guardian advocate,  
120 health care surrogate or proxy, attorney or representative, or  
121 other emergency contact identified through electronic databases  
122 pursuant to s. 394.463(2)(a), by telephone or in person within  
123 24 hours after the individual's arrival at the facility. Contact  
124 attempts shall be documented in the individual's clinical record  
125 and shall begin as soon as reasonably possible after the  
126 individual's arrival.

127 Section 4. Paragraph (a) of subsection (2) of section  
128 394.4615, Florida Statutes, is amended to read:

129 394.4615 Clinical records; confidentiality.—

130 (2) The clinical record shall be released when:

131 (a) The patient or the patient's guardian authorizes the  
132 release. The guardian or guardian advocate shall be provided  
133 access to the appropriate clinical records of the patient. The  
134 patient or the patient's guardian or guardian advocate may  
135 authorize the release of information and clinical records to  
136 appropriate persons to ensure the continuity of the patient's  
137 health care or mental health care. A receiving facility must  
138 document that, within 24 hours of admission, individuals  
139 admitted on a voluntary basis have been provided with the option  
140 to authorize the release of information from their clinical  
141 record to the individual's health care surrogate or proxy,  
142 attorney, representative, or other known emergency contact.

143 Section 5. Present paragraphs (h) and (i) of subsection (2)  
144 of section 394.463, Florida Statutes, are redesignated as  
145 paragraphs (i) and (j), respectively, a new paragraph (h) is

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146 added to that subsection, paragraphs (a), (e), (f), and (g) of  
147 that subsection are amended, and subsection (5) is added to that  
148 section, to read:

149 394.463 Involuntary examination.—

150 (2) INVOLUNTARY EXAMINATION.—

151 (a) An involuntary examination may be initiated by any one  
152 of the following means:

153 1. A circuit or county court may enter an ex parte order  
154 stating that a person appears to meet the criteria for  
155 involuntary examination and specifying the findings on which  
156 that conclusion is based. The ex parte order for involuntary  
157 examination must be based on written or oral sworn testimony  
158 that includes specific facts that support the findings. If other  
159 less restrictive means are not available, such as voluntary  
160 appearance for outpatient evaluation, a law enforcement officer,  
161 or other designated agent of the court, shall take the person  
162 into custody and deliver him or her to an appropriate, or the  
163 nearest, facility within the designated receiving system  
164 pursuant to s. 394.462 for involuntary examination. The order of  
165 the court shall be made a part of the patient's clinical record.  
166 A fee may not be charged for the filing of an order under this  
167 subsection. A facility accepting the patient based on this order  
168 must send a copy of the order to the department within 5 working  
169 days. The order may be submitted electronically through existing  
170 data systems, if available. The order shall be valid only until  
171 the person is delivered to the facility or for the period  
172 specified in the order itself, whichever comes first. If a time  
173 limit is not specified in the order, the order is valid for 7  
174 days after the date that the order was signed.

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175           2. A law enforcement officer shall take a person who  
176 appears to meet the criteria for involuntary examination into  
177 custody and deliver the person or have him or her delivered to  
178 an appropriate, or the nearest, facility within the designated  
179 receiving system pursuant to s. 394.462 for examination. The  
180 officer shall execute a written report detailing the  
181 circumstances under which the person was taken into custody,  
182 which must be made a part of the patient's clinical record. The  
183 report must include all emergency contact information for the  
184 person that is readily accessible to the law enforcement  
185 officer, including information available through electronic  
186 databases maintained by the Department of Law Enforcement or by  
187 the Department of Highway Safety and Motor Vehicles. Any  
188 facility accepting the patient based on this report must send a  
189 copy of the report to the department within 5 working days.

190           3. A physician, a physician assistant, a clinical  
191 psychologist, a psychiatric nurse, an advanced practice  
192 registered nurse registered under s. 464.0123, a mental health  
193 counselor, a marriage and family therapist, or a clinical social  
194 worker may execute a certificate stating that he or she has  
195 examined a person within the preceding 48 hours and finds that  
196 the person appears to meet the criteria for involuntary  
197 examination and stating the observations upon which that  
198 conclusion is based. If other less restrictive means, such as  
199 voluntary appearance for outpatient evaluation, are not  
200 available, a law enforcement officer shall take into custody the  
201 person named in the certificate and deliver him or her to the  
202 appropriate, or nearest, facility within the designated  
203 receiving system pursuant to s. 394.462 for involuntary



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204 examination. The law enforcement officer shall execute a written  
205 report detailing the circumstances under which the person was  
206 taken into custody. The report must include all emergency  
207 contact information for the person that is readily accessible to  
208 the law enforcement officer, including information available  
209 through electronic databases maintained by the Department of Law  
210 Enforcement or by the Department of Highway Safety and Motor  
211 Vehicles. The report and certificate shall be made a part of the  
212 patient's clinical record. Any facility accepting the patient  
213 based on this certificate must send a copy of the certificate to  
214 the department within 5 working days. The document may be  
215 submitted electronically through existing data systems, if  
216 applicable.

217  
218 When sending the order, report, or certificate to the  
219 department, a facility shall, at a minimum, provide information  
220 about which action was taken regarding the patient under  
221 paragraph (g), which information shall also be made a part of  
222 the patient's clinical record.

223 (e) The department shall receive and maintain the copies of  
224 ex parte orders, involuntary outpatient services orders issued  
225 pursuant to s. 394.4655, involuntary inpatient placement orders  
226 issued pursuant to s. 394.467, professional certificates, ~~and~~  
227 law enforcement officers' reports, and reports relating to the  
228 transportation of patients. These documents shall be considered  
229 part of the clinical record, governed by the provisions of s.  
230 394.4615. These documents shall be used to prepare annual  
231 reports analyzing the data obtained from these documents,  
232 without information identifying patients, and shall provide

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233 copies of reports to the department, the President of the  
234 Senate, the Speaker of the House of Representatives, and the  
235 minority leaders of the Senate and the House of Representatives.

236 (f) A patient shall be examined by a physician or a  
237 clinical psychologist, or by a psychiatric nurse performing  
238 within the framework of an established protocol with a  
239 psychiatrist at a facility without unnecessary delay to  
240 determine if the criteria for involuntary services are met.  
241 Emergency treatment may be provided upon the order of a  
242 physician if the physician determines that such treatment is  
243 necessary for the safety of the patient or others. The patient  
244 may not be released by the receiving facility or its contractor  
245 without the documented approval of a psychiatrist or a clinical  
246 psychologist or, if the receiving facility is owned or operated  
247 by a hospital or health system, the release may also be approved  
248 by a psychiatric nurse performing within the framework of an  
249 established protocol with a psychiatrist, or an attending  
250 emergency department physician with experience in the diagnosis  
251 and treatment of mental illness after completion of an  
252 involuntary examination pursuant to this subsection. A  
253 psychiatric nurse may not approve the release of a patient if  
254 the involuntary examination was initiated by a psychiatrist  
255 unless the release is approved by the initiating psychiatrist.  
256 The release may be approved through telehealth.

257 (g) The examination period must be for up to 72 hours. For  
258 a minor, the examination shall be initiated within 12 hours  
259 after the patient's arrival at the facility. Within the  
260 examination period ~~or, if the examination period ends on a~~  
261 ~~weekend or holiday, no later than the next working day~~

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262 ~~thereafter~~, one of the following actions must be taken, based on  
263 the individual needs of the patient:

264 1. The patient shall be released, unless he or she is  
265 charged with a crime, in which case the patient shall be  
266 returned to the custody of a law enforcement officer;

267 2. The patient shall be released, subject to subparagraph  
268 1., for voluntary outpatient treatment;

269 3. The patient, unless he or she is charged with a crime,  
270 shall be asked to give express and informed consent to placement  
271 as a voluntary patient and, if such consent is given, the  
272 patient shall be admitted as a voluntary patient; or

273 4. A petition for involuntary services shall be filed in  
274 the circuit court if inpatient treatment is deemed necessary or  
275 with the criminal county court, as defined in s. 394.4655(1), as  
276 applicable. When inpatient treatment is deemed necessary, the  
277 least restrictive treatment consistent with the optimum  
278 improvement of the patient's condition shall be made available.  
279 When a petition is to be filed for involuntary outpatient  
280 placement, it shall be filed by one of the petitioners specified  
281 in s. 394.4655(4)(a). A petition for involuntary inpatient  
282 placement shall be filed by the facility administrator. If a  
283 patient's 72-hour examination period ends on a weekend or  
284 holiday, a petition may be filed no later than the next working  
285 day thereafter.

286 (h) If the examination period ends on a weekend or holiday,  
287 a receiving facility may postpone release of a patient until the  
288 next working day thereafter only if a qualified professional  
289 documents that adequate discharge planning and procedures are  
290 not possible until the next working day. Discharge planning and

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291 procedures must include and document consideration of the  
292 following:

293 1. The patient's transportation resources;  
294 2. The patient's access to stable living arrangements;  
295 3. How assistance in securing needed living arrangements or  
296 shelter will be provided to patients at risk of readmission  
297 within the 3 weeks immediately following discharge due to  
298 homelessness or transient status. The discharging facility must  
299 document that, before discharging the patient, it has requested  
300 a commitment from a shelter provider that assistance will be  
301 rendered;

302 4. The availability of assistance in obtaining a timely  
303 aftercare appointment for needed services, including  
304 continuation of prescribed psychotropic medications. Aftercare  
305 appointments for psychotropic medication and case management  
306 must be requested to occur not later than 7 days after the  
307 expected date of discharge; if the discharge is delayed, the  
308 discharging facility must document notification of the delay to  
309 the aftercare provider. The discharging facility shall  
310 coordinate with the aftercare service provider and document the  
311 aftercare planning;

312 5. The availability of, and access to, prescribed  
313 psychotropic medications in the community. To ensure a patient's  
314 safety and provision of continuity of essential psychotropic  
315 medications, such prescribed psychotropic medications,  
316 prescriptions, multiple partial prescriptions for psychotropic  
317 medications, or a combination thereof, must be provided to the  
318 patient upon discharge to cover the intervening days until the  
319 first scheduled psychotropic medication aftercare appointment,

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320 up to a maximum of 21 calendar days;

321 6. The provision of education and written information about  
322 the patient's illness and psychotropic medications, including  
323 other prescribed and over-the-counter medications; the common  
324 side-effects of any medications prescribed; and any common  
325 adverse clinically significant drug-to-drug interactions between  
326 that medication and other commonly available prescribed and  
327 over-the-counter medications;

328 7. The provision of contact and program information about,  
329 and referral to, any community-based peer support services in  
330 the community;

331 8. The provision of contact and program information about,  
332 and referral to, any needed community resources;

333 9. Referral to substance abuse treatment programs, trauma  
334 or abuse recovery-focused programs, or other self-help groups,  
335 if indicated by assessments; and

336 10. The provision of information about advance directives,  
337 including how to prepare and use them.

338 (5) UNLAWFUL ACTIVITIES RELATING TO EXAMINATION AND  
339 TREATMENT; PENALTIES.—

340 (a) A person may not:

341 1. Knowingly furnish false information for the purpose of  
342 obtaining emergency or other involuntary admission of another;

343 2. Cause or otherwise secure, or conspire with or assist  
344 another to cause or secure, without reason for believing a  
345 person to be impaired, any emergency or other involuntary  
346 procedure of another person; or

347 3. Cause, or conspire with or assist another to cause, the  
348 denial to any person of any right accorded pursuant to this

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349 chapter.

350 (b) A person who violates this subsection commits a  
351 misdemeanor of the second degree, punishable as provided in s.  
352 775.082 and by a fine not exceeding \$5,000.

353 Section 6. Subsection (5) is added to section 397.601,  
354 Florida Statutes, to read:

355 397.601 Voluntary admissions.—

356 (5) A service provider must document that, within 24 hours  
357 of admission, individuals admitted on a voluntary basis have  
358 been provided with the option to authorize the release of  
359 information from their clinical record to the individual's  
360 health care surrogate or proxy, attorney, representative, or  
361 other known emergency contact.

362 Section 7. Section 397.6772, Florida Statutes, is amended  
363 to read:

364 397.6772 Protective custody without consent.—

365 (1) If a person in circumstances which justify protective  
366 custody as described in s. 397.677 fails or refuses to consent  
367 to assistance and a law enforcement officer has determined that  
368 a hospital or a licensed detoxification or addictions receiving  
369 facility is the most appropriate place for the person, the  
370 officer may, after giving due consideration to the expressed  
371 wishes of the person:

372 (a) Take the person to a hospital or to a licensed  
373 detoxification or addictions receiving facility against the  
374 person's will but without using unreasonable force. The officer  
375 shall use the standard form developed by the department pursuant  
376 to s. 397.321 to execute a written report detailing the  
377 circumstances under which the person was taken into custody. The

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378 report must include all emergency contact information for the  
379 person that is readily accessible to the law enforcement  
380 officer, including information available through electronic  
381 databases maintained by the Department of Law Enforcement or by  
382 the Department of Highway Safety and Motor Vehicles. The written  
383 report shall be included in the patient's clinical record; or

384 (b) In the case of an adult, detain the person for his or  
385 her own protection in any municipal or county jail or other  
386 appropriate detention facility.

387  
388 Such detention is not to be considered an arrest for any  
389 purpose, and no entry or other record may be made to indicate  
390 that the person has been detained or charged with any crime. The  
391 officer in charge of the detention facility must notify the  
392 nearest appropriate licensed service provider within the first 8  
393 hours after detention that the person has been detained. It is  
394 the duty of the detention facility to arrange, as necessary, for  
395 transportation of the person to an appropriate licensed service  
396 provider with an available bed. Persons taken into protective  
397 custody must be assessed by the attending physician within the  
398 72-hour period and without unnecessary delay, to determine the  
399 need for further services.

400 (2) The law enforcement officer must notify the nearest  
401 relative of a minor in protective custody and ~~must be notified~~  
402 by the law enforcement officer, as must notify the nearest  
403 relative or other known emergency contact of an adult, unless  
404 the adult requests that there be no notification. The law  
405 enforcement officer must document such notification, and any  
406 attempts at notification, in the written report detailing the

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407 circumstances under which the person is taken into custody  
408 required under paragraph (1)(a).

409 Section 8. Paragraph (b) of subsection (1) of section  
410 409.972, Florida Statutes, is amended to read:

411 409.972 Mandatory and voluntary enrollment.—

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

416 (b) Medicaid recipients residing in residential commitment  
417 facilities operated through the Department of Juvenile Justice  
418 or a treatment facility as defined in s. 394.455(49) ~~s.~~  
419 ~~394.455(48)~~.

420 Section 9. Subsection (7) of section 744.2007, Florida  
421 Statutes, is amended to read:

422 744.2007 Powers and duties.—

423 (7) A public guardian may not commit a ward to a treatment  
424 facility, as defined in s. 394.455(49) ~~s. 394.455(48)~~, without  
425 an involuntary placement proceeding as provided by law.

426 Section 10. This act shall take effect July 1, 2022.





## 2022 AGENCY LEGISLATIVE BILL ANALYSIS

### Department of Children and Families

<u><b>BILL INFORMATION</b></u>	
<b>BILL NUMBER:</b>	SB 1262
<b>BILL TITLE:</b>	Mental Health and Substance Abuse
<b>BILL SPONSOR:</b>	Senator Burgess
<b>EFFECTIVE DATE:</b>	July 1, 2022

<u><b>COMMITTEES OF REFERENCE</b></u>
1) Children, Families, and Elder Affairs
2) Appropriations Subcommittee on Health and Human Services
3) Appropriations
4)
5)

<u><b>CURRENT COMMITTEE</b></u>

<u><b>SIMILAR BILLS</b></u>	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

<u><b>PREVIOUS LEGISLATION</b></u>	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	
<b>YEAR:</b>	
<b>LAST ACTION:</b>	

<u><b>IDENTICAL BILLS</b></u>	
<b>BILL NUMBER:</b>	HB 1277
<b>SPONSOR:</b>	Massullo

<u><b>Is this bill part of an agency package?</b></u>
No.

<u><b>BILL ANALYSIS INFORMATION</b></u>	
<b>DATE OF ANALYSIS:</b>	1/20/22 For further information, please contact John Paul Fiore at (850) 488-9410.
<b>LEAD AGENCY ANALYST:</b>	Heather Allman, SAMH
<b>ADDITIONAL ANALYST(S):</b>	Amanda Regis, SAMH
<b>LEGAL ANALYST:</b>	SaVannah Reading, OGC
<b>FISCAL ANALYST:</b>	Julie Mayo, Budget

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## POLICY ANALYSIS

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### 1. EXECUTIVE SUMMARY

Senate Bill 1262 revises Chapter 394, F.S., relating to the Baker Act, which, defines and establishes procedures for involuntary examination and treatment of individuals with mental illness who are believed to be a danger to themselves or others. The Baker Act also establishes patients' rights, and notification and transportation requirements for those subject to involuntary examination. The bill requires that a qualified professional authorize the restriction of communication, visitation, and the timeframe in which such restrictions must be reviewed; defines telehealth to align with the definition in section 466.47, F. S.; and will authorize the release of an individual through telehealth and requires law enforcement officers to report any known contact information for relatives of persons detained under the Baker Act. Additional revisions require Baker Act discharge procedures to consider the individual's access to transportation, aftercare services, and psychotropic medication.

This bill also amends parts of Chapter 397, F.S., the Marchman Act, to require that individuals admitted voluntarily are provided the opportunity to authorize the release of information to their health care surrogate or proxy, attorney, representative, or other known emergency contact.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

The Department of Children and Families' (Department) Office of Substance Abuse and Mental Health (SAMH) is recognized as the single state authority for substance abuse and mental health services. The Office of SAMH is statutorily responsible for the planning and administration of all publicly funded substance abuse and mental health services, designating Baker Act Receiving facilities, and licensing substance abuse providers. The Department currently designates 129 Baker Act Receiving facilities and licensed over 2,800 substance abuse providers.

Part I of Chapter 394, Florida Statutes, defines and establishes procedures for involuntary examination and treatment of individuals with mental illness who are believed to be a danger to themselves or others. The Baker Act also establishes patients' rights, and notification and transportation requirements for those subject to involuntary examination. The Department is required to publish an Annual Report on the Baker Act on behalf of the Department for submission to the Legislature, this is accomplished through a contract with the University of South Florida, Baker Act Reporting Center. According to the Reporting Center, in fiscal year 2019/2020 202,598 involuntary examinations occurred of which 35,965 were minors.

Chapter 397, Florida Statutes, provides the legislative authority to support a system of care that includes prevention, intervention, clinical treatment, and recovery support services for substance use. Parts I and V of the Marchman Act define and establish procedures for involuntary admissions. The Marchman Act encourages individuals to seek services on a voluntary basis and to be actively involved in planning their own care with the assistance of qualified professionals.

#### 2. EFFECT OF THE BILL:

Section 1 revises section 394.455, Florida Statutes, to define telehealth to have the same meaning as provided in section 456.47, Florida Statutes. Adding this definition will help align the term as widely used by licensed professionals to provide clear authority for those professionals to provide Baker Act services using telehealth.

Section 2 revises section 394.459, Florida Statutes, to require that a qualified professional determine whether restricting individuals' right to communication, including any mail, correspondence to or from the individual, and immediate access of family members, guardian, guardian advocate, representative, advocacy council, or attorney is directly harmful to the individual's wellbeing or the wellbeing of others. The section also revises the requirement that such written restrictions be reviewed by a qualified professional at least every four days, rather than every seven days, which is the current standard. The definition of "qualified professional" is provided in s. 394.455, Florida Statutes.

Section 3 revises section 394.4599, Florida Statutes. Currently, receiving facilities are required to notify the individual's guardian, guardian advocate, health care surrogate or proxy, attorney, and representative by mail with the date, time, and method of notice delivery documented in the clinical record to require that any other emergency contacts identified through electronic databases be provided prompt notice of the whereabouts of individuals under involuntary examination by receiving facilities. This component may conflict with protections

afforded to individuals under the Health Insurance Portability and Accountability Act (HIPAA), when an individual is a competent adult unless the individual provides their consent to release their protected health information.

Section 4 revises section 394.4615, Florida Statutes, to require that receiving facilities document that individuals admitted on a voluntary basis have been provided the opportunity to authorize the release of information to their health care surrogate or proxy, attorney, representative or other known emergency contact.

Section 5 revises section 394.463, Florida Statutes, to require that the written report of the law enforcement officer detailing the circumstances of individuals being taken into custody, must include all known emergency contact information for the individual that is accessible to the officer, including information available through electronic databases maintained by the Florida Department of Law Enforcement or the Florida Department of Highway Safety and Motor Vehicles. The section adds the same requirement to the law enforcement officers' written report for individuals being examined under a certificate initiated by a qualified professional who is transported to a Baker Act receiving facility by a law enforcement officer. Additionally, the section requires that the Department receive and maintain these written reports relating to the transportation of individuals. Additional emergency contact information of individuals being examined under the Baker Act can be helpful to receiving facilities that need to contact the person's family or support network to gather information, coordinate care, and begin discharge planning. Often, individuals being examined under the Baker Act are unable to provide this information.

Currently, law enforcement officers complete form BA 3100: Transportation to Receiving Facility and submit the form to the receiving facility to be maintained in the clinical file. To comply with the current requirement to receive and maintain other Baker Act forms, the Department contracts with the Baker Act Reporting Center at University of South Florida to collect and analyze Baker Act data. The Reporting Center is responsible for producing an Annual Baker Act report on behalf of the Department for submission to the Legislature. The Baker Act Reporting Center may be able to utilize additional information provided by law enforcement officers within transportation forms to better understand the circumstances under which individuals are taken into custody under the Baker Act.

To implement this requirement, the Department would be required to modify 65E-5 F.A.C. to require receiving facilities to submit the transportation form along with the other currently required Baker Act forms to the Baker Act Reporting Center. The Department will also need to amend its contract with the Baker Act Reporting Center to add a requirement for collection and analysis of transportation forms. The Department would have to work with law enforcement agencies to ensure awareness of any changes to the transportation form. Receiving facilities will need technical assistance with their form submission procedure to ensure compliance with the change.

This section provides specific authority for a psychiatrist, clinical psychologist, or under certain circumstances, a psychiatric nurse or an attending emergency department physician, to release individuals through telehealth. This clarifies that telehealth can be used to release an individual from a Baker Act, which may alleviate the need to always have a professional on site to provide the examination in-person and the need to transfer individuals to a receiving facility for the in-person examination to be performed.

When the 72-hour examination period ends on a weekend or holiday, receiving facilities are currently required to file petitions for involuntary services no later than the next working day. The bill revises this section to require that, when the 72-hour examination period ends on a weekend or holiday, discharges may only be postponed until the next working day if a qualified professional documents that adequate discharge planning and procedures are not possible until the next working day. Further the bill adds that discharge plans must include a document consideration of the following:

- Access to reliable transportation;
- Access to stable living arrangement;
- How assistance in securing a living arrangement or shelter will be provided to individuals at risk of readmission within three weeks immediately following discharge due to homelessness. The receiving facility must document that a shelter has committed to provide assistance prior to discharge;
- Coordination with the aftercare service provider to provide the discharge medication list and schedule timely aftercare appointments within seven days of discharge;
- Availability of prescribed psychotropic medication until the first scheduled medication aftercare appointment or for up to 21 days;
- Education and written information about the individual's illness and medications, common adverse interactions between medication and other prescribed and over-the-counter medications;
- Contact information about and referral to community-based peer support services;
- Contact information about and referral to needed community-based resources;
- Referral to substance abuse treatment programs, trauma or abuse recovery-focused programs or other self-help groups; and
- Information about advance directives, including how to prepare and use them.

These changes align with current requirements established in administrative rule 65E-5.1303 and should not represent additional workload concerns for receiving facilities.

This section also establishes a misdemeanor of the second degree punishable as provided in section 775.082, Florida Statutes, and by a fine not to exceed \$5,000 that a person may not knowingly furnish false information for the purpose of obtaining emergency or involuntary admission of another or to cause or conspire with or assist another person to cause or secure any emergency or involuntary procedure of another person without reason to believe that the person is impaired. The bill creates criminal penalties for providing false information for the purpose of obtaining emergency or involuntary admission. In the event such actions are suspected, a referral should be made to law enforcement for investigation/enforcement.

Section 6 of the bill revises chapter 397.601, Florida Statutes requiring that individuals admitted on a voluntary basis are provided the opportunity to authorize the release of information to their health care surrogate or proxy, attorney, representative or other known emergency contact.

Section 7 of the bill amends chapter 397.6772, Florida Statutes, to require that the written report of the law enforcement officer detailing the circumstances that an individual is taken into custody under the Marchman Act must include all known emergency contact information for the individual that is accessible to the officer, including information available through electronic databases maintained by the Florida Department of Law Enforcement or the Florida Department of Highway Safety and Motor Vehicles. The bill adds that all attempts to contact relatives or other emergency contacts must also be documented in the written report of the law enforcement officer.

Section 8 of the bill makes technical changes (renumbering) to section 409.972, Florida Statutes.

Section 9 of the bill makes technical changes (renumbering) to section 744.2007, Florida Statutes.

Section 10 provides an effective date of July 1, 2022.

**3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?**

If yes, explain:	Revisions to Department rules will be needed.
What is the expected impact to the agency's core mission?	None
Rule(s) impacted (provide references to F.A.C., etc.):	65E-5, F.A.C.

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

List any known proponents and opponents:	None known
Provide a summary of the proponents' and opponents' positions:	

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?**

If yes, provide a description:	No
Date Due:	
Bill Section Number(s):	

**6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL?**

Board:	No
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Board Purpose:	
Who Appoints:	
Appointee Term:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?**

Revenues:	None
Expenditures:	None
Does the legislation increase local taxes or fees?	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

**2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?**

Revenues:	None
Expenditures:	<p>Section 5 requires the Department receive and maintain reports relating to the transportation of individuals. To comply with the requirement to receive and maintain Baker Act forms, the Department contracts with the Baker Act Reporting Center at University of South Florida to collect and analyze Baker Act data. The Reporting Center is responsible for producing an Annual Baker Act report on behalf of the Department for submission to the Legislature. The Department will need to amend its contract with the Baker Act Reporting Center to require collection and analysis of transportation forms.</p> <p>The fiscal impact is based on the level of effort required by data staff employed under the Department's contract with the University of Florida's Baker Act Reporting Center. The first year estimated cost for implementing this bill is \$90,000. Of this amount, \$15,000 is non-recurring for the cost to develop the data infrastructure, a data entry interface, and user testing.</p>
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

**3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?**

Revenues:	None
Expenditures:	None

Other:	N/A
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**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?**

Does the bill increase taxes, fees or fines?	No
Does the bill decrease taxes, fees or fines?	No
What is the impact of the increase or decrease?	N/A
Bill Section Number:	N/A

**TECHNOLOGY IMPACT**

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	None as currently written, based on program office analysis of requirements.
If yes, describe the anticipated impact to the agency including any fiscal impact.	

**FEDERAL IMPACT**

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	
If yes, describe the anticipated impact including any fiscal impact.	

**ADDITIONAL COMMENTS**

**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

<p>Issues/concerns/comments and recommended action:</p>	<p>The bill as written, may create a conflict with the Health Information Portability and Accountability Act (HIPAA). The HIPAA Privacy Rule establishes national standards to protect individuals' medical records and other individually identifiable health information, otherwise known as "protected health information" (PHI). This Rule applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically.</p> <p>PHI is information that relates to: the individual's past, present or future physical or mental health or condition, the provision of health care to the individual; or the past, present, or future payment for the provision of health care to the individual; and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. The Rule limits uses and disclosures that may be made of such information without an individual's written authorization. 45 CFR § 164.510(b) permits covered entities to share with an individual's family member, other relative, close personal friend, or any other person identified by the individual, the information directly relevant to the involvement of that person in the patient's care or payment for health care. In addition, HIPAA allows a covered entity to disclose information about a patient as necessary to notify or assist in the notification of (including by helping to identify or locate), such a person of the patient's location, general condition, or death. In either circumstance, the person can be a patient's family member, relative, guardian, caregiver, friend, spouse, or partner. However, when making disclosures to the persons listed under 45 CFR 164.510(b), a covered entity should obtain verbal permission from the patient when possible, or otherwise be able to reasonably infer that the patient does not object to the disclosure, before disclosing information to these persons. If the patient is incapacitated or not available, a covered entity may share information when, in its professional judgment, doing so is in the patient's best interest.</p> <p>Receiving facilities are HIPAA covered entities. The whereabouts of a person receiving mental health treatment is PHI. This bill requires disclosure of the whereabouts of an individual by receiving facilities to an "emergency contact" that may be identified by law enforcement; this appears to violate HIPAA if the individual does not provide their consent to share. HIPAA preempts any state law on this issue, to comply with HIPAA, the term "emergency contact" would need to be defined to be consistent with those persons specifically authorized to receive information under 45 CFR § 164.510(b) and the individual receiving treatment needs to be given the opportunity to object to disclosure of their whereabouts to said persons.</p>
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**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.)

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

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BILL: SB 1262

INTRODUCER: Senator Burgess

SUBJECT: Mental Health and Substance Abuse

DATE: January 24, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	<b>Pre-meeting</b>
2.			AHS	
3.			AP	

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**I. Summary:**

SB 1262 makes several changes to procedures surrounding voluntary and involuntary examinations of individuals under the Baker and Marchman Acts. The bill prohibits restrictions on visitors, phone calls, and written correspondence for Baker Act patients unless certain qualified medical professionals document specific conditions are met. The bill requires law enforcement officers to search certain electronic databases for emergency contact information of Baker and Marchman Act patients being transported to a receiving facility.

Under the bill, patients subject to an involuntary Baker Act examination who do not meet the criteria for a petition for involuntary services must be released at the end of 72 hours, regardless of whether the examination period ends on a weekend or holiday, as long as certain discharge criteria are met.

The bill makes it a second degree misdemeanor for a person to knowingly:

- Furnish false information for the purpose of obtaining emergency or other involuntary admission for any person;
- Cause, or conspire with another to cause, any emergency or other involuntary mental health procedure for the person under false pretenses; or,
- Cause, or conspire with another to cause, any person to be denied their rights under the Baker Act statutes.

The bill requires receiving facilities to offer voluntary Baker and Marchman Act patients the option to authorize the release of clinical information to certain individuals known to the patient within 24 hours of admission.

The bill clarifies that telehealth may be used when discharging patients under an involuntary Baker Act examination, and directs facilities receiving transportation reports detailing the



circumstances of a Baker Act to share such reports with the Department of Children and Families (the DCF) for use in analyzing annual Baker Act data.

The bill requires the DCF to receive and maintain reports relating to transportation of individuals subject to an involuntary examination, which may result in the bill having a negative fiscal impact on the DCF. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

## II. Present Situation:

### The Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.<sup>1</sup> The Baker Act deals with Florida's mental health commitment laws, and includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations.<sup>2</sup> The Baker Act also protects the rights of all individuals examined or treated for mental illness in Florida.<sup>3</sup>

### *Involuntary Examination*

Individuals suffering from an acute mental health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.<sup>4</sup> An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; and
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.<sup>5</sup>

The involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;<sup>6</sup>

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<sup>1</sup> Ch. 71-131, LO.F.; The Baker Act is contained in ch. 394, F.S.

<sup>2</sup> Sections 394.451-394.47891, F.S.

<sup>3</sup> Section 394.459, F.S.

<sup>4</sup> Sections 394.4625 and 394.463, F.S.

<sup>5</sup> Section 394.463(1), F.S.

<sup>6</sup> Section 394.463(2)(a)1., F.S. Additionally, the order of the court must be made a part of the patient's clinical record.

- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination;<sup>7</sup> or
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.<sup>8</sup>

A law enforcement officer who delivers an individual to a receiving facility must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.<sup>9</sup> Any facility accepting the patient based on this certificate must send a copy of the certificate to the DCF within 5 working days.<sup>10</sup> The same reporting requirements apply in instances where a law enforcement officer delivers a person to a receiving facility pursuant to a certificate executed by a health care professional.<sup>11</sup>

Involuntary patients must be taken to either a public or private facility which has been designated by the DCF as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold, or refer, as appropriate, involuntary patients under emergency conditions for psychiatric evaluation and to provide short-term treatment or transportation to the appropriate service provider.<sup>12</sup>

The patient must be examined by the receiving facility within 72 hours of the initiation of the involuntary examination. The examination may be performed by:

- A physician;<sup>13</sup>
- A clinical psychologist;<sup>14</sup> or
- A psychiatric nurse<sup>15</sup> performing within the framework of an established protocol with a psychiatrist at a facility.<sup>16</sup>

The patient may not be released by the receiving facility without the documented approval of one of the following:

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<sup>7</sup> Section 394.463(2)(a)2., F.S.

<sup>8</sup> Section 394.463(2)(a)3., F.S.

<sup>9</sup> Section 394.463(2)(a)2., F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 394.463(2)(a)3., F.S.

<sup>12</sup> Section 394.455(40), F.S.

<sup>13</sup> "Physician" means a medical practitioner licensed under ch. 458, F.S., or ch. 459, F.S., who has experience in the diagnosis and treatment of mental illness or a physician employed by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense. Section 394.455(33), F.S.

<sup>14</sup> "Clinical psychologist" means a psychologist as defined in s. 490.003(7), F.S., with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility. Section 394.455(5), F.S.

<sup>15</sup> "Psychiatric nurse" means an advanced practice registered nurse licensed under s. 464.012, F.S., who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician. Section 394.455(36), F.S.

<sup>16</sup> Section 394.463(2)(f), F.S.

- A psychiatrist;
- A clinical psychologist; or
- If the receiving facility is owned or operated by a hospital or health system:
  - A psychiatric nurse performing within the framework of an established protocol with a psychiatrist;<sup>17</sup> or
  - An attending emergency department physician with experience in the diagnosis and treatment of mental illness after completion of an involuntary examination.<sup>18</sup>

By the end of the 72 hour period, or if the period ends on a weekend or holiday, no later than the next working day, one of the following actions must be taken to address the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case the patient is to be returned to the custody of a law enforcement officer;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless he or she is charged with a crime, must be asked to give express and informed consent to placement as a voluntary patient and, if such consent is given, the patient must be admitted as a voluntary patient; or
- A petition for involuntary services must be filed in the circuit court if inpatient treatment is deemed necessary or with the criminal county court, as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition must be made available. A petition for involuntary inpatient placement must be filed by the facility administrator.<sup>19</sup>

Receiving facilities must also ensure that a patient's discharge plan considers all of the following prior to the patient's release:

- The patient's transportation resources;
- The patient's access to stable living arrangements;
- How assistance in securing needed living arrangements or shelter will be provided to patients at risk of readmission within the 3 weeks immediately following discharge due to homelessness or transient status. The discharging facility must document that, before discharging the patient, it has requested a commitment from a shelter provider that assistance will be rendered;
- The availability of assistance in obtaining a timely aftercare appointment for needed services, including continuation of prescribed psychotropic medications. Aftercare appointments for psychotropic medication and case management must be requested to occur not later than 7 days after the expected date of discharge; if the discharge is delayed, the discharging facility must document notification of the delay to the aftercare provider. The discharging facility shall coordinate with the aftercare service provider and document the aftercare planning;
- The availability of, and access to, prescribed psychotropic medications in the community. To ensure a patient's safety and provision of continuity of essential psychotropic medications, such prescribed psychotropic medications, prescriptions, multiple partial prescriptions for psychotropic medications, or a combination thereof, must be provided to the patient upon

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<sup>17</sup> A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist. Section 394.463(2)(f), F.S.

<sup>18</sup> Section 394.463(2)(f), F.S.

<sup>19</sup> Section 394.463(2)(g), F.S.

discharge to cover the intervening days until the first scheduled psychotropic medication aftercare appointment, up to a maximum of 21 calendar days;

- The provision of education and written information about the patient’s illness and psychotropic medications, including other prescribed and over-the-counter medications; the common side-effects of any medications prescribed; and any common adverse clinically significant drug-to-drug interactions between that medication and other commonly available prescribed and over-the-counter medications;
- The provision of contact and program information about, and referral to, any community-based peer support services in the community;
- The provision of contact and program information about, and referral to, any needed community resources;
- Referral to substance abuse treatment programs, trauma or abuse recovery-focused programs, or other self-help groups, if indicated by assessments; and
- The provision of information about advance directives, including how to prepare and use them.<sup>20</sup>

### **Notice Requirements**

Receiving facilities must give prompt notice<sup>21</sup> of the whereabouts of a patient who is being involuntarily held for examination to the patient’s guardian,<sup>22</sup> guardian advocate,<sup>23</sup> health care surrogate or proxy, attorney, and representative.<sup>24</sup> If the patient is a minor, the receiving facility must give prompt notice to the minor’s parent, guardian, caregiver, or guardian advocate. Notice for an adult may be provided within 24 hours of arrival; however, notice for a minor must be provided immediately after the minor’s arrival at the facility.<sup>25</sup> The facility may delay the notification for a minor for up to 24 hours if it has submitted a report to the central abuse hotline.

The receiving facility must attempt to notify the minor’s parent, guardian, caregiver, or guardian advocate until it receives confirmation that the notice has been received. Attempts must be repeated at least once every hour during the first 12 hours after the minor’s arrival and then once every 24 hours thereafter until confirmation is received, the minor is released, or a petition for involuntary services is filed with the court.<sup>26</sup>

### ***Involuntary Inpatient Placement***

A person may be placed in involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

- He or she is mentally ill and because of his or her mental illness:

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<sup>20</sup> Rule 65E-5.1303, F.A.C.

<sup>21</sup> Notice may be provided in person or by telephone; however, in the case of a minor, notice may also be provided by other electronic means. Section 394.455(2), F.S.

<sup>22</sup> “Guardian” means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward’s person if the ward is a minor or has been adjudicated incapacitated. Section 394.455(17), F.S.

<sup>23</sup> “Guardian advocate” means a person appointed by a court to make decisions regarding mental health treatment on behalf of a patient who has been found incompetent to consent to treatment. Section 394.455(18), F.S.

<sup>24</sup> Section 394.4599(2)(b), F.S.

<sup>25</sup> Section 394.4599(2)(b)-(c), F.S.

<sup>26</sup> Section 394.4599(c)2., F.S.

- He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement or is unable to determine for himself or herself whether placement is necessary; and
- He or she is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services; and
- Without treatment, is likely to suffer from neglect or refuse to care for himself or herself; and
- Such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or
- There is a substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.<sup>27</sup>

The administrator of the receiving or treatment facility that is retaining a patient for involuntary inpatient treatment must file a petition for involuntary inpatient placement in the court in the county where the patient is located.<sup>28</sup> Upon filing, the clerk of the court must provide copies to the DCF, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located.<sup>29</sup> The court must hold a hearing on involuntary inpatient placement within 5 court working days, unless a continuance is granted.<sup>30</sup>

### **The Marchman Act**

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.<sup>31</sup> The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.<sup>32</sup> Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.<sup>33</sup> However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.<sup>34</sup> In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).<sup>35</sup>

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider. An individual who wishes to enter

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<sup>27</sup> Section 394.467(1), F.S.

<sup>28</sup> Section 394.467(2) and (3), F.S.

<sup>29</sup> Section 394.467(3), F.S.

<sup>30</sup> Section 394.467(5), F.S.

<sup>31</sup> The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (On file with the Senate Children, Families, and Elder Affairs Committee).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Ch. 93-39, s. 2, L.O.F. (creating ch. 397, F.S., effective October 1, 1993).

treatment may apply to a service provider for voluntary admission.<sup>36</sup> Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.<sup>37</sup> However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.<sup>38</sup> As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.<sup>39</sup>

### *Involuntary Admissions*

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis. There are five involuntary admission procedures that can be broken down into two categories depending upon whether the court is involved.<sup>40</sup> Three of the procedures do not involve the court, while two require direct petitions to the circuit court. The same criteria for involuntary admission apply regardless of the admission process used.<sup>41</sup>

An individual meets the criteria for an involuntary admission under the Marchman Act when there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment, has lost the power of self-control with respect to substance use, and either:

- Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard;<sup>42</sup> or
- Without care or treatment:
  - The person is likely to suffer from neglect or refuse to care for himself or herself;
  - Such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and
  - It is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
  - There is substantial likelihood that the person:
    - Has inflicted, or threatened to or attempted to inflict physical harm on himself, herself, or another; or
    - Is likely to inflict, physical harm on himself, herself, or another unless he or she is admitted.<sup>43</sup>

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<sup>36</sup> Section 397.601(1), F.S.

<sup>37</sup> Section 397.601(2), F.S.

<sup>38</sup> Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at <http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/> (last visited January 19, 2022) (hereinafter cited as “Fundamentals of the Marchman Act”).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Section 394.675(2)(a), F.S. However, mere refusal to receive services does not constitute evidence of lack of judgment with respect to the person’s need for such services.

<sup>43</sup> Section 397.675(2)(b), F.S.

### *Non-Court Involved Involuntary Admissions*

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act include protective custody, emergency admission, and the alternative involuntary assessment for minors.

Law enforcement officers use the protective custody procedure when an individual is substance-impaired or intoxicated in public and such impairment is brought to the attention of the officer.<sup>44</sup> The purpose of this procedure is to allow the person to be taken to a safe environment for observation and assessment to determine the need for treatment. A law enforcement officer may take the individual to their residence, a hospital, a detoxification center, or an addiction receiving facility, whichever the officer determines is most appropriate.<sup>45</sup> The officer is also required to execute a written report<sup>46</sup> detailing the circumstances under which the individual was taken into custody.<sup>47</sup> The current version of the form developed and disseminated by the DCF must also include information on transportation, family members or others present when the individual was taken into custody, and next of kin or other contact information, if known.<sup>48</sup>

If the individual in these circumstances does not consent to protective custody, the officer may do so against the person's will, without using unreasonable force. Additionally, the officer has the option of taking an individual to a jail or detention facility for his or her own protection. Such detention cannot be considered an arrest for any purpose and no record can be made to indicate that the person has been detained or charged with any crime.<sup>49</sup> However, if the individual is a minor, the law enforcement officer must notify the nearest relative of a minor in protective custody without consent.<sup>50</sup>

The second process, emergency admission, authorizes an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility, or a detoxification facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only.<sup>51</sup> Individuals admitted for involuntary assessment and stabilization under this provision must have a certificate from a specified health professional<sup>52</sup> demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.<sup>53</sup>

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<sup>44</sup> Section 397.677, F.S. The individual can be a minor or adult under this process.

<sup>45</sup> Section 397.6771, F.S. A person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody.

<sup>46</sup> The DCF is required to develop the form pursuant to s. 397.321(19), F.S.

<sup>47</sup> Section 397.6772(1)(a), F.S.

<sup>48</sup> The current version of the form is available at

<https://eds.myflfamilies.com/DCFFormsInternet/Search/OpenDCFForm.aspx?FormId=1061> (last visited January 19, 2022).

<sup>49</sup> Section 397.6772(1), F.S.

<sup>50</sup> Section 397.6772(2), F.S.

<sup>51</sup> Section 397.679, F.S.

<sup>52</sup> Section 397.6793(1), F.S., provides a list of professionals that include a physician, a clinical psychologist, a physician assistant working under the scope of practice of the supervising physician, a psychiatric nurse, an advanced practice registered nurse, a mental health counselor, a marriage and family therapist, a master's-level-certified addictions professional for substance abuse services, or a clinical social worker.

<sup>53</sup> Section 397.6793, F.S. The certificate can be from a physician, advanced practice registered nurse, a psychiatric nurse, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, or a physician

Lastly, the alternative involuntary assessment for minors provides a way for a parent, legal guardian, or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.<sup>54</sup>

### **Transportation to a Facility**

#### ***Baker Act***

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.<sup>55</sup> Law enforcement must then relinquish the person, along with corresponding documentation, to a responsible individual at the facility.<sup>56</sup>

#### ***Marchman Act***

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.<sup>57</sup>

If a person in circumstances which justify protective custody<sup>58</sup> fails or refuses to consent to assistance and a law enforcement officer has determined that a hospital or a licensed detoxification or addictions receiving facility is the most appropriate place for the person, the officer may, after giving due consideration to the expressed wishes of the person:

- Take the person to a hospital or to a licensed detoxification or addictions receiving facility against the person's will but without using unreasonable force; or
- In the case of an adult, detain the person for his or her own protection in any municipal or county jail or other appropriate detention facility.<sup>59</sup>

The officer must use a standard form developed by the DCF to execute a written report detailing the circumstances under which the person was taken into custody, and the written report shall be included in the patient's clinical record.

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assistant working under the scope of a practice of the supervising physician, or a master's-level-certified addictions professional for substance abuse services.

<sup>54</sup> Section 397.6798, F.S.

<sup>55</sup> Section 394.462(1)(f)-(g), F.S.

<sup>56</sup> Section 394.462(3), F.S.

<sup>57</sup> Section 397.6795, F.S.

<sup>58</sup> Section 397.677, F.S., states that a law enforcement officer may implement protective custody measures when a minor or an adult who appears to meet the involuntary admission criteria in s. 397.675, F.S., is brought to the attention of law enforcement or in a public space.

<sup>59</sup> Section 397.6772(1)(a)-(b), F.S.



### **Individual Bill of Rights**

Both the Marchman Act and the Baker Act provide an individual bill of rights.<sup>60</sup> Rights in common include the right to:

- Dignity;
- Quality of treatment;
- Not be refused treatment at a state-funded facility due to an inability to pay;
- Communicate with others;
- Care and custody of personal effects; and
- Petition the court on a writ of habeas corpus.<sup>61</sup>

The individual bill of rights also imposes liability for damages on persons who violate individual rights.<sup>62</sup> The Marchman Act ensures the right to habeas corpus, which means that a petition for release may be filed with the court by an individual involuntarily retained or his or her parent or representative.<sup>63</sup> In addition to the petitioners authorized in the Marchman Act, the Baker Act permits the DCF to file a writ for habeas corpus on behalf of the individual.<sup>64</sup>

The Marchman Act also makes it a first degree misdemeanor<sup>65</sup> for a person to:

- Knowingly furnishing false information for the purpose of obtaining emergency or other involuntary admission for any person;
- Causing or otherwise securing, or conspiring with or assisting another to cause or secure, without reason for believing a person to be impaired, any emergency or other involuntary procedure for the person;
- Causing, or conspiring with or assisting another to cause, the denial to any person of any right accorded under the Marchman Act.<sup>66</sup>

The Baker Act currently does not contain similar criminal penalties for activities that infringe upon patients' rights.

### ***Right to Outside Communication and Visitation***

All patients held at a receiving facility have the explicit right to communicate freely and privately with others outside the facility unless it is determined that communication will likely harm the patient or others.<sup>67</sup> Similar conditions apply to the right of patients to send, receive, and mail correspondence, and to access outside visitors.<sup>68</sup> Facilities must review restrictions on a

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<sup>60</sup> Section 394.459, F.S., provides "Rights of Individuals" for individuals served through the Baker Act; section 397.501, F.S., provides "Rights of Individuals" for individuals served through the Marchman Act.

<sup>61</sup> *Id.*

<sup>62</sup> Sections 394.459(10) and 397.501(10)(a), F.S.

<sup>63</sup> Section 397.501(9), F.S.

<sup>64</sup> Section 394.459(8)(a), F.S.

<sup>65</sup> A first degree misdemeanor is punishable by one year imprisonment and a fine of \$1,000. Sections 775.082 and 775.083, F.S. However, s. 397.581, F.S., specifically provides that this offense is punishable by a fine of up to \$5,000.

<sup>66</sup> Section 397.581, F.S.

<sup>67</sup> Section 394.459(5)(a), F.S.

<sup>68</sup> Section 394.459(5)(b)-(c), F.S.

patient's right to communicate, send or receive sealed, unopened correspondence, or receive visitors at least once every 7 days.<sup>69</sup>

### **Emergency Contact Information and Florida Databases**

On December 7, 2005, Tiffany Marie Olson was killed in a traffic crash on U.S. 19 in Manatee County.<sup>70</sup> Following her mother not being notified of her death for several hours, her mother was instrumental in getting emergency contact information (ECI) added to a person's driver license or identification card record.<sup>71</sup> The Florida Department of Highway Safety and Motor Vehicles (the FLHSMV) launched the program on October 2, 2006, and it has since been adopted by 15 other states.<sup>72</sup>

ECI allows law enforcement to contact designated individuals in the event of an emergency.<sup>73</sup> The system is securely maintained by the FLHSMV and can be accessed by law enforcement only in an emergency situation.<sup>74</sup> Floridians with a valid driver's license or ID card may enter up to two emergency contacts.<sup>75</sup> Residents can register or update their ECI without cost at [flhsmv.gov/eci](http://flhsmv.gov/eci) and in local driver license offices statewide.<sup>76</sup>

### ***Driver and Vehicle Information Database (DAVID)***

The DAVID system is a FLHSMV-owned, multifaceted database that provides accurate, concise, and up-to-date driver and motor vehicle information to law enforcement, criminal justice officials, and other state agencies.<sup>77</sup> To maintain the integrity of this information, the records are regulated and can only be accessed and used by authorized personnel in accordance with state and federal law.<sup>78</sup>

The DAVID system also contains ECI for Florida drivers who have chosen to list emergency contacts.<sup>79</sup> ECI available through DAVID may only be accessed by law enforcement and may only be used in emergency situations.<sup>80</sup>

### ***Florida Crime Information Center (FCIC) System***

The FCIC system is Florida's central database for tracking various crime-related information. The system is designed "to provide services, information, and capabilities to the law enforcement

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<sup>69</sup> Section 394.459(5)(c), F.S.

<sup>70</sup> The Florida Highway Safety and Motor Vehicles (the FLHSMV), *Emergency Contact Information History*, available at <https://www.flhsmv.gov/driver-licenses-id-cards/emergency-contact-information-history/> (last visited January 19, 2022).

<sup>71</sup> *Id.*

<sup>72</sup> To Inform Families First, *About TIFF*, available at <https://www.toinformfamiliesfirst.org/> (last visited January 19, 2022) (hereinafter "About TIFF").

<sup>73</sup> The FLHSMV, *ECI Brochure*, available at [https://flhsmv.gov/pdf/eci/eci\\_brochure.pdf](https://flhsmv.gov/pdf/eci/eci_brochure.pdf) (last visited January 19, 2022).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> The FLHSMV Office of Inspector General, *DAVID Audits*, p. 1, available at <https://www.flhsmv.gov/pdf/igoffice/20171823.pdf> (last visited January 19, 2022).

<sup>78</sup> *Id.*, s. 119.0712(2)(d), F.S.

<sup>79</sup> About TIFF.

<sup>80</sup> The Fort Lauderdale Police Department, *Access to Criminal Justice Information*, p. 4, available at <https://www.flpd.org/home/showpublisheddocument/4061/637662691735570000> (last visited January 19, 2022).

and criminal justice community” in the state, and gives them access to other criminal justice information systems nationwide.<sup>81</sup> All employees that access the FCIC must be certified by the Florida Department of Law Enforcement, and all information obtained through the system is restricted to criminal justice purposes.<sup>82</sup>

Law enforcement can also use FCIC to access information pertaining to a driver’s specific license, providing an officer with information including a driver’s name, date of birth, residential address and licensure status. If a driver has chosen to add ECI, it will also be provided to an officer along with the rest of the driver-specific information at the bottom of the screen when he or she queries the FCIC database.<sup>83</sup>

### **Mental Health Data Reporting and Analysis**

The DCF collects and maintains copies of ex parte orders, involuntary outpatient services orders, involuntary inpatient placement orders, and professional certificates initiating Baker Act examinations.<sup>84</sup> Such documents are considered part of a patient’s clinical record and are used to prepare annual reports analyzing the de-identified data contained therein.<sup>85</sup> The DCF contracts with the Louis de la Parte Florida Mental Health Institute at the University of South Florida (the Institute) to perform the data analysis and prepare the reports.<sup>86</sup> The Institute also analyzes other information relating to mental health and acts as a provider of crisis services to certain patients.<sup>87</sup> The reports are provided to the DCF, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.<sup>88</sup>

### **Telehealth**

#### ***Relevant Terminology***

Section 456.47, F.S., defines the term “telehealth” as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

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<sup>81</sup> Florida Highway Patrol Policy Manual, *Criminal Justice Information Services: Policy 14.02.04C*. (Rev. Mar. 2015), available at <https://www.flhsmv.gov/fhp/Manuals/1402.pdf> (last visited Nov. 21, 2017).

<sup>82</sup> *Id.* at Policy 14.02.07C. and D.

<sup>83</sup> News 6 Orlando, *Do Florida Drivers Need to Set Up Emergency Contact Information?*, available at <https://www.clickorlando.com/news/local/2022/01/17/do-florida-drivers-need-to-set-up-emergency-contact-information/> (last visited January 19, 2022).

<sup>84</sup> Section 394.463(2)(e), F.S.

<sup>85</sup> *Id.*

<sup>86</sup> The University of South Florida, Baker Act Reporting Center, *About Us*, available at <https://www.usf.edu/cbcs/baker-act/about/index.aspx> (last visited January 19, 2022).

<sup>87</sup> *See* The University of South Florida, Baker Act Reporting Center, *What We Do*, available at <https://www.usf.edu/cbcs/baker-act/about/whatwedo.aspx> (last visited Jan. 7, 2022); and The University of South Florida, Louis de la Parte Florida Mental Health Institute, *About the Institute*, available at <https://www.usf.edu/cbcs/fmhi/about/> (last visited January 19, 2022).

<sup>88</sup> *Id.*

“Synchronous” telehealth refers to the live, real-time, or interactive transmission of information between a patient and a health care provider during the same time period. The use of live video to evaluate and diagnosis a patient would be considered synchronous telehealth.

“Asynchronous” telehealth refers to the transfer of data between a patient and a health care provider over a period of time and typically in separate time frames. This is commonly referred to as “store-and-forward.”

“Remote patient monitoring” refers to the collection, transmission, evaluation, and communication of individual health data to a health care provider from the patient’s location through technology such as wireless devices, wearable sensors, implanted health monitors, smartphones, and mobile apps.<sup>89</sup> Remote monitoring is used to monitor physiologic parameters, including weight, blood pressure, blood glucose, pulse, temperature, oximetry, respiratory flow rate, and more. Remote monitoring can be useful for ongoing condition monitoring and chronic disease management. Depending upon the patient’s needs, remote monitoring can be synchronous or asynchronous.

### ***Florida Telehealth Providers***

In 2019, the Legislature passed and the Governor approved CS/CS/HB 23, creating s. 456.47, F.S., which became effective on July 1, 2019.<sup>90</sup> It authorized Florida-licensed health care providers<sup>91</sup> to use telehealth to deliver health care services within their respective scopes of practice.

Telehealth providers who treat patients located in Florida must be one of the licensed health care practitioners listed below and be either Florida-licensed, licensed under a multi-state health care licensure compact of which Florida is a member state, or registered as an out-of-state telehealth provider:

- Behavioral Analyst;<sup>92</sup>
- Acupuncturist;<sup>93</sup>
- Allopathic physician;<sup>94</sup>
- Osteopathic physician;<sup>95</sup>
- Chiropractor;<sup>96</sup>
- Podiatrist;<sup>97</sup>
- Optometrist;<sup>98</sup>
- Nurse;<sup>99</sup>

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<sup>89</sup> American Board of Telehealth, *Telehealth: Defining 21<sup>st</sup> Century Care*, available at <https://www.americantelemed.org/resource/why-telemedicine/> (last visited January 19, 2022).

<sup>90</sup> Chapter 2019-137, s. 6, L.O.F.

<sup>91</sup> Section 456.47(1)(b), F.S.

<sup>92</sup> Section 393.17, F.S.

<sup>93</sup> Chapter 457, F.S.

<sup>94</sup> Chapter 458, F.S.

<sup>95</sup> Chapter 459, F.S.

<sup>96</sup> Chapter 460, F.S.

<sup>97</sup> Chapter 461, F.S.

<sup>98</sup> Chapter 463, F.S.

<sup>99</sup> Chapter 464, F.S.

- Pharmacist;<sup>100</sup>
- Dentist;<sup>101</sup>
- Dental Hygienist;<sup>102</sup>
- Midwife;<sup>103</sup>
- Speech Therapist;<sup>104</sup>
- Occupational Therapist;<sup>105</sup>
- Radiology Technician;<sup>106</sup>
- Electrologist;<sup>107</sup>
- Orthotist;<sup>108</sup>
- Pedorthist;<sup>109</sup>
- Prosthetist;<sup>110</sup>
- Medical Physicist;<sup>111</sup>
- Emergency Medical Technician;<sup>112</sup>
- Paramedic;<sup>113</sup>
- Massage Therapist;<sup>114</sup>
- Optician;<sup>115</sup>
- Hearing Aid Specialist;<sup>116</sup>
- Clinical Laboratory Personnel;<sup>117</sup>
- Respiratory Therapist;<sup>118</sup>
- Psychologist;<sup>119</sup>
- Psychotherapist;<sup>120</sup>
- Dietician/Nutritionist;<sup>121</sup>
- Athletic Trainer;<sup>122</sup>
- Clinical Social Worker;<sup>123</sup>

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<sup>100</sup> Chapter 465, F.S.

<sup>101</sup> Chapter 466, F.S.

<sup>102</sup> *Id.*

<sup>103</sup> Chapter 467, F.S.

<sup>104</sup> Chapter 468, F.S.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Chapter 458, F.S.

<sup>108</sup> Chapter 468, F.S.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Chapter 483, F.S.

<sup>112</sup> Chapter 401, F.S.

<sup>113</sup> *Id.*

<sup>114</sup> Chapter 480, F.S.

<sup>115</sup> Chapter 484, F.S.

<sup>116</sup> *Id.*

<sup>117</sup> Chapter 483, F.S.

<sup>118</sup> Chapter 468, F.S.

<sup>119</sup> Chapter 490, F.S.

<sup>120</sup> Chapter 491, F.S.

<sup>121</sup> Chapter 468, F.S.

<sup>122</sup> Chapter 468, F.S.

<sup>123</sup> Chapter 491, F.S.

- Marriage and Family Therapist;<sup>124</sup> and
- Mental Health Counselor.<sup>125</sup>

### III. Effect of Proposed Changes:

#### Rights of Patients

##### *Patient Access and Communication*

The bill prohibits receiving facilities from restricting any of the following patients' rights unless a qualified professional determines that failing to do so would be detrimental to the patient's clinical well-being, including:

- The right to communicate freely and privately with persons outside of the receiving facility;
- The right to receive, send, and mail sealed, unopened correspondence; and
- The right to access to any patient, subject to the patient's right to deny or withdraw consent at any time, by the patient's family, guardian, guardian advocate, representative, Florida statewide or local advocacy council, or attorney.

A "qualified professional" is defined in s. 394.455(39), F.S., to mean:

- A physician licensed under ch. 458, F.S.;
- A physician assistant licensed under ch. 459, F.S.;
- A psychiatrist licensed under ch. 458, F.S., or ch. 459, F.S.;
- A psychologist as defined in s. 490.003(7), F.S.; or
- A psychiatric nurse as defined in s. 394.455(36), F.S.

The bill also reduces the number of days within which a receiving facility must review restrictions on a patient's right to communicate or receive visitors from 7 days to 4 days.

##### *Criminal Penalty*

The bill also makes it a second degree misdemeanor<sup>126</sup> to:

- Knowingly furnish false information for the purpose of obtaining emergency or other involuntary admission for any person;
- Cause, or conspire with another to cause, any involuntary mental health procedure for the person without a reason for believing a person is impaired; or,
- Cause, or conspire with another to cause, any person to be denied their rights under the mental health statutes.

The bill also provides that a person who is convicted of this offense may be punished by a fine not exceeding \$5,000.

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> A second degree misdemeanor is punishable by up to 60 days in jail and a fine. This bill specifically authorizes that the fine is punishable up to \$5,000. Sections 775.082 and 775.083(1)(e), F.S.

## **Notice Requirements**

### ***Involuntary Admissions***

#### Baker Act

The bill adds emergency contacts, identified by law enforcement through the DAVID or FCIC electronic databases, to the list of individuals a receiving facility may contact when a patient is brought to a receiving facility for an involuntary examination under the Baker Act.

Under the bill, an officer who delivers a patient to a receiving facility must include all ECI discoverable through FCIC, DAVID, or other electronic databases maintained by the FDLE or the FLHSMV in the report detailing the circumstances under which the person was taken into custody. Such information must be included in reports following instances where a law enforcement officer:

- Determines an individual meets the criteria for involuntary examination and delivers the individual to a receiving facility;
- Delivers an individual to a receiving facility pursuant to a certificate executed by a health care professional under s. 394.463(2)(a)3., F.S.; or
- Determines that a hospital or addictions receiving facility is the most appropriate place for a person who:
  - Is in protective custody; or
  - Refuses to consent to assistance.

#### Marchman Act

When a law enforcement officer delivers a person to a hospital or addictions receiving facility under the Marchman Act, the bill requires the officer to attempt to notify the nearest relative or emergency contact of the person and document such notification, and attempts at notification, in the report.

### ***Voluntary Admissions***

The bill requires receiving facilities and substance abuse service providers serving Baker Act and Marchman Act patients, respectively, to document that individuals admitted on a voluntary basis have been provided with the option to authorize the release of clinical information, within 24 hours of admission, to the individual's:

- Health care surrogate or proxy;
- Attorney;
- Representative; or
- Other known emergency contact.

The release authorization will help to ensure patients admitted on a voluntary basis will have the option of sharing important information regarding health care decisions with the individuals specified above.

### **Transportation Reports**

The bill adds reports completed by law enforcement when a person is transported to a receiving facility to the documents received and maintained by the DCF for use in preparing annual reports on Baker Act data. The bill also makes such reports a part of a patient's clinical record. The transportation reports will allow the Baker Act Reporting Center to provide a more comprehensive overview of Baker Act data statewide.

### **Discharge Procedures**

The bill provides a definition for "telehealth," specifically that telehealth has the same meaning as defined in s. 456.47, F.S. The bill permits receiving facilities holding patients for an involuntary examination under the Baker Act to authorize the release of a patient via telehealth.

Where a patient's 72-hour involuntary examination period ends on a weekend or holiday, the bill allows receiving facilities to delay release of the patient until the next working day only if a qualified professional documents that proper discharge planning and procedures cannot be implemented until that date. Specifically, receiving facilities must include, and document consideration of the discharge planning and procedure requirements delineated in the DCF's existing rule referenced above.

### **Cross-References**

The bill amends ss. 409.972 and 744.2007, F.S., relating to mandatory and voluntary managed care enrollment, and the powers and duties of public guardians, respectively, to conform cross-references to changes made by the act.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

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

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. State Tax or Fee Increases:**

None.



E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF anticipates that the fiscal impact will be based on the level of effort required by data staff employed under the DCF's contract with the University of South Florida's Baker Act Reporting Center.<sup>127</sup> The first year estimated cost of implementation anticipated to be approximately \$90,000. Of this amount, \$15,000 is non-recurring for the cost to develop data infrastructure, a data entry interface, and user testing.<sup>128</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 394.455, 394.459, 394.4599, 394.4615, 394.463, 397.601, 397.6772, 409.972, and 744.2007 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.

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<sup>127</sup> The DCF, *Agency Analysis for SB 1262*, p. 5, January 20, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>128</sup> *Id.*

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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

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House

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsections (47), (48), and (49) of  
section 394.455, Florida Statutes, are redesignated as  
subsections (48), (49), and (50), respectively, and a new  
subsection (47) is added to that section, to read:

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

(47) "Telehealth" has the same meaning as provided in s.



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11 456.47.

12 Section 2. Paragraphs (a), (b), and (c) of subsection (5)  
13 of section 394.459, Florida Statutes, are amended, present  
14 paragraphs (d), (e), and (f) are redesignated as paragraphs (e),  
15 (f), and (g), respectively, and a new paragraph (d) is added to  
16 that subsection, to read:

17 394.459 Rights of patients.—

18 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

19 (a) Each person receiving services in a facility providing  
20 mental health services under this part has the right to  
21 communicate freely and privately with persons outside the  
22 facility unless a qualified professional determines ~~it is~~  
23 ~~determined~~ that such communication is likely to be harmful to  
24 the person or others in a manner directly related to the  
25 person's clinical well-being, the clinical well-being of other  
26 patients, or the general safety of staff. Each facility shall  
27 make available as soon as reasonably possible to persons  
28 receiving services a telephone that allows for free local calls  
29 and access to a long-distance service. A facility is not  
30 required to pay the costs of a patient's long-distance calls.  
31 The telephone shall be readily accessible to the patient and  
32 shall be placed so that the patient may use it to communicate  
33 privately and confidentially. The facility may establish  
34 reasonable rules for the use of this telephone, provided that  
35 the rules do not interfere with a patient's access to a  
36 telephone to report abuse pursuant to paragraph (f) ~~(e)~~.

37 (b) Each patient admitted to a facility under the  
38 provisions of this part shall be allowed to receive, send, and  
39 mail sealed, unopened correspondence; and no patient's incoming



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40 or outgoing correspondence shall be opened, delayed, held, or  
41 censored by the facility unless a qualified professional  
42 determines that such correspondence is likely to be harmful to  
43 the patient or others in a manner directly related to the  
44 patient's clinical well-being, the clinical well-being of other  
45 patients, or the general safety of staff. If there is reason to  
46 believe that such correspondence ~~it~~ contains items or substances  
47 which may be harmful to the patient or others, ~~in which case~~ the  
48 administrator may direct reasonable examination of such mail and  
49 may regulate the disposition of such items or substances.

50 (c) Each facility must permit immediate access to any  
51 patient, subject to the patient's right to deny or withdraw  
52 consent at any time, by the patient's family members, guardian,  
53 guardian advocate, representative, Florida statewide or local  
54 advocacy council, or attorney, unless a qualified professional  
55 determines that such access would be detrimental to the patient  
56 in a manner directly related to the patient's clinical well-  
57 being, the clinical well-being of other patients, or the general  
58 safety of staff.

59 (d) If a patient's right to communicate with outside  
60 persons; receive, send, or mail sealed, unopened correspondence;  
61 or ~~to~~ receive visitors is restricted by the facility, written  
62 notice of such restriction and the reasons for the restriction  
63 shall be served on the patient, the patient's attorney, and the  
64 patient's guardian, guardian advocate, or representative; a  
65 qualified professional must document any restriction within 24  
66 hours and such restriction shall be recorded on the patient's  
67 clinical record with the reasons therefor. The restriction of a  
68 patient's right to communicate or to receive visitors shall be



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69 reviewed at least every 3 7 days. The right to communicate or  
70 receive visitors shall not be restricted as a means of  
71 punishment. Nothing in this paragraph shall be construed to  
72 limit the provisions of paragraph (e)~~(d)~~.

73 (e)~~(d)~~ Each facility shall establish reasonable rules  
74 governing visitors, visiting hours, and the use of telephones by  
75 patients in the least restrictive possible manner. Patients  
76 shall have the right to contact and to receive communication  
77 from their attorneys at any reasonable time.

78 (f)~~(e)~~ Each patient receiving mental health treatment in  
79 any facility shall have ready access to a telephone in order to  
80 report an alleged abuse. The facility staff shall orally and in  
81 writing inform each patient of the procedure for reporting abuse  
82 and shall make every reasonable effort to present the  
83 information in a language the patient understands. A written  
84 copy of that procedure, including the telephone number of the  
85 central abuse hotline and reporting forms, shall be posted in  
86 plain view.

87 (g)~~(f)~~ The department shall adopt rules providing a  
88 procedure for reporting abuse. Facility staff shall be required,  
89 as a condition of employment, to become familiar with the  
90 requirements and procedures for the reporting of abuse.

91 Section 3. Paragraph (b) of subsection (2) of section  
92 394.4599, Florida Statutes, is amended to read:

93 394.4599 Notice.—

94 (2) INVOLUNTARY ADMISSION.—

95 (b) A receiving facility shall give prompt notice of the  
96 whereabouts of an individual who is being involuntarily held for  
97 examination to the individual's guardian, guardian advocate,



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98 health care surrogate or proxy, attorney or representative, or  
99 other emergency contact identified through electronic databases  
100 pursuant to s. 394.463(2) (a), by telephone or in person within  
101 24 hours after the individual's arrival at the facility. Contact  
102 attempts shall be documented in the individual's clinical record  
103 and shall begin as soon as reasonably possible after the  
104 individual's arrival.

105 Section 4. Paragraph (a) of subsection (2) of section  
106 394.4615, Florida Statutes, is amended to read:

107 394.4615 Clinical records; confidentiality.—

108 (2) The clinical record shall be released when:

109 (a) The patient or the patient's guardian authorizes the  
110 release. The guardian or guardian advocate shall be provided  
111 access to the appropriate clinical records of the patient. The  
112 patient or the patient's guardian or guardian advocate may  
113 authorize the release of information and clinical records to  
114 appropriate persons to ensure the continuity of the patient's  
115 health care or mental health care. A receiving facility must  
116 document that, within 24 hours of admission, individuals  
117 admitted on a voluntary basis have been provided with the option  
118 to authorize the release of information from their clinical  
119 record to the individual's health care surrogate or proxy,  
120 attorney, representative, or other known emergency contact.

121 Section 5. Paragraphs (a), (e), (f), and (g) of subsection  
122 (2) of section 394.463, Florida Statutes, are amended, and  
123 subsection (5) is added to that section, to read:

124 394.463 Involuntary examination.—

125 (2) INVOLUNTARY EXAMINATION.—

126 (a) An involuntary examination may be initiated by any one



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127 of the following means:

128       1. A circuit or county court may enter an ex parte order  
129 stating that a person appears to meet the criteria for  
130 involuntary examination and specifying the findings on which  
131 that conclusion is based. The ex parte order for involuntary  
132 examination must be based on written or oral sworn testimony  
133 that includes specific facts that support the findings. If other  
134 less restrictive means are not available, such as voluntary  
135 appearance for outpatient evaluation, a law enforcement officer,  
136 or other designated agent of the court, shall take the person  
137 into custody and deliver him or her to an appropriate, or the  
138 nearest, facility within the designated receiving system  
139 pursuant to s. 394.462 for involuntary examination. The order of  
140 the court shall be made a part of the patient's clinical record.  
141 A fee may not be charged for the filing of an order under this  
142 subsection. A facility accepting the patient based on this order  
143 must send a copy of the order to the department within 5 working  
144 days. The order may be submitted electronically through existing  
145 data systems, if available. The order shall be valid only until  
146 the person is delivered to the facility or for the period  
147 specified in the order itself, whichever comes first. If a time  
148 limit is not specified in the order, the order is valid for 7  
149 days after the date that the order was signed.

150       2. A law enforcement officer shall take a person who  
151 appears to meet the criteria for involuntary examination into  
152 custody and deliver the person or have him or her delivered to  
153 an appropriate, or the nearest, facility within the designated  
154 receiving system pursuant to s. 394.462 for examination. The  
155 officer shall execute a written report detailing the





156 | circumstances under which the person was taken into custody,  
157 | which must be made a part of the patient's clinical record. The  
158 | report must include all emergency contact information for the  
159 | person that is readily accessible to the law enforcement  
160 | officer, including information available through electronic  
161 | databases maintained by the Department of Law Enforcement or by  
162 | the Department of Highway Safety and Motor Vehicles. Such  
163 | emergency contact information may be used by a receiving  
164 | facility only for the purpose of informing listed emergency  
165 | contacts of a patient's whereabouts and shall otherwise remain  
166 | confidential and exempt pursuant to s. 119.0712(2)(d). Any  
167 | facility accepting the patient based on this report must send a  
168 | copy of the report to the department within 5 working days.

169 |         3. A physician, a physician assistant, a clinical  
170 | psychologist, a psychiatric nurse, an advanced practice  
171 | registered nurse registered under s. 464.0123, a mental health  
172 | counselor, a marriage and family therapist, or a clinical social  
173 | worker may execute a certificate stating that he or she has  
174 | examined a person within the preceding 48 hours and finds that  
175 | the person appears to meet the criteria for involuntary  
176 | examination and stating the observations upon which that  
177 | conclusion is based. If other less restrictive means, such as  
178 | voluntary appearance for outpatient evaluation, are not  
179 | available, a law enforcement officer shall take into custody the  
180 | person named in the certificate and deliver him or her to the  
181 | appropriate, or nearest, facility within the designated  
182 | receiving system pursuant to s. 394.462 for involuntary  
183 | examination. The law enforcement officer shall execute a written  
184 | report detailing the circumstances under which the person was



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185 taken into custody. The report must include all emergency  
186 contact information for the person that is readily accessible to  
187 the law enforcement officer, including information available  
188 through electronic databases maintained by the Department of Law  
189 Enforcement or by the Department of Highway Safety and Motor  
190 Vehicles. Such emergency contact information may be used by a  
191 receiving facility only for the purpose of informing listed  
192 emergency contacts of a patient's whereabouts and shall  
193 otherwise remain confidential and exempt pursuant to s.  
194 119.0712(2)(d). The report and certificate shall be made a part  
195 of the patient's clinical record. Any facility accepting the  
196 patient based on this certificate must send a copy of the  
197 certificate to the department within 5 working days. The  
198 document may be submitted electronically through existing data  
199 systems, if applicable.

200  
201 When sending the order, report, or certificate to the  
202 department, a facility shall, at a minimum, provide information  
203 about which action was taken regarding the patient under  
204 paragraph (g), which information shall also be made a part of  
205 the patient's clinical record.

206 (e) The department shall receive and maintain the copies of  
207 ex parte orders, involuntary outpatient services orders issued  
208 pursuant to s. 394.4655, involuntary inpatient placement orders  
209 issued pursuant to s. 394.467, professional certificates, ~~and~~  
210 law enforcement officers' reports, and reports relating to the  
211 transportation of patients. These documents shall be considered  
212 part of the clinical record, governed by the provisions of s.  
213 394.4615. These documents shall be used to prepare annual



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214 reports analyzing the data obtained from these documents,  
215 without information identifying patients, and shall provide  
216 copies of reports to the department, the President of the  
217 Senate, the Speaker of the House of Representatives, and the  
218 minority leaders of the Senate and the House of Representatives.

219 (f) A patient shall be examined by a physician or a  
220 clinical psychologist, or by a psychiatric nurse performing  
221 within the framework of an established protocol with a  
222 psychiatrist at a facility without unnecessary delay to  
223 determine if the criteria for involuntary services are met.  
224 Emergency treatment may be provided upon the order of a  
225 physician if the physician determines that such treatment is  
226 necessary for the safety of the patient or others. The patient  
227 may not be released by the receiving facility or its contractor  
228 without the documented approval of a psychiatrist or a clinical  
229 psychologist or, if the receiving facility is owned or operated  
230 by a hospital or health system, the release may also be approved  
231 by a psychiatric nurse performing within the framework of an  
232 established protocol with a psychiatrist, or an attending  
233 emergency department physician with experience in the diagnosis  
234 and treatment of mental illness after completion of an  
235 involuntary examination pursuant to this subsection. A  
236 psychiatric nurse may not approve the release of a patient if  
237 the involuntary examination was initiated by a psychiatrist  
238 unless the release is approved by the initiating psychiatrist.  
239 The release may be approved through telehealth.

240 (g) The examination period must be for up to 72 hours. For  
241 a minor, the examination shall be initiated within 12 hours  
242 after the patient's arrival at the facility. Within the



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243 examination period ~~or, if the examination period ends on a~~  
244 ~~weekend or holiday, no later than the next working day~~  
245 ~~thereafter~~, one of the following actions must be taken, based on  
246 the individual needs of the patient:

247 1. The patient shall be released, unless he or she is  
248 charged with a crime, in which case the patient shall be  
249 returned to the custody of a law enforcement officer;

250 2. The patient shall be released, subject to subparagraph  
251 1., for voluntary outpatient treatment;

252 3. The patient, unless he or she is charged with a crime,  
253 shall be asked to give express and informed consent to placement  
254 as a voluntary patient and, if such consent is given, the  
255 patient shall be admitted as a voluntary patient; or

256 4. A petition for involuntary services shall be filed in  
257 the circuit court if inpatient treatment is deemed necessary or  
258 with the criminal county court, as defined in s. 394.4655(1), as  
259 applicable. When inpatient treatment is deemed necessary, the  
260 least restrictive treatment consistent with the optimum  
261 improvement of the patient's condition shall be made available.  
262 When a petition is to be filed for involuntary outpatient  
263 placement, it shall be filed by one of the petitioners specified  
264 in s. 394.4655(4) (a). A petition for involuntary inpatient  
265 placement shall be filed by the facility administrator. If a  
266 patient's 72-hour examination period ends on a weekend or  
267 holiday, and the receiving facility:

268 a. Intends to file a petition for involuntary services,  
269 such patient may be held at a receiving facility through the  
270 next working day thereafter and such petition for involuntary  
271 services must be filed no later than such date. If the receiving



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272 facility fails to file a petition for involuntary services at  
273 the close of the next working day, the patient shall be released  
274 from the receiving facility.

275 b. Does not intend to file a petition for involuntary  
276 services, a receiving facility may postpone release of a patient  
277 until the next working day thereafter only if a qualified  
278 professional documents that adequate discharge planning and  
279 procedures in accordance with s. 394.468 are not possible until  
280 the next working day.

281 (5) UNLAWFUL ACTIVITIES RELATING TO EXAMINATION AND  
282 TREATMENT; PENALTIES.—

283 (a) A person may not knowingly and willfully:

284 1. Furnish false information for the purpose of obtaining  
285 emergency or other involuntary admission of another;

286 2. Cause or otherwise secure, or conspire with or assist  
287 another to cause or secure, any emergency or other involuntary  
288 procedure of another person under false pretenses; or

289 3. Cause, or conspire with or assist another to cause, the  
290 denial to any person of any right accorded pursuant to this  
291 chapter.

292 (b) A person who violates this subsection commits a  
293 misdemeanor of the first degree, punishable as provided in s.  
294 775.082 and by a fine not exceeding \$5,000.

295 Section 6. Section 394.468, Florida Statutes, is amended to  
296 read:

297 394.468 Admission and discharge procedures.—

298 (1) Admission and discharge procedures and treatment  
299 policies of the department are governed solely by this part.

300 Such procedures and policies shall not be subject to control by



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301 court procedure rules. The matters within the purview of this  
302 part are deemed to be substantive, not procedural.

303 (2) Discharge planning and procedures for any patient's  
304 release from a receiving facility or treatment facility must  
305 include and document consideration of, at a minimum:

306 (a) Follow-up behavioral health appointments;

307 (b) Information on how to obtain prescribed medications;

308 and

309 (c) Information pertaining to:

310 1. Available living arrangements;

311 2. Transportation; and

312 3. Recovery support opportunities.

313 Section 7. Paragraph (c) of subsection (3) of section  
314 394.9086, Florida Statutes, is amended, a new paragraph (d) is  
315 added to that subsection, and subsection (5) of that section is  
316 amended, to read:

317 394.9086 Commission on Mental Health and Substance Abuse.—

318 (3) MEMBERSHIP; TERM LIMITS; MEETINGS.—

319 (c) The commission shall convene no later than September 1,  
320 2021. The commission shall meet quarterly or upon the call of  
321 the chair. The commission shall hold its meetings in person at  
322 locations throughout the state ~~via teleconference or other~~  
323 ~~electronic means.~~

324 (d) Members of the commission are entitled to receive  
325 reimbursement for per diem and travel expenses pursuant to s.  
326 112.061.

327 (5) REPORTS.—By January 1, 2023 ~~September 1, 2022~~, the  
328 commission shall submit an interim report to the President of  
329 the Senate, the Speaker of the House of Representatives, and the



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330 Governor containing its findings and recommendations on how to  
331 best provide and facilitate mental health and substance abuse  
332 services in the state. The commission shall submit its final  
333 report to the President of the Senate, the Speaker of the House  
334 of Representatives, and the Governor by September 1, 2023.

335 Section 8. Subsection (5) is added to section 397.601,  
336 Florida Statutes, to read:

337 397.601 Voluntary admissions.—

338 (5) A service provider must document that, within 24 hours  
339 of admission, individuals admitted on a voluntary basis have  
340 been provided with the option to authorize the release of  
341 information from their clinical record to the individual's  
342 health care surrogate or proxy, attorney, representative, or  
343 other known emergency contact.

344 Section 9. Section 397.6772, Florida Statutes, is amended  
345 to read:

346 397.6772 Protective custody without consent.—

347 (1) If a person in circumstances which justify protective  
348 custody as described in s. 397.677 fails or refuses to consent  
349 to assistance and a law enforcement officer has determined that  
350 a hospital or a licensed detoxification or addictions receiving  
351 facility is the most appropriate place for the person, the  
352 officer may, after giving due consideration to the expressed  
353 wishes of the person:

354 (a) Take the person to a hospital or to a licensed  
355 detoxification or addictions receiving facility against the  
356 person's will but without using unreasonable force. The officer  
357 shall use the standard form developed by the department pursuant  
358 to s. 397.321 to execute a written report detailing the



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359 circumstances under which the person was taken into custody. The  
360 report must include all emergency contact information for the  
361 person that is readily accessible to the law enforcement  
362 officer, including information available through electronic  
363 databases maintained by the Department of Law Enforcement or by  
364 the Department of Highway Safety and Motor Vehicles. Such  
365 emergency contact information may be used by a hospital or  
366 licensed detoxification or addictions receiving facility only  
367 for the purpose of informing listed emergency contacts of a  
368 patient's whereabouts and shall otherwise remain confidential  
369 and exempt pursuant to s. 119.0712(2)(d). The written report

370 shall be included in the patient's clinical record; or

371 (b) In the case of an adult, detain the person for his or  
372 her own protection in any municipal or county jail or other  
373 appropriate detention facility.

374  
375 Such detention is not to be considered an arrest for any  
376 purpose, and no entry or other record may be made to indicate  
377 that the person has been detained or charged with any crime. The  
378 officer in charge of the detention facility must notify the  
379 nearest appropriate licensed service provider within the first 8  
380 hours after detention that the person has been detained. It is  
381 the duty of the detention facility to arrange, as necessary, for  
382 transportation of the person to an appropriate licensed service  
383 provider with an available bed. Persons taken into protective  
384 custody must be assessed by the attending physician within the  
385 72-hour period and without unnecessary delay, to determine the  
386 need for further services.

387 (2) The law enforcement officer must notify the nearest





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388 relative of a minor in protective custody and must be notified  
389 by the law enforcement officer, as must notify the nearest  
390 relative or other known emergency contact of an adult, unless  
391 the adult requests that there be no notification. The law  
392 enforcement officer must document such notification, and any  
393 attempts at notification, in the written report detailing the  
394 circumstances under which the person was taken into custody as  
395 required under paragraph (1) (a).

396 Section 10. Paragraph (b) of subsection (1) of section  
397 409.972, Florida Statutes, is amended to read:

398 409.972 Mandatory and voluntary enrollment.-

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

403 (b) Medicaid recipients residing in residential commitment  
404 facilities operated through the Department of Juvenile Justice  
405 or a treatment facility as defined in s. 394.455(49) ~~s.~~  
406 ~~394.455(48)~~.

407 Section 11. Subsection (7) of section 744.2007, Florida  
408 Statutes, is amended to read:

409 744.2007 Powers and duties.-

410 (7) A public guardian may not commit a ward to a treatment  
411 facility, as defined in s. 394.455(49) ~~s. 394.455(48)~~, without  
412 an involuntary placement proceeding as provided by law.

413 Section 12. This act shall take effect July 1, 2022.

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

415 And the title is amended as follows:

416 Delete everything before the enacting clause



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417 and insert:

418                   A bill to be entitled  
419           An act relating to mental health and substance abuse;  
420           amending s. 394.455, F.S.; defining the term  
421           "telehealth"; amending s. 394.459, F.S.; revising the  
422           conditions under which a patient's communication with  
423           persons outside of a receiving facility may be  
424           restricted; revising the conditions under which a  
425           patient's sealed and unopened incoming or outgoing  
426           correspondence may be restricted; revising the  
427           conditions under which a patient's visitation with  
428           persons outside of a receiving facility may be  
429           restricted; revising the frequency with which the  
430           restriction on a patient's right to receive visitors  
431           must be reviewed; amending s. 394.4599, F.S.;  
432           requiring a receiving facility to notify specified  
433           emergency contacts of individuals who are being  
434           involuntarily held for examination; amending s.  
435           394.4615, F.S.; requiring receiving facilities to  
436           document that an option to authorize the release of  
437           specified information has been provided, within a  
438           specified timeframe, to individuals admitted on a  
439           voluntary basis; amending s. 394.463, F.S.; requiring  
440           that reports issued by law enforcement officers when  
441           delivering a person to a receiving facility contain  
442           certain information related to emergency contacts;  
443           limiting the use of certain information provided;  
444           maintaining the confidential and exempt status of  
445           certain information provided to a receiving facility;



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446 requiring the Department of Children and Families to  
447 receive and maintain reports relating to the  
448 transportation of patients; authorizing receiving  
449 facility discharge examinations to be conducted  
450 through telehealth; requiring a facility administrator  
451 to file a petition for involuntary placement by a  
452 specified time; authorizing a receiving facility to  
453 postpone the release of a patient if certain  
454 requirements are met; prohibiting certain activities  
455 relating to examination and treatment; providing a  
456 criminal penalty; amending s. 394.468, F.S.; requiring  
457 that discharge and planning procedures include and  
458 document the consideration of specified factors and  
459 actions; amending s. 394.9086; modifying meeting  
460 requirements of the Commission on Mental Health and  
461 Substance Abuse; authorizing reimbursement for per  
462 diem and travel expenses; modifying the due date for  
463 the Commission's interim report; amending s. 397.601,  
464 F.S.; requiring service providers to document that an  
465 option to authorize the release of specified  
466 information has been provided, within a specified  
467 timeframe, to individuals admitted on a voluntary  
468 basis; amending s. 397.6772, F.S.; requiring law  
469 enforcement officers to include certain information  
470 relating to emergency contacts in reports relating to  
471 the delivery of a person to a hospital or licensed  
472 detoxification or addictions receiving facility;  
473 limiting the use of certain information provided;  
474 maintaining the confidential and exempt status of



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475 certain information provided to a hospital or licensed  
476 detoxification or addictions receiving facility;  
477 amending ss. 409.972 and 744.2007, F.S.; conforming  
478 cross-references; providing an effective date.

By Senator Rouson

19-01584-22

20221358\_\_

1                   A bill to be entitled  
2           An act relating to the Task Force on the Monitoring of  
3           Children in Out-of-Home Care; creating s. 39.4093,  
4           F.S.; creating the task force adjunct to the  
5           Department of Law Enforcement; requiring the  
6           department to provide certain services; specifying the  
7           purpose of the task force; specifying the composition  
8           of the task force; providing requirements for member  
9           appointments, election of a chair, and meetings;  
10          specifying duties of the task force; requiring the  
11          Florida Institute for Child Welfare to conduct certain  
12          focus groups and submit its findings to the task force  
13          by a specified date; requiring the Department of  
14          Children and Families to submit certain monthly  
15          reports to the task force through a specified date;  
16          requiring the task force to submit a report to the  
17          Governor and Legislature by a specified date;  
18          providing for future repeal; providing an effective  
19          date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23           Section 1. Section 39.4093, Florida Statutes, is created to  
24           read:

25           39.4093 Task Force on the Monitoring of Children in Out-of-  
26           Home Care.-

27           (1) CREATION.-The Task Force on the Monitoring of Children  
28           in Out-of-Home Care, a task force as defined in s. 20.03(8), is  
29           created adjunct to the Department of Law Enforcement. The

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30 Department of Law Enforcement shall provide administrative and  
31 staff support services relating to the functions of the task  
32 force.

33 (2) PURPOSE.—The purpose of the task force is to identify  
34 and counter the root causes of why children go missing while in  
35 out-of-home care and to ensure that prompt and effective action  
36 is taken to address such causes. The task force shall examine  
37 and recommend improvements to current policies, procedures,  
38 programs, and initiatives to prevent children from going missing  
39 while in out-of-home care and to ensure that timely and  
40 comprehensive steps are taken to find children who are missing  
41 for any reason, including, but not limited to, running away,  
42 human trafficking, and abduction by or absconding with a parent  
43 or an individual who does not have care or custody of the child.

44 (3) MEMBERSHIP; MEETINGS.—

45 (a) The task force is composed of the following members:

46 1. A member of the Senate, appointed by the President of  
47 the Senate.

48 2. A member of the House of Representatives, appointed by  
49 the Speaker of the House of Representatives.

50 3. The secretary, or his or her designee.

51 4. The Secretary of Juvenile Justice, or his or her  
52 designee.

53 5. The executive director of the Statewide Guardian Ad  
54 Lite Office, or his or her designee.

55 6. The executive director of the Department of Law  
56 Enforcement, or his or her designee.

57 7. A representative from Safe Kids Florida, appointed by  
58 the State Surgeon General.

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59       8. A representative from the Statewide Council on Human  
60 Trafficking, appointed by the Attorney General.

61       9. A representative from a community-based care lead agency  
62 that delivers child welfare services in a rural county,  
63 appointed by the secretary.

64       10. A representative from a community-based care lead  
65 agency that delivers child welfare services in an urban county,  
66 appointed by the secretary.

67       11. A licensed foster parent, appointed by the secretary.

68       12. A representative from a residential group care  
69 provider, appointed by the secretary.

70       13. A young adult who aged out of the foster care system,  
71 appointed by the secretary.

72       (b) Appointments to the task force must be made by August  
73 1, 2022. Each member shall serve at the pleasure of the official  
74 who appointed the member. A vacancy on the task force must be  
75 filled in the same manner as the original appointment.

76       (c) The task force shall elect a chair from among its  
77 members.

78       (d) The task force shall convene no later than September 1,  
79 2022. The task force shall meet monthly or upon the call of the  
80 chair. The task force shall hold its meetings through  
81 teleconference or other electronic means.

82       (4) DUTIES.—The duties of the task force include all of the  
83 following:

84       (a) Analyzing statistical data regarding children in out-  
85 of-home care who are missing and the reasons why the children  
86 are missing, if known.

87       (b) Identifying the root causes of why children go missing

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88 while in out-of-home care and how to prevent children from going  
89 missing while in out-of-home care.

90 (c) Assessing the relationship between children who go  
91 missing from out-of-home care and the risks of such children  
92 becoming victims of human trafficking.

93 (d) Assessing the comprehensiveness and effectiveness of  
94 existing policies and procedures for preventing children in out-  
95 of-home care from going missing, for promptly determining  
96 whether such children are missing, and for locating such  
97 children.

98 (e) Evaluating the state's approaches to reporting on the  
99 individual status of children missing from out-of-home care and  
100 the results of the efforts to locate such children, including,  
101 but not limited to, the use of technology, training,  
102 communication, and cooperation.

103 (f) Measuring the overall performance of efforts to locate  
104 and recover children missing from out-of-home care, including,  
105 but not limited to, the communication and response between  
106 community-based care lead agencies, the department, and other  
107 entities.

108 (g) Collaborating with the Florida Institute for Child  
109 Welfare to identify best practices used in other states for  
110 monitoring the location of children in out-of-home care who go  
111 missing, and evaluating whether such practices should be adopted  
112 in this state.

113 (h) Submitting recommendations to improve policies,  
114 procedures, and systems in this state, including, but not  
115 limited to, technology, training, communication, and  
116 cooperation, so that all entities are effectively monitoring



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117 children in out-of-home care, responding appropriately when such  
118 children go missing, and preventing such children from going  
119 missing while in out-of-home care.

120 (5) FOCUS GROUPS.—The Florida Institute for Child Welfare  
121 shall conduct focus groups with children in out-of-home care and  
122 young adults who aged out of the foster care system to assist  
123 the task force in fulfilling its duties. The focus groups shall,  
124 at a minimum, consider the reasons why such children seek to  
125 leave their out-of-home placement, and identify opportunities  
126 and resources to assist and prevent children from leaving their  
127 placements and to facilitate the return of such missing  
128 children. The institute shall submit the findings from the focus  
129 groups to the task force by April 1, 2023.

130 (6) REPORTS.—

131 (a) Through October 1, 2023, the department shall provide  
132 monthly reports to the task force to assist the task force in  
133 fulfilling its duties. The monthly reports must, at a minimum,  
134 address the number and percentage of children in out-of-home  
135 care who have been reported missing; the reasons why such  
136 children are missing, if known; and the length of time between  
137 when such children are reported missing and their recovery or  
138 return. The monthly report must categorize the required data by  
139 age, county, community-based care lead agency, and reasons why  
140 such children are missing, if known.

141 (b) By October 1, 2023, the task force shall submit to the  
142 Governor, the President of the Senate, and the Speaker of the  
143 House of Representatives a report that compiles the findings and  
144 recommendations of the task force.

145 (7) REPEAL.—This section is repealed June 30, 2024, unless

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146 reviewed and saved from repeal by the Legislature.

147 Section 2. This act shall take effect July 1, 2022.

**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.)

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

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BILL: SB 1358

INTRODUCER: Senator Rouson

SUBJECT: Task Force on the Monitoring of Children in Out-of-Home Care

DATE: January 24, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Cox	CF	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 1358 creates the Task Force on the Monitoring of Children in Out-of-Home Care adjunct to the Florida Department of Law Enforcement (FDLE), with the FDLE providing administrative support for the Task Force. The Task Force is required to identify and counter the root causes of why children go missing while in out-of-home care and to ensure that prompt and effective action is taken to address such causes. The Task Force must examine and recommend improvements to current policies, procedures, programs, and initiatives to prevent children from going missing while in out-of-home care and to ensure that timely and comprehensive steps are taken to find children who are missing for any reason, including, but not limited to, running away, human trafficking, and abduction by or absconding with a parent or an individual who does not have care or custody of the child.

The Task Force is to be composed of 13 members, including, but not limited to, a member of the Senate, a member of the House of Representatives, and representatives from the FDLE, the Guardian ad Litem program, and the community-based care lead agencies (CBCs), a licensed foster parent, and a young adult who has aged out of the foster care system. Dates are specified for member appointments and the initial meeting of the task force.

The bill requires the Department of Children and Families (DCF or department) to submit monthly reports through October, 2023 to assist the Task Force in fulfilling its duties and requires the Florida Institute for Child Welfare to conduct focus groups with children in out-of-home care and young adults who have aged out of the foster care system to examine why children leave their out-of-home placements and how to hopefully prevent them from leaving.

The bill requires the Task Force to submit a report with findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2023.

The bill includes a date for repeal of the section creating the Task Force on June 30, 2024, unless reviewed and saved from repeal by the Legislature.

The bill is anticipated to have a negative fiscal impact on the FDLE. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2022.

## II. Present Situation:

### Out-of-home Care

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida central abuse hotline (hotline).<sup>1</sup> A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse,<sup>2</sup> abandonment,<sup>3</sup> or neglect.<sup>4</sup> A child protective investigator (CPI) investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.<sup>5</sup>

After conducting an investigation, if the CPI determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. When the DCF removes a child from the home, known as out-of-home care, a series of dependency court proceedings must occur before a child may be adjudicated dependent.<sup>6</sup>

When children cannot safely remain at home with parents, Florida's child welfare system finds safe out-of-home placements for such children. After an assessment to determine the most

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<sup>1</sup> Section 39.201(1), F.S.

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

<sup>3</sup> Section 39.01(1), F.S. The term "abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

<sup>4</sup> Sections 39.01(50) and 39.201(2)(a), F.S. "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

<sup>5</sup> Section 39.101(2), F.S.

<sup>6</sup> See s. 39.01(14), F.S., for the definition of "child who is found to be dependent".

appropriate out-of-home placement, a child may be placed with a relative, fictive kin, licensed foster parent, in a group home or residential setting.<sup>7</sup> While in out-of-home care, the child and his or her parents receive services to address problems that led to the removal so that reunification or other permanency option may be reached as quickly as possible.<sup>8</sup>

Once removed, the shelter and daily care for the child are provided by foster or kinship families or group home staff. These caregivers undergo an assessment and licensing or certification process to ensure their suitability as caregivers. While in out-of-home care, services are provided to the child and his or her parents to help improve the problems that led to the removal so that reunification or other permanency options may be reached as quickly as possible.<sup>9</sup>

### **Missing Children in DCF Custody**

When Rilya Wilson disappeared in 2002, national awareness of the problem of children becoming missing while under the care of child welfare agencies intensified.<sup>10</sup> Florida has had protocols in place since 2008 to effectively address the purpose specified in the bill related to children missing from out-of-home care.<sup>11</sup>

In the wake of Rilya Wilson's disappearance, at the direction of Governor Jeb Bush, DCF and the Florida Department of Law Enforcement (FDLE) teamed up to locate 393 missing children who were under DCF's custody.<sup>12</sup> The multi-agency, statewide effort was entitled "Operation SafeKids" (Operation). Seven Regional Child Location Strike Forces were created in each of FDLE's seven regions. The results of the Operation included:

- 292 (75%) children were located or cases were closed.
- 13 (3%) children aged out of care and were no longer under the custody of DCF but still had active cases with law enforcement.
- 88 (22%) children were not located and remained under active investigation by the local law enforcement agency and DCF. Of these, 20 were included in the Endangered/Parental Abduction/Involuntary group, and 68 were included in the Runaway group.<sup>13</sup>

The FDLE reports that the FDLE's Missing Endangered Persons Information Clearinghouse (MEPIC)<sup>14</sup> led a multi-agency, statewide effort, titled "Operation Safe Kids." Part of this

<sup>7</sup> Rule 65C-28.004, F.A.C.

<sup>8</sup> Child Welfare Information Gateway, *Out-of-Home Care Overview*, available at <https://www.childwelfare.gov/topics/outofhome/overview/#:~:text=Out%2Dof%2Dhome%20care%20is,to%20abuse%20and%20for%20neglect> (last visited Jan. 22, 2022).

<sup>9</sup> *Id.*

<sup>10</sup> Four-year old Rilya Wilson went missing while in DCF's custody after the termination of her mother's parental rights. The DCF did not discover her disappearance until two years later, when Rilya was not found living at the home of her caregiver. The Florida Legislature passed, and the Governor signed, a bill into law that created the Rilya Wilson Act. Section 39.604, F.S., requires a child from birth to the age of school entry, who is under court-ordered protective supervision or in out-of-home care and is enrolled in an early education or child care program, to attend the program 5 days a week unless the court grants an exemption.

<sup>11</sup> Sections 39.0141 and 943.021(4), F.S.

<sup>12</sup> The FDLE and the DCF, *Operation SafeKids, Results, Findings & Recommendations* (Dec. 17, 2002), available at [https://popcenter.asu.edu/sites/default/files/problems/runaways/PDFs/FL%20DOC&F\\_2002.pdf](https://popcenter.asu.edu/sites/default/files/problems/runaways/PDFs/FL%20DOC&F_2002.pdf) (last visited January 22, 2022).

<sup>13</sup> *Id.*

<sup>14</sup> The Missing Endangered Persons Information Clearinghouse (MEPIC) is the central repository of information regarding missing endangered persons in Florida. MEPIC assists law enforcement agencies and Florida's citizens in finding missing

operation's work was implementation of the now standard procedure, opening missing persons cases for every child discovered missing while under the DCF custody. The DCF, as the custodian of the missing child, makes the initial missing report to the appropriate local law enforcement agency who then enters the case into the Florida Crime Information System (FCIC). This entry ensures all law enforcement and criminal justice professionals nationwide making inquiry regarding a possible missing child similar to the subject of the case are notified of the Florida missing child. Additionally, the DCF creates a record in the Florida Safe Families Network (FSFN), their internal database, concerning the missing episode.<sup>15</sup>

A DCF liaison, co-located within MEPIC, quality controls the information in FSFN using internal DCF information and the missing child's FCIC entry. This information is electronically transferred from the DCF liaison to members of MEPIC who facilitate its entry into MEPIC's Missing Persons Database (MPDB). In addition to populating a variety of Florida systems and access points to the information, MPDB also electronically transfers the information regarding the child to the National Center for Missing and Exploited Children (NCMEC). When fully implemented as an electronic network in February of 2008, this relay process became the first of its kind in the nation, rapidly transferring the missing record of a child in state care, to both state and federal missing persons clearinghouses to help optimize the safe recovery of the child in minimal time.<sup>16</sup>

The co-location and partnership with DCF personnel within MEPIC facilitates the ongoing effectiveness and continued success of this system as well as the facilitation of near immediate agency-to-agency communication and information sharing between state and local partners on all DCF missing child cases. This benefit is particularly valuable with those cases involving the most serious danger for the children and urgency required to insure a safe recovery.<sup>17</sup>

Additionally, a Florida Senate interim project report noted that the disappearance of Rilya Wilson in 2002 raised national awareness of the problem of children who become missing while under the care of the child welfare agencies charged with protecting them. Since then, Florida and many other states studied the issue and enacted legislation and implemented policies intended to improve tracking of children in state care. The report made a number of recommendations related to changes in Florida law, including:

- The DCF should be given rule-making authority specific to missing children. The department should be directed to promulgate rules that will provide comprehensive, explicit and consistent guidelines to be followed by its employees and contracted providers.
- The Legislature should consider amending Chapter 39 to require the department and its contracted providers to report a child as missing to the appropriate law enforcement agency, after making reasonable but unsuccessful efforts to locate the child and determining that it is necessary to report the child as missing.

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persons by providing analytical services and engaging the public in the search. As part of these services, MEPIC has worked with partner agencies to develop the Florida AMBER Plan and Florida Silver Alert Plan. Under these plans, MEPIC is responsible for issuing all AMBER Alerts, Missing Child Alerts and State Silver Alerts in Florida, *available at*: <https://www.fdle.state.fl.us/mcicsearch/> (Last visited January 11, 2022).

<sup>15</sup> The FDLE, *2022 FDLE Legislative Bill Analysis SB 1358*, p. 5, January 19, 2022. (on file with the Senate Committee on Children, Families and Elder Affairs) (hereinafter cited as "The FDLE SB 1358 Analysis").

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

- Section 937.021(1), F.S., should be amended to make it clear that a law enforcement agency must take reports of missing children not only from parents and guardians, but also from the department or its contracted providers.
- Section 787.04(3), F.S., related to removing a child during an investigation or while under protective supervision, should be amended to require that a defendant act knowingly and willfully, rather than with criminal intent, after receiving constructive or actual notice of the pending matter.<sup>18</sup>

All of these recommendations were enacted during the 2008 legislative session.<sup>19</sup>

### **Collection of Information Related to Children in Out-of-home Care**

Federal legislation enacted in 1993 supports states in planning, designing, developing, and implementing a Statewide Automated Child Welfare Information System (SACWIS) system. SACWIS is a comprehensive, automated case management system that helps social workers manage foster care and adoption cases. All states and the District of Columbia collect data on their child welfare cases and activities for entry into a statewide automated system that provides reports for a variety of uses.<sup>20</sup>

The Children's Bureau requires states to include 66 data elements, including demographic information on the child's race, age, gender, and date of entry into care. The SACWIS includes case-related information, such as the reason identified for removing the child and placing him or her into foster care, service goals, number of placements, and availability for adoption. States may include other data elements to meet their needs, including elements that help caseworkers manage their caseloads within the structure of the child welfare system. States use their SACWIS data to create management and outcome reports.<sup>21</sup>

The DCF's Florida Safe Families Network (FSFN) is the state's SACWIS.<sup>22</sup> FSFN serves as the statewide electronic case record for all child abuse investigations and case management activities in Florida. The amount of data entered into FSFN is extensive and if fully utilized can provide infinite details on the whereabouts and safety of children in out-of-home care.

### **Florida Institute for Child Welfare**

In 2014, the Legislature established the Florida Institute for Child Welfare (FICW) at the Florida State University, College of Social Work. The Legislature created the FICW to provide research and evaluation that contributes to a more sustainable, accountable, and effective child welfare

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<sup>18</sup> The Florida Senate, Committee on Children, Families, and Elder Affairs, *Missing Children*, Interim Project Report 2008-106, October 2007, available at <https://www.flsenate.gov/UserContent/Committees/Publications/InterimWorkProgram/2008/pdf/2008-106cf.pdf> (last visited January 22, 2022).

<sup>19</sup> Chapter 2008-245, L.O.F.

<sup>20</sup> Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment and Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *Introduction to Cross-System Data Sources in Child Welfare, Alcohol and Other Drug Services, and Courts*, HHS Publication No. SMA-11-4630, 2011, available at [https://ncsacw.samhsa.gov/files/DataPrimer\\_508.pdf](https://ncsacw.samhsa.gov/files/DataPrimer_508.pdf) (last visited January 22, 2022).

<sup>21</sup> *Id.*

<sup>22</sup> Rule 65C-38.001, F.A.C.

system. The purpose of the FICW is to advance the well-being of children and families by improving the performance of child protection and child welfare services through research, policy analysis, evaluation, and leadership development.<sup>23</sup> Current law requires the FICW to establish an affiliate network of public and private universities with accredited degrees in social work. All public universities with such programs in Florida are currently part of the network. In 2017, the FICW expanded its affiliate network to include research affiliates, and there are now over 50 research faculty affiliates. The FICW is statutorily mandated to:

- Maintain a program of research contributing to the scientific knowledge related to child safety, permanency, and child and family well-being.
- Advise DCF and other organizations about scientific evidence regarding child welfare practice, as well as management practices and administrative processes.
- Assess performance of child welfare services based on specified outcome measures.
- Evaluate training requirements for the child welfare workforce and the effectiveness of training.
- Develop a program of training and consulting to assist organizations with employee retention.
- Identify and communicate effective policies and promising practices.
- Recommend improvements in the state’s child welfare system.
- Submit annual reports to the Governor and Legislature.<sup>24</sup>

The FICW sponsors and supports interdisciplinary research projects and program evaluation initiatives that contribute to knowledge relevant to enhancing Florida’s child welfare outcomes.

### Task Force

Section 20.03, F.S., includes definitions related to organizational structure. In part, it defines a “task force” as an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.<sup>25</sup>

Florida has established a number of task forces in the past related to child welfare. These have typically been created either by the Governor or DCF’s Secretary in response to a tragic incident involving a child under DCF’s custody. Examples of these include, in part:

- The Nubia Report, the Investigative Panel’s Findings and Recommendations, 2011.<sup>26</sup>
- Family Safety Quality Assurance Review of Courtney Alisa Clark, Initial Findings, 2007.<sup>27</sup>
- Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse, 2010.<sup>28</sup>

<sup>23</sup> Section 1004.615, F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 20.30(8), F.S.

<sup>26</sup> Lawrence, D., Martinez, R., and Sewell, J., *The Nubia Report, The Investigative Panel’s Findings and Recommendations*, available at <http://centerforchildwelfare.org/kb/bppub/NubiasStory.pdf> (last visited Jan. 20, 2022).

<sup>27</sup> The DCF, *Family Safety Quality Assurance Review of Courtney Alisa Clark, Initial Findings*, available at <http://centerforchildwelfare.org/kb/FIPerformance/cclark%20QA%20Initial%20Findings.pdf> (last visited Jan. 20, 2022).

<sup>28</sup> The DCF, *Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse*, available at <https://www.myflfamilies.com/initiatives/GMWorkgroup/docs/Gabriel%20Myers%20COC%20Report%20May%2014%202010.pdf> (last visited Jan. 20, 2022).



- Governor's Blue Ribbon Panel on Child Protection, 2003 (Rilya Wilson).<sup>29</sup>

There is currently no task force that monitors children in out-of-home care.

### III. Effect of Proposed Changes:

The bill creates the Task Force on the Monitoring of Children in Out-of-Home Care within the FDLE. The Task Force is created to identify and counter the root causes of why children go missing while in out-of-home care and to ensure prompt and effective action is taken to address such causes. The bill requires the Task Force to examine and recommend improvements to current policies, procedures, programs, and initiatives to prevent children from going missing while in out-of-home care and to ensure that timely and comprehensive steps are taken to find children who are missing for any reason, including, but not limited to, running away, human trafficking, and abduction by a parent or a person who does not have care or custody of the child.

The Task Force must be composed of the following 13 members:

- A member of the Senate, appointed by the President of the Senate.
- A member of the House of Representatives, appointed by the Speaker of the House of Representatives.
- The Secretary of DCF, or designee.
- The Secretary of the Department of Juvenile Justice, or designee.
- The executive director of the Statewide Guardian ad Litem Office, or designee.
- The executive director of FDLE, or designee.
- A representative from Safe Kids Florida, appointed by the State Surgeon General.
- A representative from the Statewide Council on Human Trafficking, appointed by the Attorney General.
- A representative from a CBC that delivers child welfare services in a rural county, appointed by DCF's Secretary.
- A representative from a CBC that delivers child welfare services in an urban county, appointed by DCF's Secretary.
- A licensed foster parent, appointed by DCF's Secretary.
- A representative from a residential group care provider, appointed by DCF's Secretary.
- A young adult who aged out of the foster care system, appointed by DCF's Secretary.

The bill requires all Task Force appointments to be made by August 1, 2022 and provides that each member serves at the pleasure of the appointing official. A vacancy on the Task Force must be filled in the same manner as the original appointment. The members must elect a chair from among the members.

The bill requires the Task Force to convene no later than September 1, 2022, and to meet monthly thereafter or upon call of the chair. The bill allows meetings to be held through teleconference or other electronic means.

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<sup>29</sup> The DCF, *Governor's Blue Ribbon Panel on Child Protection*, available at <http://centerforchildwelfare.org/kb/FIPerformance/BlueRibbonFinal110703.pdf> (last visited Jan. 20, 2022).

The bill requires the Task Force to:

- Analyze statistical data regarding children in out-of-home care who are missing and the reasons why, if known;
- Identify the root causes of why children go missing while in out-of-home care and how to prevent children from going missing while in out-of-home care;
- Assess the relationship between children who go missing from out-of-home care and the risks of such children becoming victims of human trafficking;
- Assess the comprehensiveness and effectiveness of existing policies and procedures for preventing children in out-of-home care from going missing, for promptly determining whether such children are missing, and for locating such children;
- Evaluate the state's approaches to reporting on the individual status of children missing from out-of-home care and the results of the efforts to locate such children, including, but not limited to, the use of technology, training, communication, and cooperation;
- Measure the overall performance of efforts to locate and recover children missing from out-of-home care, including, but not limited to, the communication and response between CBC's, DCF, and other entities;
- Collaborate with the FICW to identify best practices used in other states for monitoring the location of children in out-of-home care who go missing, and evaluate whether such practices should be adopted in the state; and
- Submit recommendations to improve policies, procedures, and systems in the state, including, but not limited to, technology, training, communication, and cooperation, so all entities are effectively monitoring children in out-of-home care, responding appropriately when such children go missing, and preventing such children from going missing while in out-of-home care.

The bill requires the FICW to conduct focus groups with children in out-of-home care and young adults who aged out of the foster care system to assist the task force in fulfilling its duties. The focus groups must, at a minimum, consider the reasons why such children seek to leave their out-of-home placement, identify opportunities and resources to assist and prevent children from leaving their placements, and to facilitate the return of such missing children. The bill requires the FICW to submit the findings from the focus groups to the Task Force by April 1, 2023.

The bill requires the DCF to provide monthly reports to the Task Force until October 1, 2023. The monthly reports must, at a minimum, address the number and percentage of children in out-of-home care who have been reported missing, the reasons why such children are missing, if known, and the length of time between when such children are reported missing and their recovery or return. The monthly reports must categorize the required data by age, county, CBC, and reason, if known.

The Task Force must submit a report with its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2023.

The bill includes a repeal date for the section creating the Task Force on June 30, 2024, unless reviewed and saved from repeal by the Legislature.

The bill provides an effective date of July 1, 2022.

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

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

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The FDLE reports that due to the short-term nature of the Task Force, the FDLE states it will require two OPS positions totaling \$140,076 (\$130,986 recurring) to support the Task Force.<sup>30</sup>

**VI. Technical Deficiencies:**

None.

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<sup>30</sup> The FDLE, *Agency Analysis for SB 1358*, p. 4, January 19, 2022 (on file with Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The FDLE SB 1358 Analysis”).

## VII. Related Issues:

The FDLE has reported that as a task force pursuant to s. 20.03, F.S., this body would be required to meet sunshine meeting requirements. The bill does not provide an exception for closed sessions, therefore, task force members would not be able to openly discuss confidential and/or exempt records without waiving such rights. Further, the FDLE states that there may be the need to occasionally possess and review law enforcement sensitive information in this setting.<sup>31</sup>

The FDLE requests that additional language be included in the bill to allow for the Task Force to possess records while maintaining any exemption or confidentiality status those records may have already maintained and language authorizing closed sessions to discuss confidential and/or exempt materials that the Task Force may regularly need, such as active criminal intelligence information or active criminal investigative information, or personal identifiable information of individuals such as victims who may have constitutional rights under Marsy's Law.<sup>32</sup> Victims of crime in Florida are guaranteed certain rights that are provided in the Florida Constitution as well as in the Florida Statutes. In 2018, Florida voters passed Marsy's Law, an amendment to the Florida Constitution, to expand victim's rights.<sup>[1]</sup>

<sup>33</sup>

The FDLE respectfully recommends mirroring language found in s. 943.687(8), FS, which provides: "Any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed is exempt from s. 286.011, FS, and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, FS, and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature."<sup>34</sup>

## VIII. Statutes Affected:

The bill creates section 39.4093 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.

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<sup>31</sup> The FDLE SB 1358 Analysis, p. 5.

<sup>32</sup> *Id.*

[1]

<sup>33</sup> Victims of crime in Florida are guaranteed certain rights that are provided in the Florida Constitution as well as in the Florida Statutes. In 2018, Florida voters passed Marsy's Law, an amendment to the Florida Constitution, to expand victim's rights. Section 16(b), Art. 1, FLA. CONST.

<sup>34</sup> *Id.*

B. Amendments:

None.

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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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By Senator Book

32-01370-22

20221452\_\_

1                   A bill to be entitled  
2           An act relating to funding for sheriffs providing  
3           child protective investigative services; amending s.  
4           39.3065, F.S.; authorizing sheriffs who provide child  
5           protective investigative services to carry forward a  
6           certain percentage of unexpended state funds each  
7           fiscal year; requiring certain funds to be returned to  
8           the Department of Children and Families; prohibiting  
9           funds carried forward from being used in certain ways;  
10          requiring that certain expenditures be reported to the  
11          department; authorizing unexpended funds to be  
12          retained through contract or grant agreement renewals  
13          under certain circumstances; providing an effective  
14          date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18           Section 1. Paragraph (c) of subsection (3) of section  
19           39.3065, Florida Statutes, is amended to read:

20           39.3065 Sheriffs of certain counties to provide child  
21           protective investigative services; procedures; funding.—

22           (3)

23           (c) Funds for providing child protective investigations  
24           must be identified in the annual appropriation made to the  
25           department, which shall award grants for the full amount  
26           identified to the respective sheriffs' offices. Notwithstanding  
27           ss. 216.181(16) (b) and 216.351, the department may advance  
28           payments to the sheriffs for child protective investigations.  
29           The sheriffs may carry forward documented unexpended funds from

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30 one fiscal year to the next. However, the cumulative amount  
31 carried forward may not exceed 8 percent of the total contract  
32 amount or grant agreement amount, and any unexpended funds in  
33 excess of that amount must be returned to the department. The  
34 funds carried forward may not be used to create increased  
35 recurring future obligations or for any type of program or  
36 service that is not currently authorized by the existing  
37 contract or grant agreement with the department. The expenditure  
38 of funds carried forward must be separately reported to the  
39 department. Funds carried forward may be retained through a  
40 contract or grant agreement renewal and any new procurements as  
41 long as the same sheriff's office is retained by the department.  
42 All unexpended funds at the expiration of the contract or grant  
43 agreement must be returned to the department. Funds for the  
44 child protective investigations may not be integrated into the  
45 sheriffs' regular budgets. Budgetary data and other data  
46 relating to the performance of child protective investigations  
47 must be maintained separately from all other records of the  
48 sheriffs' offices and reported to the department as specified in  
49 the grant agreement.

50 Section 2. This act shall take effect July 1, 2022.

**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.)

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

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BILL: SB 1452

INTRODUCER: Senator Book

SUBJECT: Funding for Sheriffs Providing Child Protective Investigative Services

DATE: January 24, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	<b>Pre-meeting</b>
2.			AHS	
3.			AP	

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**I. Summary:**

SB 1452 authorizes the sheriff's office who contract with the Department of Children and Families (DCF) to carry forward documented unexpended funds from one fiscal year to the next, but the cumulative amount carried forward may not exceed 8 percent of the total contract amount or grant agreement amount. Any unexpended funds in excess of that amount must be returned to the DCF.

The funds carried forward:

- May not be used to create increased recurring future obligations;
- May not be used for any type of program or service that is not currently authorized by the existing contract or grant agreement with the DCF; and
- May be retained through a contract or grant agreement renewal and any new procurements as long as the same sheriff's office is retained by the DCF.

All unexpended funds at the expiration of the contract or grant agreement must be returned to the DCF.

The bill does not impact state expenditures. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

**II. Present Situation:**

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida central abuse hotline (hotline).<sup>1</sup> A child protective investigation begins if the hotline determines the allegations meet the statutory

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<sup>1</sup> Section 39.201(1), F.S.



definition of abuse,<sup>2</sup> abandonment,<sup>3</sup> or neglect.<sup>4</sup> A child protective investigator (CPI) investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.<sup>5</sup>

Between October 1, 2020 to September 31, 2021, 168,582 investigations were conducted and 167,813 (99.54%) of the investigations were commenced within 24 hours of receiving the abuse report.<sup>6</sup> Of the investigations closed within the same period, 240,694 alleged victims were seen and 224,048 (93.08%) of them were seen within 24 hours of the hotline intake decision date and time.<sup>7</sup>

After conducting an investigation, if the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. When the DCF removes a child from the home, a series of dependency court proceedings must occur before a child may be adjudicated dependent.<sup>8</sup>

### **Child Protective Investigators**

The DCF employs CPIs who must meet minimum qualifications, including, but not limited to, a bachelor's degree, and certification and training requirements.<sup>9</sup> A CPI has certain responsibilities, including, in part:

- Conducting investigations relating to allegations of abuse, abandonment, and/or special conditions for children;

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

<sup>3</sup> Section 39.01(1), F.S. The term “abandoned” or “abandonment” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

<sup>4</sup> Sections 39.01(50) and 39.201(2)(a), F.S. “Neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

<sup>5</sup> Section 39.101(2), F.S.

<sup>6</sup> The DCF, *Office of Child Welfare Dashboard*, January 10, 2022, available at [Child Welfare - Florida Department of Children and Families \(myflfamilies.com\)](https://myflfamilies.com) (last visited Jan. 21, 2022).

<sup>7</sup> *Id.*

<sup>8</sup> See s. 39.01(14), F.S., for the definition of “child who is found to be dependent”.

<sup>9</sup> The DCF, *Child Protective Investigator*, available at [Child Protective Investigator, Employment Opportunities - Florida Department of Children and Families \(myflfamilies.com\)](https://myflfamilies.com) (last visited Jan. 21, 2022).

- Working closely with law enforcement;
- Collecting information through observation and interviews with certain persons, including the children and parents;
- Engaging families to understand the family dynamics;
- Assessing danger threats, child vulnerabilities and caregiver protective capacities;
- Developing present and/or impending danger plans;
- Managing and modifying safety plans as necessary during the investigation;
- Arranging emergency placement for any child that cannot safely remain in the home;
- Notifying the state attorney, law enforcement, child protection team and other required individuals as appropriate;
- Providing written present and impending danger assessments;
- Completing Risk Assessment on families investigated and explaining risk score to family;
- Conducting staffing's required for families with risk scores that are High and Very High Risk;
- Providing families with services linkages to agency and community resources;
- Conducting initial/ongoing child present and impending danger assessments; and
- Developing with the family a signed Present Danger Plan and a signed safety plan.<sup>10</sup>

CPIs are required to work nights and weekends to perform their responsibilities and timely complete their assigned investigations.<sup>11</sup>

### **Contracts with Sheriffs' Offices**

Following a pilot program with the Manatee County Sheriff's Office, the DCF contracted with the sheriffs of Pasco County, Manatee County, Broward County, and Pinellas County to provide all child protective investigation services in their respective counties beginning in FY 1999-20.<sup>12</sup> The following year, the DCF was authorized to enter into grant agreements with sheriffs of other counties to perform child protective investigations in those counties.<sup>13</sup>

The sheriffs of other counties who enter into an agreement with the DCF must:

- Adopt the child welfare model that is used by CPIs who are employed by the DCF;<sup>14</sup>
- Operate in accordance with the performance standards and outcome measures required for protective investigations that are conducted by the DCF;<sup>15</sup>
- Operate in compliance with federal performance standards and metrics<sup>16</sup> that are imposed by federal law, regulation, or funding requirements;

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Section 39.3065(3)(a), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Section 39.3065(3)(b)1., F.S. The DCF is required to comply with child protection and child welfare outcomes, such as children are first and foremost protected from abuse and neglect; children are safely maintained in their homes, if possible and appropriate; services are provided to protect children and prevent removal from their home; and children have permanency and stability in their living arrangements.

<sup>16</sup> Examples of some of the metrics are noted above, such as commencing the investigation and seeing the alleged victim within 24 hours.

- Operate in accordance with the same child welfare practice model principals used by, and the same state performance standards and metrics that are imposed on, child protective investigators employed by the DCF.<sup>17</sup>

Each CPI who is employed by the sheriff must complete the same mandatory training that is required of CPIs who are employed by the DCF.<sup>18</sup>

The DCF and all contracted sheriffs, or his or her designee, must meet at least quarterly to collaborate on federal and state quality assurance and quality improvement initiatives.<sup>19</sup> The DCF must conduct an annual performance evaluation of all sheriffs providing services pursuant to a grant agreement.<sup>20</sup> Current law sets out criteria and standards that must be applied when the DCF is conducting the annual evaluations.<sup>21</sup>

### ***Sheriff Funding for CPI Contracts***

Funds for providing child protective investigations must be identified in the annual appropriations made to the DCF, and the DCF must award grants for the full amount of the appropriations to the sheriffs' offices.<sup>22</sup> The DCF is allowed to make advance payments to the sheriffs for conducting child protective investigations.<sup>23</sup> Funds provided to sheriffs' offices for investigations may not be integrated into the sheriffs' regular budgets, and must be maintained separately from all other records.<sup>24</sup> The sheriffs' offices must be reported to the DCF as set out in the grant agreement.<sup>25</sup>

The sheriffs' offices total contact amount for child protective investigative services is \$57.7 million and eight percent of that total is \$4.6 million. Over the past three years the sheriffs' offices have on average returned \$1.1 million per year to state General Revenue unallocated.

There is no provision under current law which allows sheriffs' offices to carry forward any unexpended funds. Below is a table which summarizes the amounts of unexpended funds each sheriffs' offices returned to General Revenue.

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<sup>17</sup> Section 39.3065(3)(b), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 39.3065(3)(d), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Section 39.3065(3)(c), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Section 39.3065(3)(c), F.S.

**UNEXPENDED FUNDS RETURNED BY SHERIFFS' OFFICES**

Sheriff	CPI Services	Regular Training	Title IV-E Training	Vehicle usage/ Mileage reimbursement/ Miscellaneous	Total
<b>FISCAL YEAR 2020-21</b>					
Broward	\$937,741	\$1,605	\$92,596	\$0	\$1,031,942
Hillsborough	\$133,905	\$350	\$18,495	\$0	\$152,750
Manatee	\$0	\$0	\$0	\$0	\$0
Pasco	\$3,928	\$0	\$0	\$17,811	\$21,739
Pinellas	\$0	\$0	\$0	\$0	\$0
Seminole	\$0	\$0	\$0	\$0	\$0
Walton	\$0	\$0	\$0	\$0	\$0
<b>FY 2020-21 Total</b>	<b>\$1,075,574</b>	<b>\$1,955</b>	<b>\$111,091</b>	<b>\$17,811</b>	<b>\$1,206,431</b>
<b>FISCAL YEAR 2019-20</b>					
Broward	\$355,796	\$353	\$1,608	\$0	\$357,757
Hillsborough	\$230,501	\$4,688	\$68,124	\$13,352	\$316,665
Manatee	\$0	\$0	\$0	\$0	\$0
Pasco	\$3,100	\$0	\$0	\$14,675	\$17,775
Pinellas	\$0	\$0	\$0	\$0	\$0
Seminole	\$0	\$0	\$16,238	\$0	\$16,238
Walton	\$0	\$16,725	(\$692)	\$0	\$16,033
<b>FY 2019-20 Total</b>	<b>\$589,397</b>	<b>\$21,766</b>	<b>\$85,278</b>	<b>\$28,027</b>	<b>\$724,468</b>
<b>FISCAL YEAR 2018-19</b>					
Broward	\$844,566	\$0	\$13,478	\$0	\$858,044
Hillsborough	\$139,025	\$0	\$231,375	\$928	\$371,328
Manatee	\$0	\$0	\$0	\$0	\$0
Pasco	\$0	\$0	\$0	\$15,091	\$15,091
Pinellas	\$0	\$0	\$82,489	\$0	\$82,489
Seminole	\$0	\$0	\$62,974	\$0	\$62,974
Walton	\$0	\$7,734	\$17,333	\$0	\$25,067
<b>FY 2018-19 Total</b>	<b>\$983,591</b>	<b>\$7,734</b>	<b>\$407,649</b>	<b>\$16,019</b>	<b>\$1,414,993</b>

**Community-Based Care Lead Agency Funding**

Community-based care lead agencies (lead agencies) are responsible for providing services to children who have been abused, neglected or abandoned and are involved in Florida’s child welfare system.<sup>26</sup> Section 409.990, F.S., provides for the funding of these lead agencies to perform such duties and, in part, authorizes a lead agency to carry forward unexpended state

<sup>26</sup> See the DCF, *Community-Based Care*, available at [Community Based Care - Florida Department of Children and Families \(myflfamilies.com\)](http://myflfamilies.com) (last visited January 23, 2022).

funds from one fiscal year to the next, but the cumulative amount must not exceed 8 percent of the total contract with the DCF. Any excess funds must be returned to the DCF.<sup>27</sup>

The funds that are carried forward may not be used to increase recurring future obligations, and may not be used for any program or services that are not authorized under the contract with the DCF. Expenditures of funds carried forward must be separately reported to the DCF. Any funds at the end of a contract period must be returned, but funds carried forward may be retained through any contract renewal provided the same lead agency is contracted with the DCF.<sup>28</sup>

### **III. Effect of Proposed Changes:**

The bill provides that the sheriffs who are contracted with the DCF to provide child protective services may carry forward documented unexpended funds from one fiscal year to the next, but the cumulative amount carried forward may not exceed 8 percent of the total contract or grant agreement amount. Any unexpended funds in excess of that amount must be returned to the DCF.

The funds that are carried forward may not be used to create increased recurring future obligations or for any program or service that is not currently authorized by the existing contract or grant agreement with the DCF. The funds carried forward must be separately reported to the DCF. Funds carried forward may be retained through a contract or grant agreement renewal and any new procurements as long as the same sheriff's office is retained by the DCF. All unexpended funds at the expiration of the contract or grant agreement must be returned to the DCF.

The bill is effective July 1, 2022

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

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

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

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<sup>27</sup> Section 409.990(5), F.S.

<sup>28</sup> *Id.*

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not impact state expenditures. However, the bill allows each sheriff’s office that provides child protective investigative services to carry forward documented unexpended funds up to eight percent of the total contract amount, from one fiscal year to the next. Unexpended funds in excess of eight percent must be returned to the state general revenue unallocated. Currently, all unexpended funds are returned to the state general revenue unallocated. The sheriffs’ offices total contract amount for child protective investigative services is \$57.7 million and eight percent of that total is \$4.6 million. Over the past three years the sheriffs’ offices have on average returned \$1.1 million per year to state general revenue unallocated.

	<b>Annual Contract Amount</b>	<b>8% of Annual Contract Amount</b>	<b>3-Year Average Reversion</b>
<b>Broward</b>	\$15,201,864	\$1,216,149	\$749,248
<b>Hillsborough</b>	\$13,738,700	\$1,099,096	\$280,248
<b>Manatee</b>	\$4,855,360	\$388,429	\$0
<b>Pasco</b>	\$6,466,825	\$517,346	\$18,202
<b>Pinellas</b>	\$11,915,854	\$953,268	\$27,496
<b>Seminole</b>	\$4,633,803	\$370,704	\$26,404
<b>Walton</b>	\$860,607	\$68,849	\$13,700
<b>Total</b>	<b>\$57,673,013</b>	<b>\$4,613,841</b>	<b>\$1,115,297</b>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

**VIII. Statutes Affected:**

This bill substantially amends section 39.3065 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.

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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

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House

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

**Senate Amendment**

Delete lines 29 - 33

and insert:

A sheriff may carry forward documented unexpended state funds from one fiscal year to the next. However, the cumulative amount of state funds carried forward may not exceed 8 percent of each sheriff's office total contract amount or grant agreement amount. Any unexpended state funds in excess of that amount and all unexpended federal funds must be returned to the department.





733026

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**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.)

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

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BILL: SB 1550

INTRODUCER: Senator Perry

SUBJECT: Public Records/Autopsy Reports of Minors

DATE: January 24, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	<b>Pre-meeting</b>
2.			GO	
3.			RC	

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**I. Summary:**

SB 1550 amends s. 406.135, F.S., creating a new exemption from public records disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution for autopsy reports of minors whose death were related to acts of domestic violence held by a medical examiner, except that a surviving parent who did not commit the act of domestic violence which led to the minor's death may view and copy the autopsy report of the deceased minor.

Several provisions in s. 406.135, F.S., are also amended to incorporate that an autopsy report of a minor applies to them. Specifically, provisions relating to:

- Certain government entities' authority to have access to such report;
- The custodian of the records are prohibited from disclosing such report;
- The court's discretion to issue an order authorizing disclosure of such report;
- The requirements to give certain surviving parents specified notice and a copy of a petition to view or copy such report; and
- The criminal provisions for failing to comply with the exemption.

The definition of "medical examiner" is amended and the term "minor" is defined under the section.

The bill makes findings that the new exemption from public records disclosure is a public necessity as required by the Florida Constitution. Two-thirds vote of both the House and the Senate is required for final passage.

The bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027 in accordance with s. 119.15, F.S., unless the statute is reviewed and reenacted by the Legislature before that date.

Section 406.135, F.S., also provides that the new exemption created under the bill must be given retroactive application. Technical amendments are made to the section.

There is no anticipated fiscal impact on state or local governments. Agency costs incurred in responding to public records requests for the specified information should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy 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.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

### Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

Section 119.011(12), F.S., defines “public records” to include:

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

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>5</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “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.”

received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>6</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>9</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>10</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>11</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.<sup>13</sup> Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.<sup>14</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

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

<sup>7</sup> Section 119.07(1)(a), F.S.

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>11</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>12</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>13</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004).

<sup>14</sup> *Id.*

<sup>15</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991).

## Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>16</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>19</sup>

The Act 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 is necessary.<sup>20</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>21</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>25</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote

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<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> 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?

<sup>25</sup> See generally s. 119.15, F.S.

for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.<sup>26</sup>

### **Public Records Exemptions**

Section 119.071, F.S., sets out general exemptions from inspection or copying of public records. These exemptions relate to agency administration,<sup>27</sup> agency investigations,<sup>28</sup> and security and firesafety,<sup>29</sup> Agency Personnel Information,<sup>30</sup> and other personal information.<sup>31</sup> There are several other provisions public records exemptions found throughout the Florida Statutes.<sup>32</sup>

### **Exemptions related to Sensitive Photo, or Videos of Deaths**

#### ***Autopsy Photographs, Videos, or Audio Depictions***

Section 406.135, F.S., is a provision that makes confidential and exempt a photograph, video, or audio recording of an autopsy held by a medical examiner. There is an exception which allows for a surviving spouse to view and copy a photograph or video recording or listen to or copy an audio recording of the deceased spouse's autopsy.<sup>33</sup> If there is no surviving spouse, current law provides that the surviving parent must have access to such records.<sup>34</sup> If there is no surviving spouse and no surviving parent, then an adult child is required to have access to such records.<sup>35</sup> Unless the identity of the deceased must otherwise remain confidential and exempt, a local, state, or federal agency may also view or copy such records if:

- It is in furtherance of its official duties; and
- The request to view or copy the photograph or video, or listen to or copy an audio recording is in writing.<sup>36</sup>

The custodian of the record, or his or her designee, may not allow any other person to view or copy such records except an agent designated in writing by the deceased's surviving relative who has authority to request such records.<sup>37</sup>

Upon a showing of good cause, the court may issue an order authorizing any person to view or copy a photograph or video recording, or listen to or copy any audio recording of an autopsy.<sup>38</sup> The court may impose any restrictions or stipulations that it deems appropriate.<sup>39</sup> There are three factors which the court must consider when determining whether good cause exists, including:

- Whether such disclosure is necessary for the public evaluation of governmental performance;

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<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> Section 119.071(1), F.S.

<sup>28</sup> Section 119.071(2), F.S.

<sup>29</sup> Section 119.071(3), F.S.

<sup>30</sup> Section 119.071(4), F.S.

<sup>31</sup> Section 119.071(5), F.S.

<sup>32</sup> See e.g., ss 39.0132(4)(a)1. and 63.022(4)(i), F.S.

<sup>33</sup> Section 406.135(2), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Section 406.135(3)(b), F.S.

<sup>37</sup> Section 406.135(3)(c), F.S.

<sup>38</sup> Section 406.135(4)(a), F.S.

<sup>39</sup> *Id.*

- The seriousness of the intrusion into the family’s right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records.<sup>40</sup>

Any handling of photographs, videos, or audio recordings of an autopsy must be under the direct supervision of the custodian of record or his or her designee.<sup>41</sup>

The surviving spouse, surviving parent, or adult children of the deceased, as appropriate, must be given:

- Reasonable notice of a petition filed with the court to view or copy a photograph or video recording, or listen to or copy an audio recording of an autopsy;
- A copy of such petition; and
- Reasonable notice of the opportunity to be present and heard at any hearing.<sup>42</sup>

A custodian of a photograph, video, or audio recording of an autopsy who willfully and knowingly violates these provisions commits a felony of the third degree.<sup>43</sup> Any person who willfully and knowingly violates a court order issued after showing good cause to view or copy a photograph or video, or listen to or copy an audio recording of an autopsy commits a felony of the third degree.<sup>44</sup>

A criminal or administrative proceeding is exempt from s. 406.135, F.S., and is subject to all the provisions of ch. 119, F.S., unless otherwise exempted.<sup>45</sup> A court in a criminal or administrative proceeding, however, may, upon a showing of good cause, restrict or otherwise control the disclosure of an autopsy, crime scene, or similar photograph, video, or audio recording.<sup>46</sup>

The exemption under s. 406.135, F.S. is given retroactive application.<sup>47</sup> There is no provision under current law which makes confidential and exempt autopsy *reports* of any person that are held by a medical examiner, including autopsy reports of a minor whose death was related to an act of domestic violence.<sup>48</sup>

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<sup>40</sup> Section 406.135(4)(b), F.S.

<sup>41</sup> Section 406.135(5)(c), F.S.

<sup>42</sup> Section 406.135(5), F.S.

<sup>43</sup> Section 406.135(6)(a), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine.

Sections 775.082(3)(e) and 775.083(1)(c), F.S.

<sup>44</sup> Section 406.135(6)(b), F.S.

<sup>45</sup> Section 406.135(7), F.S.

<sup>46</sup> *Id.*

<sup>47</sup> Section 406.135(8), F.S.

<sup>48</sup> Section 741.28(2), F.S. defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family member or household member. A family or household member includes spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. Section 784.011(1), F.S., defines “assault” as intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Section 784.021(1), F.S., defines “aggravated assault” as an assault: (a) with a deadly weapon without the intent to kill; or (b) with an intent to commit a felony. Section 784.03(1)(a), F.S., states that the offense of battery

### *Mass Killings*

Section 119.071(2)(p), F.S., makes a photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence confidential and exempt public records requirements.<sup>49</sup> Similar to the above described public records exemption related to autopsies, a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, the surviving parents must have access to such records and if there is no surviving spouse or parent then the adult children must have access to such records.<sup>50</sup>

Additionally, access may be provided to the photograph or video or audio recordings by a court in the same circumstances as described above for autopsies.<sup>51</sup>

As with the exemption related to autopsies, this exemption applies retroactively and to all photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of

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occurs when a person: 1. Actually and intentionally touches or strikes another person against the will of the other; or 2. Intentionally causes bodily harm to another person. Section 784.045(1)(a), F.S., states a person commits aggravated battery who, in committing battery: 1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or 2. Uses a deadly weapon. Section 794.011(1)(h), F.S., defines “sexual battery” as oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose. Section 748.048(2), F.S., states a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking. Section 784.048(3), F.S., states that a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking. Section 784.048(1)(a), F.S., states that “harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. Section 784.048(1)(c), F.S., defines “credible threat” as a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. Section 784.048(1)(d), F.S., states “cyberstalk” means: 1. To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or 2. To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission. Section 784.048(1)(b), F.S., defines “course of conduct” as a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. Section 787.01(1)(a), F.S., defines “kidnapping” as forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to: 1. Hold for ransom or reward or as a shield or hostage; 2. Commit or facilitate commission of any felony; 3. Inflict bodily harm upon or to terrorize the victim or another person; or 4. Interfere with the performance of any governmental or political function. Section 787.02(1)(a), F.S., defines “false imprisonment” as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will.

<sup>49</sup> Section 119.071(2)(o), F.S., defines “killing of a victim of mass violence” as events that depict either a victim being killed or the body of a victim killed in an incident in which three or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence.

<sup>50</sup> Section 119.071(2)(p)2., F.S.

<sup>51</sup> See s. 119.071(2)(p)4.-6., F.S.



mass violence, regardless of whether the killing of the person occurred before, on, or after May 23, 2019.<sup>52</sup>

### III. Effect of Proposed Changes:

The bill establishes that an autopsy *report* of a minor whose death was related to an act of domestic violence held by a medical examiner is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The bill provides for an exception that allows a surviving parent who did not commit the act of domestic violence which led to the minor's death to view and copy the report.

Several provisions in s. 406.135, F.S., are amended to provide that an autopsy report of a minor apply to them, including specifically:

- Government entities may view or copy an autopsy report of a minor if provisions under current law are met (e.g. a written request in furtherance of its official duties);
- The custodian of the record, or his or her designee, may not permit any other person, except an authorized designed agent, to view or copy an autopsy report of a minor;
- The court may, upon a showing of good cause, issue an order authorizing any person to view or copy an autopsy report of a minor;
- Any viewing, copying, or other handling of an autopsy report of a minor must be under the direct supervision of the custodian of record or his or her designee;
- Any surviving parent who did not commit the act of domestic violence which led to the minor's death must be given reasonable notice of petition to view or copy the autopsy report, a copy of the petition, and reasonable notice of the opportunity to be heard at any hearing; and
- Any custodian of an autopsy report of a minor who willfully and knowingly violates the provisions in s. 406.135, F.S., commits a third degree felony.

The bill amends the term "medical examiner" to include possession of a *report* of an autopsy in the course of assisting a medical examiner in the performance of his or her official duties, in addition to a photograph, or audio or video recording of an autopsy. The term "minor" is also defined as a person younger than 18 years of age who has not had the disability of nonage removed pursuant to s. 743.01, F.S., or s. 743.015, F.S.

The new exemption provided for under s. 406.135, F.S., must be given retroactive application. Technical changes are made to the section.

The bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027, unless the Legislature reviews and reenacts the exemption before that date.

The bill also provides a statement of public necessity as required by the Florida Constitution, which notes:

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<sup>52</sup> Section 119.071(2)(p)7., F.S. However, the provision further states that it is not intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any Florida court, as of the effective date of the act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence.

[t]he Legislature finds that it is a public necessity that autopsy reports for minor children whose deaths were related to acts of domestic violence be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that autopsy reports describe the deceased in graphic and often disturbing fashion and that autopsy reports for minor children who were victims of domestic violence may describe the deceased nude, bruised, bloodied, broken, with bullet or other wounds, cut open, dismembered, or decapitated. As such, these reports often contain highly sensitive descriptions of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and the deceased's minor friends, as well as injury to the memory of the deceased. The Legislature recognizes that the existence of the Internet and the proliferation of websites throughout the world encourages and promotes the wide dissemination of reports and publications 24 hours a day and that widespread unauthorized dissemination of autopsy reports for minor children whose deaths were related to acts of domestic violence would subject the immediate family and the minor friends of the deceased to continuous injury. The Legislature further finds that the exemption provided in this act should be given retroactive application because it is remedial in nature.

The bill is effective upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

##### **B. Public Records/Open Meetings Issues:**

#### **Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for autopsy reports of a minor whose death was related to an act of domestic violence held by a medical examiner, thus, the bill will require a two-thirds vote to be enacted.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

**Scope of Exemption**

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect a surviving parent of a deceased minor whose death was related to an act of domestic violence. This bill exempts only those reports of minors who death was caused by domestic violence and makes an exception for a surviving parent of the deceased minor if he or she is not the parent who committed the act of domestic violence with lead to the minor's death. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 406.135 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.

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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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550368

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Before line 25

insert:

Section 1. This act may be cited as the "Rex and Brody Reinhart Act."

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

And the title is amended as follows:

Delete line 2



550368

11 and insert:

12       An act relating to public records; providing a short  
13       title; amending s.

By Senator Bean

4-01184A-22

20221560\_\_

1                   A bill to be entitled  
2       An act relating to voluntary admissions for mental  
3       illness; amending s. 394.4625, F.S.; revising  
4       voluntary admission requirements for minors; providing  
5       an effective date.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9       Section 1. Paragraph (a) of subsection (1) of section  
10      394.4625, Florida Statutes, is amended to read:

11       394.4625 Voluntary admissions.—

12       (1) AUTHORITY TO RECEIVE PATIENTS.—

13       (a) A facility may receive for observation, diagnosis, or  
14      treatment any person 18 years of age or older making application  
15      to the facility by express and informed consent for admission or  
16      any person ~~age 17~~ years of age or younger ~~under~~ for whom such  
17      application is made by his or her guardian. If found to show  
18      evidence of mental illness, to be competent to provide express  
19      and informed consent, and to be suitable for treatment, such  
20      person 18 years of age or older may be admitted to the facility.  
21      A person ~~age 17~~ years of age or younger ~~under~~ may be admitted,  
22      if found to show evidence of mental illness and to be suitable  
23      for treatment, upon the express and informed consent of the  
24      person's guardian ~~only after a hearing to verify the~~  
25      ~~voluntariness of the consent.~~

26       Section 2. This act shall take effect July 1, 2022.

**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.)

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

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BILL: SB 1560

INTRODUCER: Senator Bean

SUBJECT: Voluntary Admissions for Mental Illness

DATE: January 24, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	<b>Pre-meeting</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 1560 removes the requirement for Baker Act receiving facilities to hold voluntariness hearings for patients under 18 years of age seeking voluntary admission. The bill provides that receiving facilities may instead admit minors on a voluntary basis if the following conditions are met:

- The patient is found to show evidence of mental illness;
- The patient is suitable for treatment; and
- The patient’s guardian provides express and informed consent to admission.

Under the bill, before a minor patient is admitted for a voluntary examination under the Baker Act, providers at a receiving facility must determine that a minor patient has shown evidence of mental illness and suitability for treatment, and the express and informed consent of a parent or guardian must be obtained.

The bill is not anticipated to have a significant fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

**II. Present Situation:**

**The Baker Act**

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.<sup>1</sup> The Baker Act deals with Florida’s mental health commitment laws, and includes legal procedures

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<sup>1</sup> Chapter 71-131, L.O.F.; the Baker Act is contained in ch. 394, F.S.



for mental health examination and treatment, including voluntary and involuntary examinations.<sup>2</sup> The Baker Act also protects the rights of all individuals examined or treated for mental illness in Florida.<sup>3</sup>

Individuals suffering from an acute mental health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.<sup>4</sup>

### ***Involuntary Examination***

An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; and
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.<sup>5</sup>

The involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;<sup>6</sup>
- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination;<sup>7</sup> or
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.<sup>8</sup>

Involuntary patients must be taken to either a public or private facility which has been designated by the Department of Children and Families (the DCF) as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold, or refer, as appropriate, involuntary patients under emergency conditions for psychiatric evaluation and to provide short-term treatment or transportation to the appropriate service provider.<sup>9</sup> The patient must be examined by the

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<sup>2</sup> Sections 394.451-394.47891, F.S.

<sup>3</sup> Section 394.459, F.S.

<sup>4</sup> Sections 394.4625 and 394.463, F.S.

<sup>5</sup> Section 394.463(1), F.S.

<sup>6</sup> Section 394.463(2)(a)1., F.S. Additionally, the order of the court must be made a part of the patient's clinical record.

<sup>7</sup> Section 394.463(2)(a)2., F.S. The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.

<sup>8</sup> Section 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record

<sup>9</sup> Section 394.455(40), F.S.

receiving facility within 72 hours of the initiation of the involuntary examination and specified actions must be taken within that time frame to address the individual needs of the patient.<sup>10</sup>

### ***Voluntary Admissions and Transfer to Voluntary Status***

Baker Act receiving facilities also admit any person 18 years of age or older making application by express and informed consent for admission, or any person age 17 or under for whom such application is made by his or her guardian.<sup>11</sup> If found to show evidence of mental illness, to be competent to provide express and informed consent, and to be suitable for treatment, a person 18 years of age or older may be admitted to the facility.<sup>12</sup>

A patient admitted on an involuntary basis who applies to be transferred to voluntary status must be transferred to voluntary status immediately, unless the patient has been charged with a crime, or has been involuntarily placed for treatment by a court pursuant to s. 394.467, F.S., and continues to meet the criteria for involuntary placement.<sup>13</sup>

### ***Voluntary Admissions for Minor Patients***

Any person age 17 or under may be admitted only after a hearing to verify the voluntariness of their consent.<sup>14</sup> However, in 1997 a joint legislative committee determined that the “voluntariness hearing”<sup>15</sup> described in the Florida Administrative Code at that time did not conform to a “hearing” as intended elsewhere in statute, as all other references to “hearings” in the Baker Act are judicial in nature.<sup>16</sup> Moreover, minors lack the legal capacity to independently consent to admission or treatment.<sup>17</sup> As a result, all reference to “voluntary hearings” were removed from the Code.<sup>18</sup> The DCF states that only a judicial hearing would suffice to meet this

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<sup>10</sup> Section 394.463(2)(g), F.S.

<sup>11</sup> Section 394.4625(1)(a), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 394.4625(4), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> Prior to 1997, Rule 10E-5.21(4), F.A.C., defined a “voluntary hearing” as follows: “An informal hearing between a facility administrator or his designee and an individual under 18 years of age who has requested voluntary admission. The purpose of this meeting is to verify and ensure the voluntariness of the applicant’s request. This is a nonjudicial procedure and is solely for the purpose of safeguarding against an individual being coerced, pressured, misled, or in any way forced to seek voluntary admission to a facility.” Fla. Admin. Code R. 10E-5.21(4) (1996) (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>16</sup> The DCF, *Frequently Asked Questions*, p. 7-9, available at <https://www.myflfamilies.com/service-programs/samh/crisis-services/laws/Minors.pdf> (last visited January 18, 2022) (hereinafter, “The DCF FAQs”).

<sup>17</sup> The DCF FAQs, p. 8.

<sup>18</sup> Prior to 1997, Rule 10E-5.050: Voluntary Admissions of Civil Patients, contained special requirements pertaining to the voluntary admission of minor patients at Baker Act receiving facilities. Specifically, a hearing must be conducted by the facility administrator or their designee, in such a manner as to ensure the applicant’s ability to freely express their desires. Participation in the hearing was to be limited to the individual seeking voluntary admission, and the facility administrator or their designee was to ensure the uninfluenced response of the applicant. At the specific request of the administrator or the patient, another facility staff member or an attorney may be present. Findings of the hearing were to be recorded in the patient’s clinical record and subject to review in the same manner as other items in the record. In the event the voluntary nature of the request was not confirmed, the facility was required to release the patient, unless the patient met the criteria for involuntary examination and a “Certificate of Professional Initiating Involuntary Examination” was executed. *See* Rule 10E-5.050(3), F.A.C. (1996) (on file with the Senate Committee on Children, Families, and Elder Affairs).

legal requirement, and that such hearings would need to be conducted prior to the minor's voluntary admission, despite the consent of the parents or assent of the child to the admission.<sup>19</sup>

The majority of patients under the age of 18 years old who are admitted under the Baker Act are admitted under involuntary status and either discharged or later transferred to voluntary status, and the DCF states that it is unlikely that pre-admission court hearings for voluntary admission of minors are being conducted anywhere in the state.<sup>20</sup> Some facilities still require staff to conduct a “voluntariness hearing”; some review voluntary admissions with the court magistrate at the time involuntary placement hearings are conducted; and others do not hold any type of hearing.<sup>21</sup>

### **Individual Bill of Rights**

The Baker Act provides an individual bill of rights, which entitles patients to the right to:

- Dignity;
- Treatment;
- Express and informed consent;
- Quality of treatment
- Not be refused treatment at a state-funded facility due to an inability to pay;
- Communicate with others;
- Care and custody of personal effects;
- Voting in public elections; and
- Petition the court on a writ of habeas corpus.<sup>22</sup>

The individual bill of rights also imposes liability for damages on persons who violate individual rights.<sup>23</sup> The right to express and informed patient consent specifically provides that if a patient has been adjudicated incapacitated or found incompetent to consent to treatment, express and informed consent to treatment is to be sought instead from the patient’s guardian or guardian advocate.<sup>24</sup> If the patient is a minor, consent for admission or treatment must also be requested from the patient’s guardian,<sup>25</sup> and such consent is mandatory unless the minor is seeking outpatient crisis intervention services.<sup>26</sup> Further, express and informed consent for admission or treatment given by a minor patient cannot be a condition of admission when the patient’s guardian gives express and informed consent for the patient’s admission.<sup>27</sup>

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<sup>19</sup> The DCF FAQs, p. 11.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Section 394.459, F.S.

<sup>23</sup> Section 394.459(10), F.S.

<sup>24</sup> Section 394.459(3)(a)1., F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

**III. Effect of Proposed Changes:**

The bill removes the requirement for Baker Act receiving facilities to hold voluntariness hearings as a condition of admission for patients under 18 years of age. The bill provides that receiving facilities may instead admit minor patients if the following conditions are met:

- The patient is found to show evidence of mental illness;
- The patient is suitable for treatment; and
- The patient's guardian provides express and informed consent to admission.

Under the bill, before a minor patient is admitted for a voluntary examination under the Baker Act, providers at a receiving facility must determine that a minor patient has shown evidence of mental illness and suitability for treatment, and the express and informed consent of a parent or guardian must be obtained. As a result, both medical providers and parents or guardians will have to agree on the decision to admit a minor patient.

The bill is effective July 1, 2022.

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

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

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

Admissions of minor Baker Act patients already require consent of the patient's guardian, and as such the bill is unlikely to have an impact on receiving facilities or hospitals.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 394.4625 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

By Senator Garcia

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1                   A bill to be entitled  
2           An act relating to the Domestic Violence Task Force;  
3           creating s. 39.909, F.S.; creating the Domestic  
4           Violence Task Force adjunct to the Department of  
5           Children and Families; requiring the department to  
6           provide certain services to the task force; providing  
7           purposes of the task force; specifying the composition  
8           of the task force; providing for the appointment of  
9           task force members and requirements for meetings;  
10          specifying duties of the task force; requiring state  
11          departments and agencies to provide requested  
12          assistance to the task force; requiring the task force  
13          to submit reports to the Governor and the Legislature  
14          by certain dates; providing for dissolution of the  
15          task force; providing for future repeal, unless saved  
16          by the Legislature through reenactment; providing an  
17          effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21           Section 1. Section 39.909, Florida Statutes, is created to  
22           read:

23           39.909 Domestic Violence Task Force.—

24           (1) CREATION.—The Domestic Violence Task Force, a task  
25           force as defined in s. 20.03(8), is created adjunct to the  
26           department. The department shall provide administrative and  
27           support staff services relating to the functions of the task  
28           force.

29           (2) PURPOSES.—The purposes of the task force are to

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30 evaluate the child welfare system in relation to domestic  
31 violence investigations and cases in this state, to consider  
32 proposed legislation, and to make recommended changes to  
33 existing laws, rules, and policies.

34 (3) MEMBERSHIP; APPOINTMENT; MEETINGS.—

35 (a) The task force shall be composed of the following  
36 members:

37 1. The Secretary of Children and Families or the  
38 secretary's designee, who shall serve as chair;

39 2. The president of the Florida Partnership to End Domestic  
40 Violence or the president's designee;

41 3. A representative of domestic violence courts, appointed  
42 by the Governor;

43 4. A domestic violence victim, appointed by the President  
44 of the Senate;

45 5. A representative of a certified domestic violence  
46 center, appointed by the Speaker of the House of  
47 Representatives;

48 6. A representative of a certified batterers' intervention  
49 program, appointed by the Governor;

50 7. A child protective investigator from the department,  
51 appointed by the President of the Senate;

52 8. A representative from a county sheriff's office  
53 protective investigation team, appointed by the Speaker of the  
54 House of Representatives;

55 9. A representative from the field of law enforcement,  
56 appointed by the Governor;

57 10. A chief executive officer of a community-based care  
58 lead agency, appointed by the President of the Senate; and

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59 11. A licensed therapist who specializes in treating  
60 victims of domestic violence, appointed by the Speaker of the  
61 House of Representatives.

62 (b) Appointments to the task force must be made by August  
63 1, 2022. Members shall be appointed to serve at the pleasure of  
64 the appointing authority. A vacancy on the task force must be  
65 filled in the same manner as the original appointment.

66 (c) The task force shall convene for its first meeting by  
67 no later than September 1, 2022. The task force shall meet  
68 quarterly or upon the call of the chair and hold its meetings by  
69 teleconference or other electronic means.

70 (4) DUTIES.—

71 (a) The duties of the Domestic Violence Task Force shall  
72 include all of the following:

73 1. Examining the effectiveness of current operations and  
74 treatment in batterers' intervention programs, the consistency  
75 in enforcement of laws, and the level of accountability of  
76 agencies and providers that conduct protective investigations  
77 and that are responsible for handling dependency cases for  
78 domestic violence incidents.

79 2. Eliciting feedback and seeking input from stakeholders  
80 who are responsible for domestic violence investigations and  
81 cases in the child welfare system regarding necessary policy or  
82 rule changes.

83 3. Developing best practices, policies, and procedures  
84 relating to domestic abuse reports and delivery of services to  
85 the victims and perpetrators of domestic violence acts, and  
86 addressing the specific challenges when such incidents involve  
87 children.



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88       4. Developing updated protocols, as necessary, to ensure  
89 that policies and procedures relating to domestic violence abuse  
90 reports, dependency cases, and termination of parental rights  
91 cases are consistently enforced.

92       5. Developing policies relating to the roles of the  
93 department and the Florida Partnership to End Domestic Violence  
94 with respect to domestic violence incidents, including, but not  
95 limited to, such incidents that involve children. Such policies  
96 must evaluate their oversight of domestic violence services with  
97 a goal of optimizing accountability.

98       6. Evaluating the appropriateness of establishing a  
99 diversion program model for victims of domestic violence who  
100 become subject to dependency proceedings related to children in  
101 their custody as a result of such domestic violence, which  
102 allows for judicial oversight if certain criteria are met but  
103 which permits the dependency petition to be dismissed without  
104 prejudice if the victim completes narrowly tailored services  
105 related to intimate partner violence which are deemed necessary  
106 to keep the child safe.

107       7. Determining the need for updated definitions and  
108 corresponding provisions applicable to domestic violence abuse  
109 reports and dependency cases, such as "failure to protect" and  
110 "intimate partner violence."

111       8. Determining when a domestic violence victim's failure to  
112 protect his or her child may be used as a basis to file a  
113 shelter petition.

114       9. Evaluating steps needed, as appropriate, to ensure  
115 proper implementation of and adherence to, as appropriate, the  
116 Safe and Together model that has been used in this state.

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117 10. Determining what steps should be taken during a  
118 domestic violence investigation to ensure a nonoffending or  
119 victim parent is aware of the option to seek an injunction and  
120 request to remain in the home with the child, if appropriate.

121 (b) The task force may call upon appropriate departments  
122 and agencies of state government for such professional  
123 assistance as may be needed in the discharge of its duties, and  
124 such departments and agencies shall provide such assistance in a  
125 timely manner.

126 (5) REPORTS.—By March 1, 2023, the task force shall submit  
127 an interim report to the Governor, the President of the Senate,  
128 and the Speaker of the House of Representatives which contains  
129 its findings and recommendations on best practices, policies,  
130 and procedures relating to domestic abuse reports and cases  
131 involving children, as well as proposed changes to current  
132 legislation to implement the task force's recommendations. The  
133 task force shall submit its final report to the Governor, the  
134 President of the Senate, and the Speaker of the House of  
135 Representatives by September 1, 2023. The task force is  
136 dissolved upon submission of the final report.

137 (6) REPEAL.—This section is repealed September 1, 2024,  
138 unless saved from repeal through reenactment by the Legislature.

139 Section 2. This act shall take effect July 1, 2022.

**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.)

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

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BILL: SB 1598

INTRODUCER: Senator Garcia

SUBJECT: Domestic Violence Task Force

DATE: January 24, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	<b>Pre-meeting</b>
2.			AHS	
3.			AP	

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**I. Summary:**

SB 1598 creates a Domestic Violence Task Force (“Task Force”) adjunct to the Department of Children and Families (DCF). The DCF is required to provide administrative and support staff services for the functions of the Task Force.

The bill sets out the purposes of the Task Force which are to:

- Evaluate the child welfare system in relation to domestic violence investigations and cases in Florida;
- Consider proposed legislation; and
- Make recommendations to change existing laws, rules and policies.

The bill provides that the Task Force must be composed of eleven members. Two members are provided for by title and the other nine members must be appointed by the Governor, the President of the Senate, or the Speaker of the House of Representatives. The appointments must be made by August 1, 2022, and the members are appointed to serve at the pleasure of the appointing authority. A vacancy on the task force must be filled in the same manner as the original appointment.

The Task Force must convene its first meeting by no later than September 1, 2022, and must meet quarterly or upon the call of the chair. The Task Force must hold its meetings by teleconference or other electronic means.

The bill sets out several duties for which the Task Force is responsible, and it may call upon appropriate departments and agencies of state government for assistance that may be needed in the discharge of its duties. Such departments and agencies must provide such assistance in a timely manner.

The Task Force must submit an interim report by March 1, 2023 and its final report, which must contain specified findings and recommendations, by September 1, 2023 to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The Task Force is dissolved upon submission of the final report and s. 39.909, F.S., which creates the Task Force, is repealed September 1, 2024 unless saved from repeal through reenactment by the Legislature.

This bill will have a negative fiscal impact on state government due to the Commission being housed adjunct to the DCF with the DCF providing administrative and support staff services to the Task Force. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

## II. Present Situation:

Domestic violence continues to be a widespread issue throughout the United States<sup>1</sup> and worldwide.<sup>2</sup> Domestic violence is a pattern of behavior, violence, or threats of violence that a person uses to gain power and control over a current or former intimate partner.<sup>3</sup>

Under Florida law, the term “domestic violence” means any assault,<sup>4</sup> aggravated assault,<sup>5</sup> battery,<sup>6</sup> aggravated battery,<sup>7</sup> sexual assault, sexual battery,<sup>8</sup> stalking,<sup>9</sup> aggravated stalking,<sup>10</sup>

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<sup>1</sup> National Conference of State Legislatures (NCSL), *Domestic Violence/Domestic Abuse Definitions and Relationships*, June 13, 2019, available at [Domestic Violence/Domestic Abuse Definitions and Relationships \(ncsl.org\)](https://www.ncsl.org/legislative-policy-research/domestic-violence-domestic-abuse-definitions-and-relationships) (last visited Jan. 20, 2022) (hereinafter cited as “NCSL DV”).

<sup>2</sup> Khan, N. *What Are the Effects of Domestic Violence on the Family and Children*, Better Help, November 11, 2021, available at [Domestic Violence - What Are The Effects Of Domestic Violence On Children? | BetterHelp](https://www.betterhelp.com/blog/what-are-the-effects-of-domestic-violence-on-children/) (last visited Jan. 20, 2022).

<sup>3</sup> Florida Coalition Against Domestic Violence, *Leading Florida Higher, Lifting Survivors Upward, Florida’s Commitment to Ending Domestic Violence and Saving Lives*, p. 3, available at <https://www.myflfamilies.com/service-programs/domestic-violence/docs/2019%20Annual%20%20Report.pdf> (last visited Jan. 20, 2022).

<sup>4</sup> Section 784.011(1), F.S., defines “assault” as intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

<sup>5</sup> Section 784.021(1), F.S., defines “aggravated assault” as an assault with a deadly weapon without the intent to kill; or with an intent to commit a felony.

<sup>6</sup> Section 784.03(1)(a), F.S., states that the offense of battery occurs when a person: actually and intentionally touches or strikes another person against the will of the other; or intentionally causes bodily harm to another person.

<sup>7</sup> Section 784.045(1)(a), F.S., states a person commits aggravated battery who, in committing battery: intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon.

<sup>8</sup> Section 794.011(1)(h), F.S., defines “sexual battery” as oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

<sup>9</sup> Section 748.048(2), F.S., states a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking.

<sup>10</sup> Section 784.048(3), F.S., states that a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking. Section 784.048(1)(a), F.S., states that “harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. Section 784.048(1)(c), F.S., defines “credible threat” as a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the

kidnapping,<sup>11</sup> false imprisonment,<sup>12</sup> or any criminal offense resulting in physical injury or death of one family or household member by another family member or household member.<sup>13</sup> A family or household member includes spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.<sup>14</sup>

The use of threats, intimidation, isolation, and using children as pawns are examples of the tactics domestic violence perpetrators use against victims.<sup>15</sup>

Domestic violence harms all family members.<sup>16</sup> Family violence harms the victim and presents dangers for immediate family members.<sup>17</sup> Significant trauma, such as domestic violence, can interfere with brain and skill development of the young child.<sup>18</sup> A child's emotional, psychological, or physical development can be harmed if he or she is exposed to violence at a young age.<sup>19</sup> Children who witness violence are more likely to have difficulty in school, abuse drugs or alcohol, act aggressively, and suffer from depression.<sup>20</sup>

### ***Domestic Violence Data***

Based on data from 2000 to 2018, approximately 26% of women and 27% of men have been subjected to physical or sexual violence from a current or former husband or male intimate partner at least once in their lifetime, totaling approximately 641 to 753 million victims.<sup>21</sup>

According to a national study conducted by the Centers for Disease Control and Prevention

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safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. Section 784.048(1)(d), F.S., states “cyberstalk” means: to engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or to access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission. Section 784.048(1)(b), F.S., defines “course of conduct” as a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.

<sup>11</sup> Section 787.01(1)(a), F.S., defines “kidnapping” as forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to: hold for ransom or reward or as a shield or hostage; commit or facilitate commission of any felony; inflict bodily harm upon or to terrorize the victim or another person; or interfere with the performance of any governmental or political function.

<sup>12</sup> Section 787.02(1)(a), F.S., defines “false imprisonment” as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will.

<sup>13</sup> Section 741.28(2), F.S.

<sup>14</sup> Section 741.28(3), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Seifert, K. *Domestic Violence Harms All Family Members*, Psychology Today, October 30, 2012, available at [Domestic Violence Harms All Family Members | Psychology Today](#) (last visited Jan. 20, 2022) (hereinafter cited as “DV Harms Families”).

<sup>17</sup> U.S. Department of Justice, Office of Justice Programs, *Family Violence, Special Features*, available at [Family Violence | Overview | Office of Justice Programs \(ojp.gov\)](#) (last visited Jan. 20, 2022) (hereinafter cited as “US DOJ Family Violence”).

<sup>18</sup> DV Harms Families.

<sup>19</sup> US DOJ Family Violence.

<sup>20</sup> *Id.*

<sup>21</sup> World Health Organization (WHO) on behalf of the United Nations Inter Agency Working Group on Violence Against Women Estimation and Data, *Violence Against Women Prevalence Estimates, 2018: Executive Summary*, 2018, [Violence against women prevalence estimates, 2018 – Executive summary \(who.int\)](#) (last visited Jan. 22, 2022).

(CDC), approximately 1 in 4 women and nearly 1 in 10 men have experienced domestic violence acts including sexual violence, physical violence, or stalking in their lifetime.<sup>22</sup> The CDC also estimates that over 43 million women and 37 million men have been victims of such domestic violence by intimate partners throughout their lifetime.<sup>23</sup> The national cost of medical and mental health care services related to domestic violence is estimated to be over \$8 billion annually.<sup>24</sup>

The National Domestic Violence Hotline (NDVH) is available to help by phone, live chat, and text 24 hours per day, 7 days per week.<sup>25</sup> The hotline receives more than 24,000 calls per month.<sup>26</sup> As of December 2021, Florida has transitioned all services for the hotline to the Domestic Violence Collaborative, which is a new contractor that represents a conglomerate of three certified domestic violence centers. The Collaborative is to offer a domestic violence hotline that is available to provide legal advice and referrals for services.<sup>27</sup> During FY 2019-20, the domestic violence hotline received 73,817 calls from individuals seeking emergency services, information and assistance.<sup>28</sup>

## Stakeholders

There are several stakeholders which are responsible for, and contribute to, the operation and functions of domestic violence programs, dependency cases, and injunctions of protection in Florida. Some of the key entities and their roles are described below.

### DCF

The DCF is required to comply with child protection and child welfare outcomes, including, in part:

- Children are first and foremost protected from abuse and neglect;
- Children are safely maintained in their homes, if possible and appropriate;
- Services are provided to protect children and prevent removal from their home; and
- Children have permanency and stability in their living arrangements.<sup>29</sup>

With respect to the duties and functions of domestic violence incidents, the DCF is statutorily responsible for, amongst other things, the statewide domestic violence program. Section 39.903, F.S., requires the DCF to:

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<sup>22</sup> The CDC, *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release*, p. 7, Nov. 2018, available at [The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief — Updated Release \(cdc.gov\)](https://www.cdc.gov/nisvs/data/brief/2015-data-brief-updated-release) (last visited Jan. 19, 2022) (hereinafter cited as “CDC Study”).

<sup>23</sup> *Id.* at pp. 20 & 22.

<sup>24</sup> Huecker, M., King, K., & others, *Domestic Violence*. National Center for Biotechnology Information, Aug. 26, 2021, available at [Domestic Violence - StatPearls - NCBI Bookshelf \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/35444444/) (last visited Jan. 20, 2022).

<sup>25</sup> NDVH, *Here for You*, available at [Domestic Violence Support | The National Domestic Violence Hotline \(thehotline.org\)](https://www.thehotline.org/) (last visited Jan. 19, 2022).

<sup>26</sup> U.S. Department of Health & Human Services, Family and Youth Services Bureau, *The National Domestic Violence Hotline*, available at [The National Domestic Violence Hotline | The Administration for Children and Families \(hhs.gov\)](https://www.hhs.gov/fysb/national-domestic-violence-hotline/) (last visited Jan. 19, 2022).

<sup>27</sup> The DCF, *Domestic Violence Services January 2022, PowerPoint Presentation by DaMonica Smith in the January 18, 2022 Meeting of the Senate Committee on Children, Families, and Elder Affairs* (on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>28</sup> Florida DV Statistics.

<sup>29</sup> Section 409.986(2), F.S.

- Operate the domestic violence program and coordinate and administer statewide activities;
- Receive and approve or reject applications for initial certification of domestic violence centers, and annually renew the certification thereafter;
- Inspect the premises of domestic violence centers that are applying for an initial certification or facing potential suspension or revocation of certification;
- Promote the involvement of certified domestic violence centers in the coordination, development, and planning of domestic violence programming in the circuits;
- Coordinate with state agencies that have health, education, or criminal justice responsibilities;
- Cooperate with, assist in and participate in, programs of other properly qualified state agencies;
- Contract with an entity or entities for the delivery and management of services for Florida’s domestic violence program if it is in the best interest of the state;
- Consider applications from certified domestic violence centers for capital improvement grants and award those grants; and
- Adopt rules to administer this section.

The DCF is also tasked with certifying and monitoring batterers’ intervention programs (“BIP”) that are used by the justice system to ensure statewide consistency.<sup>30</sup> The DCF must adopt rules to administer this section, including but not limited to, developing criteria for the approval, suspension, or rejection of certification of BIPs.<sup>31</sup>

### ***Florida Partnership to End Domestic Violence (FPEDV)***

In 2020, the FPEDV replaced the Florida Coalition Against Domestic Violence (“Coalition”) following a finding that the chief executive officer of the Coalition was paid more than \$7.5 million over three years.<sup>32</sup> Each state is required to have a State Domestic Violence Coalition to access the federal funding provided for in the Family Violence Prevention and Services Act.<sup>33</sup> The FPEDV is a nonprofit (501c3) organization that is positioned to become Florida’s new federally recognized Domestic Violence Coalition.<sup>34</sup>

<sup>30</sup> Chapter No. 2021-152, L.O.F., in part, revived, reenacted, and amended s. 741.327, F.S., to authorize the DCF to certify and monitor BIPs. The DCF was authorized to adopt rules to administer this section, including but not limited to, developing criteria for the approval, suspension, or rejection of certification of BIPs. Prior to 2021, the DCF performed this role from 2001 through 2012 under s. 741.325, F.S. However, the General Appropriations Act of 2011-2012 eliminated funding for the DCF’s BIP certification staff, and the Legislature repealed s. 741.32(2), F.S., which removed the DCF’s Office of Certification and Monitoring of Batterers’ Intervention and repealed the statutory requirement that batterers’ intervention programs be certified by the DCF. Ch. 2011-69, Laws of Florida.

<sup>31</sup> Section 741.327(2), F.S.

<sup>32</sup> See Dan Sweeney, *Disgraced nonprofit CEO served a subpoena via Twitter by Florida House*, Sun Sentinel, Mar. 05, 2020, available at <https://www.sun-sentinel.com/news/politics/fl-ne-tiffany-carr-subpoena-twitter-20200305-vhqbdq5ucnc3tajblvkezerh64-story.html>; Renzo Downey, *Ron DeSantis calls for reviews of state’s private-public contracts*, Florida Politics, Feb 20, 2020, available at <https://floridapolitics.com/archives/320097-ron-desantis-calls-for-reviews-of-states-private-public-contracts/>; Mary Ellen Klas, *Tampa Bay Times*, *Eckerd Connects in Clearwater Exceeded Florida Cap on Salaries, Says IG Report*, Oct. 19, 2021, available at [Eckerd Connects in Clearwater exceeded Florida cap on salaries, says IG report \(tampabay.com\)](https://www.tampabay.com/news/politics/govt/eckerd-connects-in-clearwater-exceeded-florida-cap-on-salaries-says-ig-report/) (all sites last visited Jan. 19, 2022).

<sup>33</sup> 42 U.S.C. §10411(c).

<sup>34</sup> The FPEDV, *About Us, Our Story*, available at [About Us - FPEDV](https://www.fpedv.org/about-us) (last visited Jan. 19, 2022).

The FPEDV's mission is to eliminate domestic violence by promoting safe families, providing technical assistance to centers and providers, and engaging in systems and social change. It is tasked with:

- Providing education, support and technical assistance for domestic violence service providers;
- Serving as an information clearinghouse, primary point of contact, and resource center on domestic violence in the state;
- Following and providing updates on relevant national developments;
- Supporting the development of policies, protocols, and procedures to improve domestic violence intervention and prevention in Florida; and
- Working cooperatively with all related state and federal agencies.<sup>35</sup>

### *Domestic Violence Centers*

Domestic violence centers provide services to survivors of domestic violence.<sup>36</sup> Florida has 41 certified domestic violence centers. The certified domestic violence centers provide crisis counseling and support services to victims of domestic violence and their children.<sup>37</sup>

The certified domestic violence centers provide all of the following services free of charge:

- Emergency shelter.
- A 24-hour crisis and information hotline.
- Safety planning.
- Counseling, case management, and child assessments.
- Education for community awareness.
- Training for law enforcement and other professionals.
- Other ancillary services such as relocation assistance, daycare, and transitional housing.<sup>38</sup>

Domestic violence centers must be certified by the DCF in order to receive state funding.<sup>39</sup> The DCF sets criteria for certification and minimum standards to ensure the health and safety of clients served.<sup>40</sup> To be eligible for certification as a domestic violence center, an applicant must apply to the DCF and be a not-for-profit entity.<sup>41</sup> A domestic violence center's primary mission must be to provide services to survivors of domestic violence. Certified domestic violence centers employ staff and rely on volunteers to provide services to survivors. Certified domestic violence centers also provide nonresidential outreach services.<sup>42</sup>

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<sup>35</sup> *Id.*

<sup>36</sup> Section 39.902(2), F.S.; Rule 65H-1.011, F.A.C.

<sup>37</sup> The DCF, *Domestic Violence Overview*, available at <https://www.myflfamilies.com/service-programs/domestic-violence/overview.shtml> (last visited Jan. 20, 2022).

<sup>38</sup> *Id.*

<sup>39</sup> Section 39.905(6)(a), F.S.

<sup>40</sup> Sections 39.903(9) and 39.905(1), F.S.; Rule 65H-1, F.A.C.

<sup>41</sup> The DCF, *Domestic Violence Center, Application for Certification, Form CF613*, p. 3, January 2015, available at [https://www.myflfamilies.com/service-programs/domestic-violence/docs/CF-613\\_Application-for-Certification.pdf](https://www.myflfamilies.com/service-programs/domestic-violence/docs/CF-613_Application-for-Certification.pdf) (last visited Jan. 20, 2022).

<sup>42</sup> Section 39.905(1)(c), F.S.



An applicant may seek certification to serve an area that has an existing certified domestic violence center; however, the applicant must show there is an unmet need in the area.<sup>43</sup> One of the minimum criteria that an applicant must meet is that the domestic violence center has been providing services to survivors for 18 consecutive months, including 12 months as an emergency shelter.<sup>44</sup> After the DCF certifies a domestic violence center, the certification is good for one year and automatically expires on June 30. If there is a favorable report from the DCF, it will annually renew a domestic violence center's certification.<sup>45</sup>

During FY 2019-20, Florida's certified domestic violence centers<sup>46</sup> provided emergency shelter to 13,250 survivors of domestic violence and their children.<sup>47</sup>

### ***Law Enforcement***

Law enforcement officers are often the first actors who a victim of domestic violence is likely to encounter. As first responders, law enforcement officers play an important role in protecting victim safety and enhancing offender accountability. The visibility and authority of law enforcement increases the likelihood that a person experiencing domestic violence will come into contact with such officers. The goal of the law enforcement response to domestic violence should be to reduce the prevalence and frequency of the crime, while preserving officer safety. Domestic violence calls are among the most dangerous situations in which an officer may find himself or herself.<sup>48</sup>

Section 741.29, F.S., requires law enforcement officers investigating an alleged incident of domestic violence to perform certain actions, in part, to:

- Assist the victim to obtain medical treatment if such is required as a result of the alleged incident to which the officer responds.
- Advise the victim that there is a domestic violence center from which the victim may receive services.
- Give the victim immediate notice of the legal rights and remedies available on a standard form.

In 2019, there were 105,298 crimes of domestic violence reported to the Florida Department of Law Enforcement which resulted in 66,069 arrests.<sup>49</sup>

<sup>43</sup> Section 39.905(1)(i), F.S.; Rule 65H-1.012, F.A.C.

<sup>44</sup> Section 39.905(1)(h), F.S.; Rule 65H-1.012, F.A.C.

<sup>45</sup> Section 39.905(3), F.S.; Rule 65H-1.012, F.A.C.

<sup>46</sup> Section 39.902(2), F.S.; Rule 65H-1.011, F.A.C. provide that domestic violence centers provide services to survivors of domestic violence. Florida has 41 certified domestic violence centers. The certified domestic violence centers provide crisis counseling and support services to victims of domestic violence and their children. Department of Children and Families, *Domestic Violence Overview*, available at <https://www.myflfamilies.com/service-programs/domestic-violence/overview.shtml> (last visited Jan. 14, 2022).

<sup>47</sup> *Id.*

<sup>48</sup> See Stop Violence Against Women, *Role of Police*, available at [https://www.stopvaw.org/role\\_of\\_police](https://www.stopvaw.org/role_of_police); See also Palm Beach County Law Enforcement Guidelines *Domestic Violence Investigations*, p. 4, available at <https://www.flsheriffs.org/uploads/DVprotocolFNL.pdf> (all sites last visited Jan. 20, 2022).

<sup>49</sup> The DCF, *Domestic Violence Statistics*, available at [Domestic Violence - Florida Department of Children and Families \(myflfamilies.com\)](https://www.myflfamilies.com) (last visited Jan. 10, 2022) (hereinafter cited as "Florida DV Statistics") [citing the FDLE, *Florida's*

### ***Domestic Violence Courts***

Domestic violence cases that relate to injunctions are a family court case, but many of the legal issues overlap with several other types of cases, such as dependency and dissolution cases.<sup>50</sup> Several circuits, such as the tenth, eleventh, and seventeenth, have domestic violence courts.<sup>51</sup> Some circuits have several judges who are assigned exclusively to hear domestic violence cases,<sup>52</sup> whereas other circuits do not specify the number of judges, if any, who are designated exclusively as domestic violence courts.<sup>53</sup> Florida’s Domestic Violence Benchbook is a comprehensive book available to courts that addresses issues related to domestic violence injunctions, mandatory reporting, civil and criminal proceedings outlines, child support in domestic violence proceedings and other relevant case materials.<sup>54</sup>

### ***Batterers’ Intervention Program***

Batterer intervention programs (BIPs) emerged in the United States in the late 1970’s as one component of the social response to domestic violence.<sup>55</sup> BIPs are designed to address the root cause of domestic violence and deter participants from committing acts of domestic violence in the future.<sup>56</sup>

Section 741.325, F.S., sets requirements for BIPs to meet, including that the:

- Primary purpose of the program must be the safety of the victim and children, if present;
- Batterer must be held accountable for acts of domestic violence;
- Program must be at least 29 weeks in length and include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming;
- Program content must be based on a cognitive behavioral therapy model or a psychoeducational model that addresses tactics of power and control by one person over another; and

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*County and Jurisdictional Reported Domestic Violence Offenses, 2019*, available at [DV\\_Jurisdiction\\_Offenses\\_2019.aspx \(state.fl.us\)](https://www.flcourts.org/DV_Jurisdiction_Offenses_2019.aspx), last visited (Jan. 10, 2022)].

<sup>50</sup> *Id.* at p. 1-4.

<sup>51</sup> See Tenth Judicial Circuit, *Domestic Violence*, available at [Domestic Violence | 10th Judicial Circuit Court \(flcourts.org\)](https://www.flcourts.org/Domestic_Violence_10th_Judicial_Circuit_Court); Eleventh Judicial Circuit, *Domestic Violence*, available at [Domestic Violence \(flcourts.org\)](https://www.flcourts.org/Domestic_Violence) (hereinafter cited as “11<sup>th</sup> Circuit DV Courts”); Seventeenth Judicial Circuit, *Domestic Violence*, available at [06 DOMESTIC VIOLENCE – Seventeenth Judicial Circuit of Florida \(flcourts.org\)](https://www.flcourts.org/06_DOMESTIC_VIOLENCE_-_Seventeenth_Judicial_Circuit_of_Florida) (hereinafter cited as “17<sup>th</sup> Circuit DV Courts”) (all sites last visited Jan. 19, 2022).

<sup>52</sup> See 11<sup>th</sup> Circuit DV Courts noting that there are seven judges who exclusively hear domestic violence cases. See also 17<sup>th</sup> Circuit DV Courts noting that there are four judges who are assigned to criminal and civil domestic violence divisions.

<sup>53</sup> Florida Second Judicial Circuit, *Navigating the Court System*, available at [Florida's 2nd Judicial Circuit | Court System \(leoncountyfl.gov\)](https://www.leoncountyfl.gov/Florida's_2nd_Judicial_Circuit_Court_System) (last visited Jan. 20, 2022) (noting that circuit courts are courts of general jurisdiction that handle domestic relations cases and explicitly refer to family courts but not domestic violence). See also Florida Eighth Judicial Circuit, *The Eighth Judicial Circuit of Florida Administrative Order 9.03 (v 2022-1), General Assignments*, available at [9.03-v2022-General-Assignments-Effective-January-1-2022-December-31-2022.pdf \(circuit8.org\)](https://www.flcourts.org/9.03-v2022-General-Assignments-Effective-January-1-2022-December-31-2022.pdf) (list visited Jan. 20, 2022).

<sup>54</sup> The OCI, *Florida’s Domestic Violence Benchbook*, June 2020, available at [Microsoft Word - DV Bench Book Changes - Final \(flcourts.org\)](https://www.flcourts.org/Microsoft_Word_-_DV_Bench_Book_Changes_-_Final) (last visited Jan. 20, 2022).

<sup>55</sup> Battered Women’s Justice Project, *Current Research on Batterer Intervention Programs and Implications for Policy*, p. 1, December 2017, available at <https://www.bwjp.org/assets/batterer-intervention-paper-final-2018.pdf> (last visited Jan. 20, 2022) (hereinafter cited as “Research on BIP and Policy Implications”).

<sup>56</sup> *Id.* at pp. 3, 6.

- Program shall be funded by user fees paid by the batterers who attend the program, which allows them to take responsibility for their acts of violence.<sup>57</sup>

There are several BIP providers throughout the state.<sup>58</sup> A list of them may be found on the Office of the State Courts Administrator (OSCA) website.<sup>59</sup>

### ***Child Protective Investigators***

The DCF employs child protective investigators who must meet minimum qualifications, including, but not limited to, a bachelor's degree, a valid driver's license, and certification requirements.<sup>60</sup> A child protective investigator has certain responsibilities, including, in part:

- Conducting investigations relating to allegations of abuse, abandonment, and/or special conditions for children;
- Working closely with law enforcement; and
- Collecting information through observation and interviews with certain persons, including the children and parents.<sup>61</sup>

Currently, there are a total of seven county sheriff offices that conduct the child protective investigations in place of the DCF, including Pinellas, Pasco, Manatee, Hillsborough, Broward, Seminole, and Walton.<sup>62</sup> Current law provides that the DCF must transfer all responsibility for child protective investigations for Pinellas County, Manatee County, Broward County, and Pasco County to the sheriff of that county in which the child abuse, abandonment, or neglect is alleged to have occurred.<sup>63</sup> The sheriff offices are obligated to comply with performance standards and outcome measures required of the DCF.<sup>64</sup>

### ***Community-based Care Lead Agencies***

A lead agency is a single entity with which the DCF has a contract for the provision of care in the child protection and welfare system.<sup>65</sup> The DCF enters into 5-year contracts with lead agencies for the procurement of services.<sup>66</sup> There are minimum requirements with which lead agencies must comply to be eligible to contract with the DCF.<sup>67</sup>

The lead agencies are obligated to perform several duties, which apply to domestic violence reports and cases, including, in part, to:

<sup>57</sup> Section 741.325(1)(e), F.S., provides that there is an exception for local, state, or federal programs that are wholly or partly fund batterers' intervention programs.

<sup>58</sup> The OSCA, *Florida Courts*, Dec. 14, 2021, available at [Batterers' Intervention Program List of Providers - Florida Courts \(flcourts.org\)](https://www.flcourts.org/batterers-intervention-program-list-of-providers) (last visited Jan. 19, 2022).

<sup>59</sup> *Id.*

<sup>60</sup> The DCF, *Child Protective Investigator*, available at [Child Protective Investigator, Employment Opportunities - Florida Department of Children and Families \(myflfamilies.com\)](https://myflfamilies.com/employment-opportunities) (last visited Jan. 19, 2022).

<sup>61</sup> *Id.*

<sup>62</sup> Florida's Center for Child Welfare, *Sheriffs contacts*, available at <http://centerforchildwelfare.fmhi.usf.edu/SherrifContacts.shtml> (last visited Jan. 20, 2022).

<sup>63</sup> Section 39.3065(1), F.S.

<sup>64</sup> Section 39.3065(3)(b), F.S.

<sup>65</sup> Section 409.986(3)(d), F.S.

<sup>66</sup> Section 409.987(3), F.S.

<sup>67</sup> Section 409.987(4), F.S.

- Serve the children who are referred as a result of abuse, abandonment, or neglect reports;
- Provide accurate and timely information to the DCF, as specified in s. 409.997, F.S.;
- Prepare and file all necessary court documents, and attend dependency court proceedings to give evidence;
- Ensure all individuals providing care to dependent children receive training and specified information and meet employment requirements;
- Comply with federal and state statutory requirements and agency rules in the provision of contractual rules; and
- Use authority to subcontract for the provision of services provided the lead agency contribute to services and meet specified criteria.<sup>68</sup>

The DCF contracts with the following lead agencies as illustrated in the table and map below:<sup>69</sup>

<b>Lead Agency</b>	<b>Circuit(s)</b>
Lakeview Center, Families First Network	1
Big Bend Community Based Care, Inc.	2 & 14
Partnership for Strong Families	3 & 8
Family Support Services of North Florida, Inc.	4 (Duval and Nassau) and 6 <sup>70</sup>
Kids First of Florida, Inc.	4 (Clay)
Kids Central, Inc.	5
Eckerd Connects	13 <sup>71</sup>
St Johns County Board of County Commissioners	7 (St Johns)
Community Partnership for Children, Inc.	7 (Flagler, Volusia, Putnam)
Embrace Families	9 and 18 (Seminole)
Heartland for Children	10
Citrus Family Care Network	11 and 16
Safe Children Coalition	12
ChildNet Inc.	15 and 17
Brevard Family Partnership	18 (Brevard)
Communities Connected for Kids	19
Children’s Network of SW Florida	20

In FY 2019-20, advocates developed 153,757 safety plans related to domestic violence cases and provided a total of 233,602 hours of advocacy and counseling services.<sup>72</sup>

<sup>68</sup> Section 409.988(1), F.S.

<sup>69</sup> The DCF, *Lead Agency Map, Community-Based Care*, available at: <https://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml> (last visited Jan. 20, 2022).

<sup>70</sup> WUSF Public Media, *Family Support Services of North Florida will fully take over on January 1, 2022*, Nov. 30, 2021, available at [State selects replacement for Eckerd Connects to run foster care in Pinellas, Pasco | WUSF Public Media](https://www.wusf.com/news/local-news/family-support-services-of-north-florida-will-fully-take-over-on-january-1-2022) (last visited Jan. 20, 2022).

<sup>71</sup> Eckerd Connects will carry out its contract until it expires June 30, 2022. WFLA, *DCF, Eckerd Connects ending child welfare services contracts in 3 Tampa Bay counties*, available at <https://www.wfla.com/news/local-news/dcf-eckerd-connects-end-child-welfare-services-in-3-tampa-bay-counties/> (last visited Jan. 20, 2022).

<sup>72</sup> *Id.*

**Dependency Process**

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida’s central abuse hotline (hotline), including incidents of domestic violence.<sup>73</sup> A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse,<sup>74</sup> abandonment,<sup>75</sup> or neglect.<sup>76</sup> A child protective investigator investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.<sup>77</sup>

After conducting an investigation, if the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. When the DCF removes a child from the home, a series of dependency court proceedings must occur before a child may be adjudicated dependent.<sup>78</sup> The dependency court process is summarized in the table below.

**The Dependency Court Process**

<b>Dependency Proceeding</b>	<b>Description of Process</b>	<b>Controlling Statute</b>
Removal	A child protective investigation determines the child’s home is unsafe, and the child is removed.	s. 39.401, F.S.
Shelter Hearing	A shelter hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	A petition for dependency occurs within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.

<sup>73</sup> Section 39.201(1), F.S.

<sup>74</sup> Section 39.01(2), F.S. The term “abuse” means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

<sup>75</sup> Section 39.01(1), F.S. The term “abandoned” or “abandonment” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

<sup>76</sup> Sections 39.01(50) and 39.201(2)(a), F.S. “Neglect” occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

<sup>77</sup> Section 39.101(2), F.S.

<sup>78</sup> See s. 39.01(14), F.S., for the definition of “child who is found to be dependent”.

Dependency Proceeding	Description of Process	Controlling Statute
Arraignment Hearing and Shelter Review	An arraignment and shelter review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	An adjudicatory trial is held within 30 days of arraignment. The judge determines whether a child is dependent during trial.	s. 39.507, F.S.
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews the case plan and placement of the child. The judge orders the case plan for the family and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition hearing	The court may change temporary placement at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	Once the child has been out-of-home for 12 months, if DCF determines that reunification is no longer a viable goal, termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	This hearing is set as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Hearing	An adjudicatory trial shall be set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

***Child Welfare and Domestic Violence***

Domestic violence can be a basis for a child becoming the subject of a dependency proceedings as described above if the allegations meet the statutory definition of abuse, abandonment, or neglect.

Often, complex relational dynamics are at play in an impacted household, creating multiple risk factors for those who are experiencing violence. Some examples these dynamics can be expressed with the following hypothetical circumstances:

- The offending parent may make allegations of child abuse and neglect against the nonoffending parent as a control tactic.



- A survivor may decide to leave the relationship with the offending parent without having the financial resources to care for the children.
- The survivor might stay in a dangerous household for fear of more severe retaliation if he or she were to leave with the children.<sup>79</sup>

In households where domestic violence is present, children’s experiences can range from overhearing or witnessing confrontations, to being hurt when intervening, or directly experiencing abuse. Several factors influence the impact of domestic violence on children, including the nature of the violence, the age and gender of the child, the amount of time that has elapsed since the child’s exposure to violence, and the presence of child maltreatment. It is important to note that not all children exposed to domestic violence experience negative effects, in part due to protective factors such as social competence and supportive relationships with adults.<sup>80</sup>

When domestic violence is identified and a case is screened in for services, caseworkers are tasked with assessing safety and risk in the household. The extensive overlap between domestic violence and child maltreatment requires a specialized and coordinated response in child welfare casework.<sup>81</sup>

### ***Termination of Parental Rights***

Section 39.806, F.S., authorizes the DCF to file a petition for termination of parental rights (TPR) against both parents when they fail to remedy the family problems that brought a child into the dependency system.<sup>82</sup> Alternatively, the DCF may move to terminate only one of the parent’s rights if it can prove certain grounds, such as incarceration, egregious conduct, aggravated child abuse, murder or manslaughter of the other parent or another child, or felony battery that resulted in serious bodily injury to the child or another child.<sup>83</sup>

### ***Strength & Together Model (SATM)***

The SATM was developed by the Safe & Together Institute (SATI) that was founded by David Mandel, MA, LPC, who is the Executive Director.<sup>84</sup> It is an internationally recognized model designed to increase child welfare professionals’ proficiency in domestic violence informed practice.<sup>85</sup> The SATI offers core and advanced training options, including certification

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<sup>79</sup> Child Welfare.gov, *FACT Sheets, Domestic Violence: A Primer for Child Welfare Professionals*, p. 2-3, available at [https://www.childwelfare.gov/pubPDFs/domestic\\_violence.pdf](https://www.childwelfare.gov/pubPDFs/domestic_violence.pdf) (last visited Jan. 20, 2022).

<sup>80</sup> *Id.* at p. 3.

<sup>81</sup> *Id.* at p. 6.

<sup>82</sup> Section 39.8055, F.S.

<sup>83</sup> Sections 39.806 and 39.811(6), F.S.

<sup>84</sup> The SATI, *About Us, Founder’s Statement*, available at [FOUNDER’S STATEMENT - Safe & Together Institute \(safeandtogetherinstitute.com\)](https://safeandtogetherinstitute.com) (last visited Jan. 20, 2022).

<sup>85</sup> The SATI, *About Us, About the Model*, available at [ABOUT THE MODEL - Safe & Together Institute \(safeandtogetherinstitute.com\)](https://safeandtogetherinstitute.com) (last visit Jan. 20, 2022) (hereinafter cited as “SATI About the Model”).

programs.<sup>86</sup> Child welfare professionals and domestic violence advocates throughout the state have received domestic violence training and technical assistance.<sup>87</sup>

The SATI has worked with child welfare professionals and local community partners in several states, including Florida, to implement the SATM.<sup>88</sup> In 2010, for instance, the DCF, with the assistance of David Mandel & Associates as part of their Safe & Together consultation and training work in Florida, is reported to have implemented new Hotline procedures related to allegations of “failure to protect” in domestic violence reports.<sup>89</sup> The new procedure requires an investigation to be initiated and a legal consultation before allegations of “failure to protect” may be made against a domestic violence survivor.<sup>90</sup>

It is unclear to what extent this model is being utilized currently in Florida to address allegations of abuse, abandonment, or neglect where domestic violence is occurring in the home and to what extent children are being removed from his or her caregiver as a result of such actions.

### **Injunctions**

Current law establishes a cause of action for an injunction for protection against domestic violence.<sup>91</sup> The circuit court has jurisdiction to hear a petition for injunction.<sup>92</sup> This petition may be filed by any person who either is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming the victim of domestic violence.<sup>93</sup> The person can file a petition against a current or former spouse, any person related by blood or marriage, any person who is or was residing within a single dwelling unit, or is a person with whom the petitioner had a child.<sup>94</sup> A person is not precluded from requesting an injunction because he or she is not a spouse.<sup>95</sup> The court is prohibited from issuing mutual orders of protection, but may issue separate injunctions for petition against domestic violence where each party has complied with the provisions under law which cannot be waived.<sup>96</sup>

An injunction may be sought even if there is no other cause of action pending between the parties, but a petitioner must disclose the pendency of any such action in a petition.<sup>97</sup> If an action is filed under ch. 61, F.S., regarding dissolution of marriage, support and time-sharing, any order

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<sup>86</sup> The SATI, *What We Offer, Trainings, Systems, Consultations and Tools for Becoming More Domestic Violence-Informed*, available at [WHAT WE OFFER - Safe & Together Institute \(safeandtogetherinstitute.com\)](https://www.safeandtogetherinstitute.com) (last visited Jan. 20, 2022).

<sup>87</sup> The DCF, *Domestic Violence, Programs, Child Welfare & Child Protection*, available at [Domestic Violence - Florida Department of Children and Families \(myflfamilies.com\)](https://www.myflfamilies.com) (last visited Jan. 20, 2022).

<sup>88</sup> SATI About the Model. SATI also partners with child welfare professionals in Colorado, Oregon, Michigan, Iowa, Connecticut, New York, New Jersey, Wisconsin, and the District of Columbia.

<sup>89</sup> The SATI, *Florida DCF Removes Takes Steps to Stop ‘Failure to Protect’ Allegations Against Domestic Violence Survivors*, Aug. 12, 2010, available at [Florida DCF removes takes steps to stop “failure to protect” allegations against domestic violence survivors - Safe & Together Institute \(safeandtogetherinstitute.com\)](https://www.safeandtogetherinstitute.com) (last visited Jan. 20, 2022).

<sup>90</sup> *Id.*

<sup>91</sup> Section 741.30(1), F.S.

<sup>92</sup> Section 741.30(1)(a), F.S.

<sup>93</sup> Section 741.30(1)(a), F.S.

<sup>94</sup> Section 741.30(3)(f), F.S.

<sup>95</sup> Section 741.30(1)(e), F.S.

<sup>96</sup> Section 741.30(1)(i), F.S.

<sup>97</sup> Section 741.30(1)(b), F.S.



entered in that proceeding takes precedence over any inconsistent provision of an injunction ordered under s. 741.30, F.S., which addresses matters governed by ch. 61, F.S.<sup>98</sup>

A sworn petition for injunction for protection against domestic violence must contain specific allegations of domestic violence, including facts and circumstances upon the basis of which relief is sought.<sup>99</sup> Effective October 1, 2002, the clerk of the court may not assess a fee for filing a petition for protection against domestic violence.<sup>100</sup> The clerk of the court is tasked with several responsibilities with respect to injunction proceedings, for instance providing simplified petition forms for the injunction, any modifications, and the enforcement of them, including instructions for completion.<sup>101</sup>

A domestic violence form pack and form packs for other injunctions, such as stalking and repeat violence, as well as helpful information and links on domestic violence are available on some clerk of courts websites, such as the Broward County Clerk of Court.<sup>102</sup> Current law sets out a sample of a sworn petition which must be in substantially the same form when it is filed with the court to request an injunction for domestic violence.<sup>103</sup>

If the sworn petition seeks to determine a parenting plan and time-sharing schedule with regard to the parties' minor child or children, allegations required under s. 61.522, F.S., of the Uniform Child Custody Jurisdiction and Enforcement Act must be accompanied by or included incorporated into the petition.<sup>104</sup>

In determining whether there is reasonable cause to believe that the petitioner is in imminent danger of becoming a victim of domestic violence, the court must consider and evaluate all relevant factors alleged in the petition, including, but not limited to:

- The history between the petitioner and respondent, including any threats, harassment, stalking, or physical abuse;
- Whether the respondent has attempted to harm the petitioner or individuals closely associated with the petitioner;
- Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child;
- Whether the respondent has intentionally injured or killed a family pet;
- Whether the respondent has used, or has threatened to use, against the petitioner any weapons;
- Whether the respondent has a criminal history involving violence or the threat of violence;
- The existence of a verifiable order of protection issued previously or from another jurisdiction;
- Whether the respondent has destroyed personal property; and

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<sup>98</sup> Section 741.30(1)(c), F.S.

<sup>99</sup> Section 741.30(3)(a), F.S.

<sup>100</sup> Section 741.30(2)(a), F.S.

<sup>101</sup> *Id.*

<sup>102</sup> Brenda D. Forman Clerk of Courts (COC), *Domestic Violence Forms and Self-Help*, available at [Domestic Violence - Broward County Clerk of Courts \(browardclerk.org\)](http://DomesticViolence-BrowardCountyClerkofCourts(browardclerk.org)) (last visited Jan. 12, 2022).

<sup>103</sup> Section 741.30(3)(b), F.S.

<sup>104</sup> Section 741.30(3)(d), F.S.

- Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.<sup>105</sup>

The court may grant a temporary injunction ex parte, pending a full hearing, if it appears that an immediate and present danger of domestic violence exists.<sup>106</sup> The court may grant such relief that it deems proper, including an injunction:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the temporary and exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner;
- On the same basis as provided in s. 61.13, F.S., providing the petitioner a temporary parenting plan, including a time-sharing schedule, which may award the petitioner up to 100 percent of the time-sharing;
- Ordering the respondent to participate in treatment, intervention, or counseling services;
- Referring a petitioner to a certified domestic violence center;<sup>107</sup>
- Awarding to the petitioner the temporary, exclusive care, possession, or control of an animal that is owned or cared for by certain persons, including the parties to the injunction; and
- Ordering such other relief as the court deems necessary for the protection of a victim.<sup>108</sup>

Relief ordered that restrains the respondent from committing any acts of domestic violence or other relief granted that the court deems is necessary for protection of the victim remain in effect until the injunction is modified or dissolved.<sup>109</sup> Any temporary parenting plan remains in effect until the order expires or an order is entered by a court of competent jurisdiction in a pending or subsequent civil action or proceeding affecting certain parenting rights, including, but not limited to, placement, adoption or time-sharing.<sup>110</sup>

A temporary or final judgment on injunction must explicitly state that:

- The injunction is valid and enforceable in all counties in the State of Florida;
- Law enforcement officers may use their arrest powers under s. 901.15(6), F.S. to enforce the terms of the injunction;
- The court had jurisdiction over the parties and matter under the laws of Florida and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's due process rights;
- The date the respondent was served with the temporary or final order, if the information is known;<sup>111</sup> and
- It is a violation of s. 790.233, F.S., and a first degree misdemeanor, for the respondent to possess or control any firearm or ammunition.<sup>112</sup>

<sup>105</sup> Section 741.30(6)(b), F.S.

<sup>106</sup> Section 741.30(6)(a), F.S.

<sup>107</sup> Section 741.30(6)(a)6., F.S., requires the court to provide the petitioner with a list of certified domestic centers.

<sup>108</sup> Section 741.30(6)(a), F.S.

<sup>109</sup> Section 741.30(6)(c), F.S., provides that any party may move to modify or dissolve the injunction at any time.

<sup>110</sup> Section 741.30(6)(a)4., F.S.

<sup>111</sup> Section 741.30(6)(d), F.S.

<sup>112</sup> Section 741.30(6)(g), F.S.

The court may also include in the injunction an order that the respondent attend a batterer’s intervention program (BIP),<sup>113</sup> and must order it in certain circumstances.<sup>114</sup> When the court orders the alleged perpetrator to participate in a BIP, the court must provide a list of batterers’ intervention programs.<sup>115</sup>

### Task Force

Section 20.03, F.S., includes definitions related to organizational structure. It defines a “task force” as an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.<sup>116</sup>

Florida has established a number of task forces in the past related to child welfare. These have typically been created either by the Governor or DCF’s Secretary in response to a tragic incident involving a child under DCF’s custody. Examples of these include, in part:

- The Nubia Report, the Investigative Panel’s Findings and Recommendations, 2011.<sup>117</sup>
- Family Safety Quality Assurance Review of Courtney Alisa Clark, Initial Findings, 2007.<sup>118</sup>
- Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse, 2010.<sup>119</sup>
- Governor’s Blue Ribbon Panel on Child Protection, 2003 (Rilya Wilson).<sup>120</sup>

There is currently no task force that evaluates the impact of domestic violence and the removal of a child and initiation of dependency proceedings as a result of such domestic violence.

### III. Effect of Proposed Changes:

The bill creates the Task Force, as the term “task force” is defined in current law.<sup>121</sup> It is created adjunct to the DCF, which must provide administrative and support staff services for the functions of the Task Force.

The bill sets out the purposes of the Task Force which are to:

<sup>113</sup> BIPs are designed to address the root cause of domestic violence and deter participants from committing acts of domestic violence in the future. Battered Women’s Justice Project, *Current Research on Batterer Intervention Programs and Implications for Policy*, p. 1, Dec. 2017, available at <https://www.bwjp.org/assets/batterer-intervention-paper-final-2018.pdf> (last visited Jan. 14, 2022).

<sup>114</sup> Section 741.30(6)(e), F.S.

<sup>115</sup> Section 741.30(6)(a)5., F.S.

<sup>116</sup> Section 20.30(8), F.S.

<sup>117</sup> Lawrence, D., Martinez, R., and Sewell, J., *The Nubia Report, The Investigative Panel’s Findings and Recommendations*, available at <http://centerforchildwelfare.org/kb/bppub/NubiasStory.pdf> (last visited Jan. 20, 2022).

<sup>118</sup> The DCF, *Family Safety Quality Assurance Review of Courtney Alisa Clark, Initial Findings*, available at <http://centerforchildwelfare.org/kb/FIPerformance/cclark%20QA%20Initial%20Findings.pdf> (last visited Jan. 20, 2022).

<sup>119</sup> The DCF, *Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse*, available at <https://www.myflfamilies.com/initiatives/GMWorkgroup/docs/Gabriel%20Myers%20COC%20Report%20May%2014%202010.pdf> (last visited Jan. 20, 2022).

<sup>120</sup> The DCF, *Governor’s Blue Ribbon Panel on Child Protection*, available at <http://centerforchildwelfare.org/kb/FIPerformance/BlueRibbonFinal110703.pdf> (last visited Jan. 20, 2022).

<sup>121</sup> There currently is no diversion program model in Florida for domestic violence victims related to dependency cases.<sup>121</sup> No such model has been identified as being used in any other state.

- Evaluate the child welfare system in relation to domestic violence investigations and cases in Florida;
- Consider proposed legislation; and
- Make recommendations to change existing laws, rules and policies.

The Task Force is comprised of eleven members. Two members are specifically provided for by title, including the Secretary of Children and Families, or the secretary's designee, and the president of the Florida Partnership to End Domestic Violence, or the president's designee. The Governor, the President of the Senate, or the Speaker of the House of Representatives each appoint three of the nine remaining members. Specifically, the Governor must appoint:

- A representative of domestic violence courts;
- A representative of a certified batterers' intervention program; and
- A representative from the field of law enforcement.

The President of the Senate must appoint:

- A domestic violence victim;
- A child protective investigator from the DCF; and
- A chief executive officer of a community-based care lead agency.

The Speaker of the House of Representatives must appoint:

- A representative of a certified domestic violence center;
- A representative from a county sheriff's office protective investigation team; and
- A licensed therapist who specializes in treating victims of domestic violence.

The Secretary of DCF or the secretary's designee will serve as chair of the Task Force. The nine members must be appointed by August 1, 2022, and they will be appointed to serve at the pleasure of the appointing authority. A vacancy on the Task Force must be filled in the same manner as the original appointment.

The Task Force must convene its first meeting by no later than September 1, 2022, and must meet quarterly or upon the call of the chair. It must hold its meetings by teleconference or other electronic means.

The bill sets out the duties of the Task Force which include, in summary, to:

- Examine the effectiveness of current operations and treatment in batterers' intervention programs, the consistency in enforcement of laws, and the level of accountability of agencies and providers;
- Elicit feedback and seek input from stakeholders who are responsible for domestic violence investigations and cases regarding certain changes;
- Develop best practices, policies and procedures relating to specified issues;
- Develop updated protocols, as necessary, to ensure that policies relating to certain domestic violence reports and cases are consistently enforced;
- Develop policies relating to the roles of the DCF and the Florida Partnership to End Domestic Violence with respect to specified domestic violence incidents with a goal of optimizing accountability;

- Evaluate the appropriateness of establishing a diversion program model for victims of domestic violence;
- Determine the need for updated definitions and corresponding provisions applicable to domestic violence abuse reports and dependency cases, such as “failure to protect” and “intimate partner violence”;
- Determine when a domestic violence victim’s failure to protect his or her child may be used as a basis to file a shelter petition;
- Evaluate steps needed, as appropriate, to ensure proper implementation of and adherence to, as appropriate, the SATM; and
- Determine what steps should be taken during a domestic violence investigation to ensure certain goals are met.

The Task Force may call upon appropriate departments and agencies of state government for professional assistance as may be needed in the discharge of its duties, and such agencies must provide such assistance in a timely manner.

The Task Force must submit an interim report by March 1, 2023, and its final report by September 1, 2023, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must contain its findings and recommendations on best practices, policies, and procedures regarding:

- Domestic Violence reports and cases involving children; and
- Proposed changes to current legislation to implement the Task Force’s recommendations.

The Task Force is dissolved upon submission of the final report. The new section created under the bill to establish the Task Force is repealed on September 1, 2024, unless saved from repeal through reenactment by the Legislature.

The bill is effective July 1, 2022.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will likely have an insignificant, negative fiscal impact on state government as the Task Force is adjunct to the DCF. The DCF will incur costs related to the providing administrative and support services to the Task Force.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 39.909 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Bradley

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1                   A bill to be entitled  
2       An act relating to guardianship; amending s. 744.2001,  
3       F.S.; specifying circumstances under which the Office  
4       of Public and Professional Guardians' executive  
5       director's monitoring tool for ensuring compliance by  
6       professional guardians may include a certain financial  
7       audit; requiring the development of a tool utilizing  
8       the clerks of the court to collect certain data;  
9       creating s. 744.20042, F.S.; providing legislative  
10      findings and intent; requiring the Department of  
11      Elderly Affairs to collect, compile, maintain, and  
12      manage certain data submitted by clerks of the court;  
13      requiring clerks of the court to collect and report  
14      monthly specified data related to guardianship cases  
15      to the department; requiring the department to collect  
16      specified data for certain guardians; requiring the  
17      department to publish datasets in a specified manner  
18      by certain dates; providing that certain information  
19      remains confidential when reported to the department;  
20      providing that the department may disclose such  
21      information only under certain circumstances; creating  
22      s. 744.20043, F.S.; requiring the department to create  
23      and maintain a publicly available dashboard containing  
24      certain information; providing a requirement for such  
25      information; amending ss. 744.362, 744.363, 744.365,  
26      and 744.367, F.S.; requiring a guardian, in an initial  
27      guardianship report, an initial guardianship plan, a  
28      verified inventory, or an annual guardianship report,  
29      respectively, to submit certain information to the

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30 clerk of the court in a certain format; providing an  
31 effective date.

32  
33 Be It Enacted by the Legislature of the State of Florida:

34  
35 Section 1. Paragraph (a) of subsection (3) and subsection  
36 (6) of section 744.2001, Florida Statutes, are amended to read:  
37 744.2001 Office of Public and Professional Guardians.—There  
38 is created the Office of Public and Professional Guardians  
39 within the Department of Elderly Affairs.

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

43 (a) Developing and implementing a monitoring tool to ensure  
44 compliance of professional guardians with the standards of  
45 practice established by the Office of Public and Professional  
46 Guardians. This monitoring tool may not include a financial  
47 audit as required by the clerk of the circuit court under s.  
48 744.368 unless the tool is primarily used by the clerk of the  
49 court for auditing and reviewing purposes and the Department of  
50 Elderly Affairs collects the data derived by the tool for  
51 purposes pursuant to s. 744.20042.

52 (6) The executive director may conduct or contract for  
53 demonstration projects authorized by the Department of Elderly  
54 Affairs, within funds appropriated or through gifts, grants, or  
55 contributions for such purposes, to determine the feasibility or  
56 desirability of new concepts of organization, administration,  
57 financing, or service delivery designed to preserve the civil  
58 and constitutional rights of persons of marginal or diminished



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59 capacity. Any gifts, grants, or contributions for such purposes  
60 shall be deposited in the Department of Elderly Affairs  
61 Administrative Trust Fund. A tool to collect data utilizing the  
62 clerks of the court must be developed in conjunction with a  
63 guardian's duties pursuant to ss. 744.362, 744.363, 744.365, and  
64 744.367 and the clerk of the court's duties in s. 744.368.

65 Section 2. Section 744.20042, Florida Statutes, is created  
66 to read:

67 744.20042 Guardianship data collection and transparency.-

68 (1) LEGISLATIVE FINDINGS AND INTENT.-It is the intent of  
69 the Legislature to create a model of uniform data collection  
70 related to guardianship cases in this state by requiring local  
71 clerks of the court to report complete, accurate, and timely  
72 data and to make such data available to the public. The  
73 Legislature finds that it is an important state interest to  
74 implement a uniform data collection process and promote  
75 guardianship case transparency.

76 (2) DEPARTMENT DUTIES.-The Department of Elderly Affairs  
77 shall collect, compile, maintain, and manage data submitted by  
78 clerks of the court pursuant to subsection (3).

79 (3) DATA COLLECTION AND REPORTING.-Beginning July 1, 2022,  
80 an entity required to collect data in accordance with this  
81 subsection shall collect the specified data relating to  
82 guardianship cases open on or after July 1, 2022, and submit  
83 such data in accordance with this subsection to the Department  
84 of Elderly Affairs monthly for every guardianship proceeding in  
85 a circuit court:

86 (a) Clerk of the court.-Each clerk of the court shall  
87 collect the following data for each guardianship case that is

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88 active, or was active before such case was closed, within the  
89 county:

90 1. Type of guardianship case, including whether it is a  
91 guardianship over:

92 a. A minor with a developmental disability.

93 b. An adult with a developmental disability.

94 c. A minor which is unrelated to a developmental  
95 disability.

96 d. An elderly person who has been deemed incapacitated by a  
97 court.

98 e. A veteran pursuant to part VIII of this chapter.

99 2. The current case status, including whether the case is  
100 open or pending or has been disposed of or closed.

101 3. Information related to the participants of the  
102 guardianship case, including:

103 a. For the ward:

104 (I) Identifying information, including date of birth, race,  
105 ethnicity, and gender.

106 (II) Zip code of the last known mailing address.

107 (III) Marital status.

108 (IV) Residential status, including whether he or she  
109 resides in:

110 (A) A home owned by the ward.

111 (B) A home of a family member or friend. A family member  
112 includes a spouse, former spouse, noncohabitating partner,  
113 person related by blood or marriage, person who is presently  
114 residing with the ward as if a family or who resided together in  
115 the past as if a family, and person who has a child in common  
116 with the ward regardless of whether they have been married or

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117 have resided together at any time.

118 (C) A community residential home licensed under chapter  
119 419.

120 (D) An assisted living facility licensed under chapter 429.

121 (E) A nursing home or related health care facility licensed  
122 under chapter 400.

123 (F) A correctional facility or institution governed by  
124 chapter 944.

125 (G) A juvenile detention or residential commitment facility  
126 governed by chapter 985.

127 (V) Whether the ward has been found to be indigent under s.  
128 27.52, including specifically if such determination was made at  
129 the time the petition was alleged or at any time during the  
130 proceedings.

131 (VI) The date of the ward's death, if applicable.

132 b. For the guardian:

133 (I) The name of the guardian.

134 (II) The zip code of the last mailing address of the  
135 guardian.

136 (III) The relationship status of the guardian to the ward,  
137 including whether he or she is:

138 (A) A nonprofessional.

139 (B) A state registered professional guardian.

140 (C) A public guardian.

141 (D) An attorney.

142 (IV) Whether the guardian is the representative payee for  
143 the ward.

144 (V) The type of guardian serving the guardianship case,  
145 including whether he or she is:

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- 146       (A) A guardian advocate.
- 147       (B) A voluntary guardian.
- 148       (C) An emergency temporary guardian.
- 149       (VI) The number of cases in the county in which the  
150 guardian currently represents a ward.
- 151       (VII) The number of cases from which the guardian has been  
152 removed for cause in a judicial circuit, if applicable.
- 153       (VIII) Whether the guardianship is over the person but not  
154 the property.
- 155       4. Information related to the attorneys representing any  
156 participant of the case, including:
- 157           a. Name of attorney and his or her bar number.
- 158           b. Whether the attorney has withdrawn from representation  
159 of the specified participant.
- 160       5. Information related to court dates and motions,  
161 including:
- 162           a. The date of any court appearance and the type of  
163 proceedings scheduled for each date reported.
- 164           b. Each scheduled trial date, if applicable.
- 165           c. Dismissal date and each hearing date, if applicable.
- 166           d. The type of the initial pleading and date such pleading  
167 was filed, including a petition:
- 168               (I) Alleging an incapacitated person.
- 169               (II) For emergency temporary guardianship.
- 170               (III) To appoint a successor guardian.
- 171               (IV) For limited guardianship.
- 172               (V) Not otherwise specified in this sub-subparagraph.
- 173           e. The party filing the initial pleading, including whether  
174 the petitioner is:

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- 175       (I) A family member or friend.  
176       (II) A professional guardian.  
177       (III) A public guardian.  
178       (IV) An attorney.  
179       (V) The Department of Children and Families.  
180       (VI) A hospital licensed under chapter 395.  
181       (VII) Any other person not specified in this sub-  
182 subparagraph.
- 183       f. The reason stated in the pleading to support the  
184 petition for guardianship, including:
- 185       (I) Medical condition.  
186       (II) Financial exploitation.  
187       (III) Other exploitation.  
188       (IV) Disability.  
189       (V) Abuse.  
190       (VI) Neglect or abandonment.  
191       (VII) Substance abuse.  
192       (VIII) Any other reason not specified in this sub-  
193 subparagraph.
- 194       g. Information related to the hearing and order of  
195 incapacity, including:
- 196       (I) The date of the hearing.  
197       (II) The date of the order appointing a guardian, if  
198 applicable.
- 199       (III) Whether the order is for limited or plenary  
200 guardianship.
- 201       h. Information related to court monitoring, including:  
202       (I) Whether trust assets exist.  
203       (II) Whether the guardian appointed has completed his or

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204 her initial and continuing education requirements.

205 (III) Whether a credit history investigation pursuant to s.

206 744.3135 has been completed or waived, if applicable.

207 (IV) Whether a level 2 background screening pursuant to s.

208 744.3135 has been completed or waived, if applicable.

209 i. Information related to the reason for closure or

210 disposition of the case, including:

211 (I) Restoration of rights of the ward.

212 (II) The ward reaching the age of majority.

213 (III) The death of the ward.

214 (IV) Transfer of the case to another jurisdiction.

215 (V) Expiration of the emergency temporary guardianship

216 order.

217 (VI) Dismissal of the case, including:

218 (A) A less restrictive alternative implemented; or

219 (B) Other reason.

220 6. Information related to the examining committee assigned

221 to the underlying incapacity hearing for each case, including:

222 a. The name of each expert witness serving on the examining

223 committee.

224 b. The number of guardianship cases each expert witness on

225 the examining committee has worked on in the past 10 years.

226 c. The number of guardianship cases in which each expert

227 witness on the examining committee has recommended the

228 appointment of a guardian.

229 (b) Department of Elderly Affairs.—The Department of

230 Elderly Affairs shall collect the following data, as applicable,

231 for all professional guardians registered with the department

232 and any guardian identified in reports submitted by a clerk of

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- 233 the court, including all of the following:
- 234 1. Legal name and registration number of the guardian.
  - 235 2. Eligibility status to serve as a professional guardian.
  - 236 3. Mailing and e-mail address of the guardian.
  - 237 4. Counties where the guardian is appointed to open
  - 238 guardianship cases.
  - 239 5. Year in which the guardian was first registered.
  - 240 6. Agency or firm where the guardian is employed, if
  - 241 applicable.
  - 242 7. Statewide investigation alliance-substantiated
  - 243 allegations, if applicable.
  - 244 8. Ten-year disciplinary history, if applicable.
  - 245 9. Number of cases where the guardian has been removed from
  - 246 the case for cause, if applicable.
  - 247 10. Number of cases in each judicial circuit where the
  - 248 guardian has been removed from a case for cause, if applicable.
- 249 (4) DATA PUBLICLY AVAILABLE.—Beginning January 1, 2023, the
- 250 department shall publish datasets in its possession, except
- 251 information otherwise exempt from s. 119.071, in a modern, open,
- 252 electronic format that is machine-readable and readily
- 253 accessible by the public on the department’s website. Beginning
- 254 March 1, 2023, and monthly thereafter, the department shall
- 255 publish the data received under subsection (3), except
- 256 information otherwise exempt from s. 119.071(1), in the same
- 257 modern, open, electronic format that is machine-readable and
- 258 readily accessible to the public on the department’s website.
- 259 The published data must be searchable, at a minimum, by data
- 260 elements, county, and circuit.
- 261 (5) CONFIDENTIALITY.—Information collected by any reporting

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262 agency which is exempt from s. 119.071(1) when held by that  
263 agency remains exempt from s. 119.071(1) when submitted to and  
264 held by the Department of Elderly Affairs under this section.  
265 The Department of Elderly Affairs may disclose such information  
266 only if the agency submitting the information grants permission  
267 in writing to disclose the exempt information.

268 Section 3. Section 744.20043, Florida Statutes, is created  
269 to read:

270 744.20043 Guardianship dashboard.—The department shall  
271 create and maintain a publicly available dashboard containing  
272 certain real-time data elements to promote transparency and  
273 accountability in accordance with s. 744.20042(3) while  
274 protecting a ward's right to privacy. The information must  
275 include the data points collected and reported in accordance  
276 with s. 744.20042 and be searchable by such data points and  
277 percentage of total data reported for each data point.

278 Section 4. Subsection (3) is added to section 744.362,  
279 Florida Statutes, to read:

280 744.362 Initial guardianship report.—

281 (3) A guardian shall submit to the clerk of the court  
282 information pursuant to s. 744.20042 in an electronic format  
283 developed and approved by the Department of Elderly Affairs.

284 Section 5. Subsection (7) is added to section 744.363,  
285 Florida Statutes, to read:

286 744.363 Initial guardianship plan.—

287 (7) The guardian shall submit to the clerk of the court  
288 information pursuant to s. 744.20042 in an electronic format  
289 developed and approved by the Department of Elderly Affairs.

290 Section 6. Subsection (7) is added to section 744.365,



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20221710\_\_

291 Florida Statutes, to read:

292 744.365 Verified inventory.-

293 (7) DATA REPORTING.-The guardian shall submit to the clerk  
294 of the court information pursuant to s. 744.20042 in an  
295 electronic format developed and approved by the Department of  
296 Elderly Affairs.

297 Section 7. Subsection (7) is added to section 744.367,

298 Florida Statutes, to read:

299 744.367 Duty to file annual guardianship report.-

300 (7) The guardian shall submit to the clerk of the court  
301 information pursuant to s. 744.20042 in an electronic format  
302 developed and approved by the Department of Elderly Affairs.

303 Section 8. This act shall take effect July 1, 2022.

**From:** [Delia, Peter](#)  
**To:** [Lowery, Nikki](#)  
**Subject:** FW: OSGR- OPPG - S.744.2111, F.S.  
**Date:** Monday, January 24, 2022 9:27:48 AM

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Hey Nikki, this is the only on file attachment for SB 1710. Thanks!

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**From:** Derek Miller <millerd@elderaffairs.org>  
**Sent:** Thursday, August 26, 2021 10:58 AM  
**To:** Toliver, Lance <Lance.Toliver@myfloridahouse.gov>; Landry, Jeanne <Jeanne.Landry@myfloridahouse.gov>; Delia, Peter <Delia.Peter@flsenate.gov>  
**Subject:** OSGR- OPPG - S.744.2111, F.S.

Lance, Peter, and Jeanne,

I hope today is treating you well. As promised, below are the stats you all inquired about from last week's call:

1. The total number of complaints received at DOEA/OPPG that were initially believed to be against a guardian and/or involving a guardianship for each of these 5 years –
  - a. 2016: 183
  - b. 2017: 132
  - c. 2018: 56
  - d. 2019: 113
  - e. 2020: 169
  - f. first 6-months of 2021: 89
  
2. A breakdown of how many of these complaints received were attended to entirely within DOEA/OPPG and disposed of, and how many were assigned to the Clerk of Courts' Statewide Investigative Alliance (SIA) for review and further investigation.
  - a. 2016: Referred SIA: 22
  - b. 2017: Referred SIA: 83
  - c. 2018: Referred SIA: 47
  - d. 2019: Referred SIA: 128
  - e. 2020: Handled by OPPG 109; Referred SIA: 63
  - f. first 6-months of 2021: Handled by OPPG: 39; Referred SIA
  
3. The approximate total number of public record requests received by the DOEA regarding OPPG complaints since 2017 is 170.
  - a. 2017: 17
  - b. 2018: 11

- c. 2019: 63
- d. 2020: 31
- e. first 8-months of 2021: 48

If you have any other questions, please do not hesitate to call me or send me an email.

Best,  
Derek



Please note: Florida has a broad public records law (Chapter 119, Florida Statutes). Most written communications to or from state employees are public records obtainable by the public upon request. Emails sent to me at this email address may be considered public and will only be withheld from disclosure if deemed confidential pursuant to the laws of the State of Florida.

**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.)

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

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BILL: SB 1710

INTRODUCER: Senators Bradley and Brandes

SUBJECT: Guardianship

DATE: January 24, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	<b>Pre-meeting</b>
2.			AP	
3.			RC	

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**I. Summary:**

SB 1710 requires the Department of Elder Affairs (the DOEA) to create and maintain a publicly available, real-time dashboard containing data relating to guardianship matters across the state. The bill requires clerks of court to gather and transmit specific data points to the DOEA, and requires the DOEA to collect specified data on professional guardians and those identified by clerks of court for certain purposes.

The bill permits the DOEA to include financial audits performed by clerks of court in guardianship cases as part of a tool used by the agency to monitor professional guardians. The bill also requires the DOEA to develop a tool to collect data from the following items in a guardianship case:

- The initial guardianship report;
- The initial guardianship plan;
- The verified inventory;
- The annual guardianship report; and
- Audits conducted by clerks of court pursuant to s. 744.368, F.S.

The bill specifies that information collected by the DOEA that is exempt from Florida's public disclosure requirements will remain exempt once submitted to and held by the agency, and that the DOEA may only disclose such information if given written authorization to do so by the agency which provided the information. The bill also provides legislative findings and intent.

The bill is anticipated to have a negative fiscal impact on the DOEA due to the cost of creating and maintaining the database and dashboard. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

## II. Present Situation:

### Guardianship

When an individual is unable to make legal decisions regarding his or her person or property, a guardian may be appointed to act on his or her behalf. A guardian is someone who is appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property or both.<sup>1</sup> Adjudicating a person totally incapacitated and in need of a guardian deprives a person of his or her civil and legal rights.<sup>2</sup> The Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of that person's rights.<sup>3</sup>

The process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.<sup>4</sup> Once a person has been adjudicated incapacitated, termed a "ward", the court appoints a guardian and the letters of guardianship are issued.<sup>5</sup> The order appointing a guardian must be consistent with the ward's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.<sup>6</sup>

### Types of Guardians

#### *Two Main Forms of Guardianship*

There are two main forms of guardianship:

- Guardianship over the person; or
- Guardianship over the property, which may be limited or plenary.<sup>7</sup>

For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily.<sup>8</sup> However, when an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.<sup>9</sup>

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<sup>1</sup> Section 744.102(9), F.S.

<sup>2</sup> Section 744.1012(1), F.S.

<sup>3</sup> Section 744.1012(2), F.S.

<sup>4</sup> Section 744.3201, F.S.

<sup>5</sup> See s. 744.345, F.S.

<sup>6</sup> Section 744.2005, F.S.

<sup>7</sup> See generally, s. 744.102(9), F.S. A plenary guardian exercises all delegable rights and powers of the ward after a court has determined that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

<sup>8</sup> Section 744.341(1), F.S.

<sup>9</sup> See generally, s. 744.102(12), F.S.

### ***Natural Guardians***

Parents are considered natural guardians of their biological and adopted children, up until the time that their children cease to be minors, or unless the parents' parental rights have been terminated.<sup>10</sup>

### ***Guardian Advocates***

Guardian advocates are appointed by the court for persons with developmental disabilities.<sup>11</sup> A circuit court may appoint a guardian advocate, without an adjudication of incapacity, for a developmentally disabled individual if the person:

- Lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person, property, or estate; or
- Has voluntarily petitioned for the appointment of a guardian advocate.<sup>12</sup>

### ***Voluntary Guardians***

A court may appoint a voluntary guardian for a person who:

- Is incapable of the care, custody, and management of his or her estate by reason of age or physical infirmity; and
- Has voluntarily petitioned for the appointment.<sup>13</sup>

The petition must be accompanied by a certificate of a licensed physician specifying that he or she has examined the petitioner and that the petitioner is competent to understand the nature of the guardianship and his or her delegation of authority.<sup>14</sup> Notice of hearing on any petition for appointment and for authority to act must be given to the petitioner and to any person requested by the petitioner.<sup>15</sup> Such request may be made in the petition for appointment of guardian or in a subsequent written request for notice signed by the petitioner.<sup>16</sup>

Unless the voluntary guardianship is limited, a voluntary guardian appointed has the same duties and responsibilities as are provided by law for plenary guardians of the property.<sup>17</sup> A voluntary guardianship may be terminated by the ward by filing a notice with the court that the voluntary guardianship is terminated.<sup>18</sup>

### ***Successor Guardians***

A successor guardian must be appointed and duly qualified before a guardian can be relieved of their duties.<sup>19</sup> A successor guardian can only be appointed if a guardian dies, becomes

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<sup>10</sup> Section 744.301(1), F.S.

<sup>11</sup> Section 744.102(11), F.S.

<sup>12</sup> Section 744.3085, F.S.

<sup>13</sup> Section 744.341(1), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Section 744.341(3), F.S.

<sup>18</sup> Section 744.341(5), F.S.

<sup>19</sup> Section 744.471, F.S.

incapacitated, or is removed. Successor guardians are governed by the laws concerning guardianships.<sup>20</sup>

### **Appointment of a Guardian**

The following may be appointed guardian of a ward:

- Any resident of Florida who is 18 years of age or older and has full legal rights and capacity;
- A nonresident if he or she is related to the ward by blood, marriage, or adoption;
- A trust company, a state banking corporation, or state savings association, or a national banking association or federal savings and loan association, provided the entity is authorized and qualified to exercise fiduciary powers in Florida;
- A nonprofit corporation organized for religious or charitable purposes and existing under the laws of Florida;
- A judge who is related to the ward by blood, marriage, or adoption, or has a close relationship with the ward or the ward's family, if he or she serves without compensation;
- A provider of health care services to the ward, whether direct or indirect, when the court specifically finds that there is no conflict of interest with the ward's best interests; or
- A for-profit corporation that meets certain qualifications, including being wholly owned by the person who is the circuit's public guardian in the circuit where the corporate guardian is appointed.<sup>21</sup>

Guardians<sup>22</sup> who are not professional guardians are required to complete eight hours of instruction and training through a course approved by the chief judge of the circuit court and taught by a court-approved organization within four months after being appointed to a ward.<sup>23</sup> The instruction and training must cover:

- The legal duties and responsibilities of the guardian;
- The rights of the ward;
- The availability of local resources to aid the ward; and
- The preparation of habilitation plans and annual guardianship reports, including financial accounting for the ward's property.<sup>24</sup>

### **Examining Committees**

Section 744.331, F.S., sets forth the procedures for determining whether a person is incapacitated. The notice of filing of a petition to determine incapacity and the petition for appointment of a guardian must be read to the alleged incapacitated person.<sup>25</sup> The alleged incapacitated person must be provided with an attorney, who cannot serve as the guardian or counsel for the guardian.<sup>26</sup> Within five days of filing a petition for determination of incapacity, the court must appoint an examining committee consisting of three members, which must include a psychiatrist or physician and two other persons, such as a psychologist, a nurse, social worker,

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<sup>20</sup> *Id.*

<sup>21</sup> Section 744.309, F.S.

<sup>22</sup> Other than a parent who is the guardian of the property of a minor child.

<sup>23</sup> Section 744.3145, F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Section 744.331(1), F.S.

<sup>26</sup> Section 744.331(2)(c), F.S.

gerontologist, or other qualified persons with sufficient knowledge, skill, experience, or training.<sup>27</sup>

Each committee member must examine the person and then issue a report evaluating the person's mental health, functional ability, and physical health.<sup>28</sup> The examining committee members must each submit their examining reports within 15 days after appointment.<sup>29</sup> Within three days after the report is filed and at least 10 days before the hearing, a copy of the committee member's report must be served on the petitioner and on the attorney for the alleged incapacitated person.<sup>30</sup> If the committee determines that the person is not incapacitated in any respect, the court must dismiss the petition.<sup>31</sup> However, if at least two of the three examining committee members conclude the person is incapacitated in some respect, the court proceeds to a hearing on the petition and makes a final determination based on the evidence presented by the parties.<sup>32</sup>

### **Emergency Temporary Guardianship**

A court may appoint an emergency temporary guardian<sup>33</sup> for an allegedly incapacitated person upon a finding that there appears to be an imminent danger that:

- The physical or mental health or safety of the person will be seriously impaired; or
- The person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken.<sup>34</sup>

Under those circumstances, a court may appoint an emergency temporary guardian after the filing of a petition for determination of incapacity and before the appointment of a guardian.<sup>35</sup> The court must appoint counsel to represent the alleged incapacitated person during the proceedings.<sup>36</sup> Further, the court may appoint an emergency temporary guardian on its own motion if no petition for appointment of guardian has been filed when the order determining incapacity is entered.<sup>37</sup>

### **Office of Public and Professional Guardians**

In 1999, the Legislature created the "Public Guardianship Act" and established the Statewide Public Guardianship Office (SPGO) within the DOEA.<sup>38</sup> In 2016, the Legislature renamed the Statewide Public Guardianship Office within the DOEA as the Office of Public and Professional Guardians (OPPG), required OPPG to regulate professional guardians and investigate complaints, and added six full-time equivalent positions to the OPPG, including an attorney and

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<sup>27</sup> Section 744.331(3)(a), F.S.

<sup>28</sup> Section 744.331(3)(e)-(f), F.S.

<sup>29</sup> Section 744.331(3)(e), F.S.

<sup>30</sup> Section 744.331(3)(h), F.S.

<sup>31</sup> Section 744.331(4), F.S.

<sup>32</sup> Section 744.331(5), F.S.

<sup>33</sup> Section 744.3031(1), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Section 744.3031(2), F.S.

<sup>38</sup> Chapter 99-277, L.O.F.



investigators.<sup>39</sup> The OPPG appoints local public guardian offices to provide guardianship services to people who have neither adequate income nor assets to afford a private guardian, nor any willing family or friend to serve.<sup>40</sup>

There are 17 public guardian offices that serve all 67 counties.<sup>41</sup> Since 2016, approximately 550 professional guardians have registered with the OPPG.<sup>42</sup>

### ***Complaint Investigations***

Any person may submit a complaint against a professional guardian to the OPPG. Once the OPPG receives a complaint, it is required to:

- Review and, if determined legally sufficient,<sup>43</sup> investigate complaints against professional guardians;
- Initiate an investigation no later than 10 business days after the OPPG receives a complaint;
- Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and person filing the complaint within 60 days;
- Obtain supporting information, including interviewing the ward, family member, or interested party, or documentation to determine the legal sufficiency of a complaint;
- Dismiss any complaint that is not legally sufficient; and
- Coordinate with the clerks of the court to avoid duplication of duties.

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

- 183 in 2016;
- 132 in 2017;
- 56 in 2018;
- 113 in 2019;
- 169 in 2020; and
- 89 in the first 6-months of 2021.<sup>44</sup>

The annual number of public records requests regarding OPPG complaints since 2017 are as follows:

- 17 in 2017;
- 11 in 2018;
- 63 in 2019;
- 31 in 2020; and

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<sup>39</sup> Chapter 2016-40, L.O.F.

<sup>40</sup> The DOEA, *Office of Public and Professional Guardians*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited January 22, 2022).

<sup>41</sup> The DOEA, *Office of Public and Professional Guardians (OPPG)*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited January 23, 2022).

<sup>42</sup> *Id.*

<sup>43</sup> Section 744.2004(1), F.S., states that a complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.

<sup>44</sup> Email from Derek Miller, Legislative Affairs Director, the DOEA, August 26, 2021 (on file with the Senate Children, Families, and Elder Affairs Committee).

- 48 in the first 8-months of 2021.<sup>45</sup>

### **Public and Professional Guardians**

A professional guardian is a guardian who has at any time rendered services to three or more wards as their guardian; however, a person serving as a guardian for two or more relatives is not considered a professional guardian.<sup>46</sup> A public guardian is considered a professional guardian for purposes of regulation, education, and registration.<sup>47</sup>

#### ***Registration***

A professional guardian must register with the OPPG annually.<sup>48</sup> As part of the registration, the professional guardian must:

- Provide sufficient information to identify the professional guardian;
- Complete a minimum of 40 hours of instruction and training through a course approved or offered by the OPPG;<sup>49</sup>
- Successfully pass an examination approved by the DOEA to demonstrate competency to act as a professional guardian;
- Undergo a criminal background check by the Federal Bureau of Investigation and the Florida Department of Law Enforcement;
- Submit to a credit history check; and
- Maintain a current blanket bond.<sup>50, 51</sup>

Guardians registered with the OPPG must complete a minimum of 16 hours of continuing education every two calendar years after the year in which the initial 40-hour educational requirement is met. The ward's assets may not be used to pay for such education.<sup>52</sup>

Guardians seeking appointment by the court and all employees of a professional guardian who have a fiduciary responsibility to the ward must submit to a credit history check and undergo a level 2 background screening.<sup>53</sup> The DOEA must ensure the clerks of the court and the chief judge of each judicial circuit receive information about each registered professional guardian.<sup>54</sup>

The executive director of the OPPG may deny registration to a professional guardian if the executive director determines that the guardian's proposed registration, including the guardian's credit or criminal investigations, indicates that registering the professional guardian would

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<sup>45</sup> *Id.*

<sup>46</sup> Section 744.102(17), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> Section 744.2002, F.S.

<sup>49</sup> This training may not be paid with the assets of the ward.

<sup>50</sup> Section 744.2003(2), F.S., further requires the bond to be maintained by the guardian in an amount not less than \$50,000 and must cover all wards for whom the guardian has been appointed at any given time. The liability of the provider of the bond is limited to the face amount of the bond, regardless of the number of wards for whom the professional guardian has been appointed.

<sup>51</sup> Sections 744.2002(3) and 744.3135, F.S.

<sup>52</sup> Section 744.2003(3), F.S.

<sup>53</sup> Section 744.3135(1), F.S.

<sup>54</sup> Section 744.2002(9), F.S.

violate any provision of ch. 744, F.S.<sup>55</sup> The OPPG is required to report any suspension or revocation of a professional guardian's registration to the court of competent jurisdiction for any guardianship case to which the professional guardian is currently appointed.<sup>56</sup>

### **Responsibilities of the Clerk of the Circuit Court**

In addition to the duty to serve as the custodian of the guardianship files, the clerk must review each initial and annual guardianship report to ensure that it contains required information about the ward.<sup>57</sup> Guardians are required to file initial reports and annual reports consisting of accounting or guardianship plans after they are appointed to a ward.<sup>58</sup> The initial guardianship report, for a guardian of a ward's property, must consist of a verified inventory of such property.<sup>59</sup> For a guardian of a person, the initial guardianship report must consist of an initial guardianship plan, including details such as where the ward will live and any medical or social services the ward may need.<sup>60</sup> Annual plans must consist of an annual accounting of the ward's property and the process by which the ward is being served by the guardian.<sup>61</sup>

The clerk is required to complete his or her review of the initial or annual report within 30 days after the filing of such reports.<sup>62</sup> The clerk is also required to audit the verified inventory and accountings report within 90 days of its filing, and report his or her findings to the court.<sup>63</sup> The clerk must notify the court when a required report is not timely filed by a guardian.<sup>64</sup>

If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.<sup>65</sup>

If a guardian fails to produce records and documents to the clerk upon request, the clerk may request the court to enter an order requiring a guardian to file the report.<sup>66</sup> The judge may also impose sanctions on the guardian, which may include contempt, removal of the guardian, and fines.<sup>67</sup>

### **Guardianship Improvement Task Force**

In the summer of 2021, the Florida Court Clerks and Comptrollers organized the Guardianship Improvement Task Force (Task Force), which examined numerous aspects of Florida's

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<sup>55</sup> Section 744.2002, F.S.

<sup>56</sup> Section 744.2004(4), F.S.

<sup>57</sup> Section 744.368, F.S.

<sup>58</sup> Section 744.361, F.S.

<sup>59</sup> Section 744.362, F.S.,

<sup>60</sup> Sections 744.362–744.363, F.S.

<sup>61</sup> Section 744.367, F.S.

<sup>62</sup> Section 744.368(2), F.S.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Sections 744.368–744.3685, F.S.

<sup>67</sup> Sections 744.3685(3) and 744.367(5), F.S.

guardianship system and laws.<sup>68</sup> The Task Force was formed with the goal of studying the current status of guardianships in Florida and making recommendations to improve the safety of wards across Florida.<sup>69</sup> The Task Force was comprised of 22 members, including judges, clerks of court, members of the Legislature, attorneys, state agencies, and numerous others.<sup>70</sup>

### ***Task Force Report***

On November 15, 2021, the Task Force finalized a report summarizing their work and containing numerous legislative recommendations.<sup>71</sup> Recommendations encompassed the following nine focus areas:

- Statewide Guardianship Data Transparency;
- Statewide Uniformity in Forms, Processes, and Practices;
- Increased Oversight, Safeguards, and Court Monitoring Practices Across the State;
- Preserving the Rights, Dignity, and Autonomy of Alleged and Adjudged Incapacitated Persons;
- Ensuring the Use of Least Restrictive Alternatives (including Advance Directives and Supported Decision-Making);
- Health and Residential Care “Pipeline to Guardianship”;
- Enhanced Education and Qualification Requirements of Professionals and Parties in Guardianship;
- Increased Accessibility and Transparency of Professional Guardians and the Guardianship Process; and
- Need for Additional Workgroup(s) Responsible for Assessing Florida’s Guardianship System.<sup>72</sup>

The report concluded that the most significant issue addressed by the Task Force was the need for a method to improve the availability of data in order to document problems within Florida’s guardianship system.<sup>73</sup> The report further stated that a great deal of basic information related to guardianship cases is not readily available, including but not limited to:

- The number of people under guardianship;
- The number of guardians across the state;
- How many cases each guardian has under their purview;
- How much money and property are under the control of guardians across the state; and
- Information related to wards.<sup>74</sup>

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<sup>68</sup> The Florida Bar, Florida Bar News, *Guardianship Improvement Task Force Inks Its Final Report*, November 16, 2021, available at <https://www.floridabar.org/the-florida-bar-news/guardianship-improvement-task-force-inks-its-final-report/> (last visited January 23, 2022).

<sup>69</sup> Florida Court Clerks and Comptrollers, Guardianship Improvement Task Force, *About the Task Force*, available at <https://www.guardianshipimprovementtaskforce.com/> (last visited January 23, 2022).

<sup>70</sup> *Id.*

<sup>71</sup> Florida Court Clerks and Comptrollers, Guardianship Improvement Task Force, *Final Report*, January 2022, available at <https://guardianshippf.wpengine.com/wp-content/uploads/2022/01/GITFReport-Jan2022.pdf> (last visited January 23, 2022) (hereinafter, “The Final Report”).

<sup>72</sup> *Id.* at pp. 19-23.

<sup>73</sup> *Id.* at p. 29.

<sup>74</sup> *Id.*

According to the report, one topic of concern identified was the potential failure by the courts, clerks of court, and/or court monitors to report situations of abuse, neglect, or exploitation to Florida's Central Abuse Hotline.<sup>75</sup> Without any formalized method for data collection by the courts in each guardianship case, the Task Force concluded that there is no way to determine whether the courts, clerks, and court monitors are complying with their mandatory reporting obligations provided under s. 415.1034, F.S.<sup>76</sup>

Ultimately, the Task Force made the following four recommendations in the area of data transparency:

- Create a statewide data collection system for all guardianship cases;
- Require that every judicial circuit collect and report information in all guardianship cases regarding the existence of advance directives, powers of attorney, health care surrogate designations, and other similar legal documents, whether the document was honored (in part or total), and any reason given by the court for not honoring the document;
- Require that every judicial circuit collect and report guardianship case information and changes to the Office of Public and Professional Guardians (OPPG); and
- Require that OPPG promptly notify the chief judge in any judicial circuit in which a professional guardian is currently serving and/or has previously served as a guardian in a case of any verified findings of misconduct, disciplinary records, or removal of the guardian for cause by any other court.<sup>77</sup>

The report also noted that exactly how widespread and extensive such abuses by guardians may be remains is unknown, due in part to a lack of available data.<sup>78</sup> Relevant questions regarding the demographics of Florida's professional guardians include:

- How many professional guardians in Florida are also public guardians?
- How many professional guardians in Florida maintain dual (state or federal) licenses, such as attorneys barred to practice in Florida?
- How many professional guardians also serve as representative payees in non-guardianship cases?
- How many professional guardians in Florida take on pro bono cases?
- How many professional guardians are compensated by hospitals, assisted living facilities, or other health or residential care providers to serve as a guardian in specific cases?

To address these issues, the Task Force recommended the creation of a publicly accessible, online database regarding the registration, qualifications, and disciplinary/removal history for all professional guardians.<sup>79</sup>

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<sup>75</sup> *Id.* at p. 30.

<sup>76</sup> Section 415.1034, F.S., provides that any person who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited must immediately report such knowledge or suspicion to the central abuse hotline.

<sup>77</sup> The Final Report at p. 29-38.

<sup>78</sup> *Id.* at p. 85.

<sup>79</sup> *Id.* at p. 84.

## Public Records and Exemptions

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>80</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>81</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>82</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>83</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>84</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>85</sup>

### III. Effect of Proposed Changes:

#### Guardianship Data Collection and Transparency

The bill creates s. 744.20042, F.S., providing for guardianship data collection and transparency. Specifically, the bill requires the DOEA to collect, compile, maintain, and manage data submitted to the DOEA under the act. Further, the bill requires each clerk of the court and the DOEA to collect and report certain data by a specified date, specifies the data to be collected, requires the data to be publicly available, and provides for the confidentiality of certain data. Each of these provisions is discussed more below.

#### *Legislative Findings and Intent*

The bill provides legislative findings and intent, specifically that the Legislature intends to create a model of uniform data collection related to guardianship cases throughout Florida by requiring local clerks of the court to report complete, accurate, timely, and publicly available data. The bill provides that the Legislature finds it is an important state interest to implement a uniform data collection process and promote transparency in guardianship matters statewide.

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<sup>80</sup> Section 119.07(1)(a), F.S.

<sup>81</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>82</sup> FLA. CONST. art. I, s. 24(c).

<sup>83</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>84</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>85</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

### *Clerks of Court Data*

Beginning July 1, 2022, the bill requires clerks of court to collect, compile, maintain, and manage data on guardianship cases open on or after that date. Clerks must submit the data to the DOEA each month for every guardianship case in a circuit court.

For each guardianship case that is active in a county, or was active in a county prior to being closed, the bill requires clerks of the court for each county throughout Florida to gather and submit all of the following data points:

- Type of guardianship case, including whether it is a guardianship over:
  - A minor with a developmental disability.<sup>86</sup>
  - An adult with a developmental disability.
  - A minor which is unrelated to a developmental disability.
  - An elderly person who has been deemed incapacitated by a court.
  - A veteran pursuant to part VIII<sup>87</sup> of ch. 744, F.S.
- The current case status, including whether the case is open or pending or has been disposed of or closed.
- Information related to the participants of the guardianship case, including:
  - For the ward:
    - Identifying information, including date of birth, race, ethnicity, and gender.
    - Zip code of the last known mailing address.
    - Marital status.
    - Residential status, including whether he or she resides in:
      - A home owned by the ward.
      - A home of a family member or friend, which is defined in the bill to include a spouse, former spouse, non-cohabitating partner, person related by blood or marriage, person who is presently residing with the ward as if a family or who resided together in the past as if a family, and person who has a child in common with the ward regardless of whether they have been married or have resided together at any time.
      - A community residential home licensed under ch. 419, F.S.
      - An assisted living facility licensed under ch. 429, F.S.
      - A nursing home or related health care facility licensed under ch. 400, F.S.
      - A correctional facility or institution governed by ch. 944, F.S.
      - A juvenile detention or residential commitment facility governed by ch. 985, F.S.
    - Whether the ward has been found to be indigent under s. 27.52, F.S.,<sup>88</sup> including specifically if such determination was made at the time the petition was alleged or at any time during the proceedings.
    - The date of the ward's death, if applicable.
  - For the guardian:

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<sup>86</sup> “Developmental disability” means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. Section 393.063(12), F.S.

<sup>87</sup> Part VIII of ch. 744, F.S., applies to veterans and others receiving benefits from the U.S. Department of Veteran Affairs.

<sup>88</sup> Section 27.52, F.S. provides criteria for indigency status used to determine a person's eligibility for appointment of a public defender.

- The name of the guardian.
- The zip code of the last mailing address of the guardian.
- The relationship status of the guardian to the ward, including whether he or she is:
  - A nonprofessional.
  - A state registered professional guardian.
  - A public guardian.
  - An attorney.
- Whether the guardian is the representative payee for the ward.
- The type of guardian serving the guardianship case, including whether he or she is:
  - A guardian advocate.
  - A voluntary guardian.
  - An emergency temporary guardian.
- The number of cases in the county in which the guardian currently represents a ward.
- The number of cases from which the guardian has been removed for cause in a judicial circuit, if applicable.
- Whether the guardianship is over the person but not the property.
- Information related to the attorneys representing any participant of the case, including:
  - Name of attorney and his or her bar number.
  - Whether the attorney has withdrawn from representation of the specified participant.
- Information related to court dates and motions, including:
  - The date of any court appearance and the type of proceedings scheduled for each date reported.
  - Each scheduled trial date, if applicable.
  - Dismissal date and each hearing date, if applicable.
  - The type of the initial pleading and date such pleading was filed, including a petition:
    - Alleging an incapacitated person.
    - For emergency temporary guardianship.
    - To appoint a successor guardian.
    - For limited guardianship.
    - Not otherwise specified above.
  - The party filing the initial pleading, including whether the petitioner is:
    - A family member or friend.
    - A professional guardian.
    - A public guardian.
    - An attorney.
    - The Department of Children and Families.
    - A hospital licensed under ch. 395, F.S.
    - Any other person not specified in this sub-subparagraph.
  - The reason stated in the pleading to support the petition for guardianship, including:
    - Medical condition.
    - Financial exploitation.<sup>89</sup>
    - Other exploitation.<sup>90</sup>
    - Disability.

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<sup>89</sup> See s. 415.102(8)(a)-(b), F.S.

<sup>90</sup> *Id.*



- Abuse.<sup>91</sup>
- Neglect or abandonment.<sup>92</sup>
- Substance abuse.<sup>93</sup>
- Any other reason not specified above.
- Information related to the hearing and order of incapacity, including:
  - The date of the hearing.
  - The date of the order appointing a guardian, if applicable.
  - Whether the order is for limited or plenary guardianship.
- Information related to court monitoring, including:
  - Whether trust assets exist.
  - Whether the guardian appointed has completed his or her initial and continuing education requirements.
  - Whether a credit history investigation pursuant to s. 744.3135, F.S., has been completed or waived, if applicable.
  - Whether a level 2 background screening pursuant to s. 744.3135, F.S., has been completed or waived, if applicable.
- Information related to the reason for closure or disposition of the case, including:
  - Restoration of rights of the ward.
  - The ward reaching the age of majority.
  - The death of the ward.
  - Transfer of the case to another jurisdiction.
  - Expiration of the emergency temporary guardianship order.
  - Dismissal of the case, including:
    - A less restrictive alternative implemented; or
    - Other reason.
- Information related to the examining committee assigned to the underlying incapacity hearing for each case, including:
  - The name of each expert witness serving on the examining committee.
  - The number of guardianship cases each expert witness on the examining committee has worked on in the past 10 years.
  - The number of guardianship cases in which each expert witness on the examining committee has recommended the appointment of a guardian.

### ***Department of Elder Affairs Data***

For all registered professional guardians, and for any guardian identified in reports submitted by a clerk of court, the bill directs the DOEA to collect all of the following data points:

- Legal name and registration number of the guardian.
- Eligibility status to serve as a professional guardian.
- Mailing and e-mail address of the guardian.
- Counties where the guardian is appointed to open guardianship cases.
- Year in which the guardian was first registered.

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<sup>91</sup> See s. 415.102(1), F.S.

<sup>92</sup> See s. 415.102(16), F.S.

<sup>93</sup> See s. 397.311(47), F.S.

- Agency or firm where the guardian is employed, if applicable.
- Statewide investigation alliance-substantiated allegations, if applicable.
- Ten-year disciplinary history, if applicable.
- Number of cases where the guardian has been removed from the case for cause, if applicable.
- Number of cases in each judicial circuit where the guardian has been removed from a case for cause, if applicable.

### ***Data Publishing***

The bill directs the DOEA to publish all datasets in its possession in a modern, open, electronic format which is machine-readable and publicly available on the agency's website. The DOEA must subsequently publish all data in its possession in the same format, including data received from clerks of court, beginning March 1, 2023, and monthly thereafter. The bill prohibits the DOEA from publishing, at any time, any data exempt from the public records disclosure requirements of s. 119.071, F.S.

The data published on the DOEA website must be searchable, at a minimum, by:

- Data elements;
- County; and
- Circuit.

### ***Confidentiality Requirements***

The bill provides that any information which, pursuant to s. 119.071, F.S., is exempt from public records disclosure requirements when held by a reporting agency retains that exempt status after being submitted to the DOEA. The DOEA is only permitted to disclose exempt information collected if the agency submitting the information grants written permission to do so. This will allow the DOEA to publish data collected on its website without including information that is otherwise exempt from statutory disclosure requirements.

### ***Guardianship Dashboard***

The bill creates s. 744.20043, F.S., requiring the DOEA to create and maintain a publicly available dashboard containing the data collected under the bill. The data must be searchable by:

- Individual data points; and
- Percentage of data reported for each data point.

The dashboard is intended to promote transparency and accountability while protecting a ward's right to privacy.

### ***Conforming Provisions***

The bill amends s. 744.2001, F.S., authorizing the DOEA to utilize financial audits prepared by the clerk of the court as part of a statutorily required monitoring tool for professional guardians, if:

- The tool is primarily used by the clerk of the court for auditing and reviewing purposes; and
- The DOEA collects the data derived by the tool for use as part of the agency's data collection requirements of the bill.

The bill amends ss. 744.362, 744.363, 744.365, and 744.367, F.S., requiring guardians to submit information to the clerk of court in conjunction with the following items for each guardianship case:

- Initial guardianship report;
- Initial guardianship plan;
- Verified inventory; and
- Annual guardianship report.

The information must be submitted in an electronic format developed and approved by the DOEA.

The bill also requires the DOEA to develop a tool to collect data utilizing the clerks of court in conjunction with a guardian's duties to submit each of the four items listed above and with the clerk of court's duty to review each item.

The bill is effective July 1, 2022.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill requires clerks of court to gather and submit data to the OPPG, which will likely result in an unknown cost to counties throughout the state as a result of increased workload. To the extent that the bill results in increased workload, the bill may conflict with the provisions of Article VII, Section 18 of the Florida Constitution by requiring counties to expend funds.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The DOEA will need to create and maintain a database and real-time dashboard on its website containing the information collected. The clerks of court will also incur costs in gathering and transmitting data to the DOEA, and in developing a format for guardians to submit information from initial and annual reports, verified inventories, and initial plans. The impact of these costs are indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 744.2001, 744.362, 744.363, 744.365, and 744.367 of the Florida Statutes.

This bill creates sections 744.20042 and 744.20043 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.



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LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 744.2112, Florida Statutes, is created  
to read:

744.2112 Statewide database of guardianship information;  
publication of professional guardian registration profiles.—

(1) The Florida Clerks of Court Operations Corporation and  
clerks of court shall establish a statewide database of



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11 guardianship information to facilitate improved court oversight  
12 of such guardianships. The database must be interoperable with  
13 the data systems of each circuit court, such that each circuit  
14 court may easily access the data for regular use in judicial  
15 proceedings. The database must include, at a minimum,  
16 professional guardian registration and disciplinary data  
17 provided by the Office of Public and Professional Guardians,  
18 information on the status of guardian compliance with the  
19 statutory qualifications for guardianship, and the status of  
20 statutorily required reports and submissions. The database must  
21 be searchable by, at a minimum, petitioner, ward, ward  
22 demographic information, guardian and guardian location,  
23 counsel, other parties to each case, judge, and circuit. The  
24 database must have the ability to generate statewide and  
25 circuit-level statistical data of assistance to the courts and  
26 the Department of Elderly Affairs. The Office of Public and  
27 Professional Guardians shall share professional guardian  
28 registration and disciplinary data for the purposes of this  
29 subsection.

30 (2) The Office of Public and Professional Guardians shall  
31 publish professional guardian registration profiles on its  
32 internet website. The profiles must be accessible and searchable  
33 by the public, and shall include, at a minimum, information  
34 submitted under section 744.2002, whether any complaints against  
35 the professional guardian have been substantiated, and any  
36 disciplinary actions taken by the department.

37 Section. 2 This act shall take effect July 1, 2022.

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

39 And the title is amended as follows:



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40 Delete everything before the enacting clause  
41 and insert:

42 A bill to be entitled  
43 An act relating to guardianship; creating s. 744.2112,  
44 F.S.; requiring the Florida Clerks of Court Operations  
45 Corporation and clerks of court to establish a  
46 statewide database of guardianship information for  
47 certain purposes; requiring the database to be  
48 interoperable with certain data systems; requiring the  
49 database to include certain information; requiring the  
50 database to be searchable by certain data points;  
51 requiring the data base to have the ability to  
52 generate certain information; requiring the Office of  
53 Public and Professional Guardians to share certain  
54 information; requiring the Office of Public and  
55 Professional Guardians to publish professional  
56 guardian registration profiles on a website; requiring  
57 the profiles to be accessible and searchable by the  
58 public; requiring the profiles to include certain  
59 information; providing an effective date.