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|--------------|---|---|------------|-------------------------|----------------|
| Tab 2 | CS/SB 226 by JU, Berman; (Similar to H 00813) Support for Dependent Adult Children | | | | |
| 897670 | D | S | CF, Berman | Delete everything after | 03/03 10:16 AM |

| | | | | | |
|--------------|---|--|--|--|--|
| Tab 3 | SB 390 by Garcia; Domestic Violence Task Force | | | | |
|--------------|---|--|--|--|--|

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| Tab 4 | SB 404 by Perry; (Identical to CS/H 00273) Public Records/Autopsy Reports of Minors Whose Deaths were Related to Acts of Domestic Violence | | | | |
|--------------|---|--|--|--|--|

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| Tab 5 | SB 536 by Garcia; (Similar to H 01087) Child Support | | | | |
| 176882 | A | S | CF, Garcia | Delete L.268 - 343: | 03/03 10:17 AM |

| | | | | | |
|--------------|--|---|--------------|-------------------|----------------|
| Tab 6 | SB 538 by Trumbull; (Identical to H 01155) Provisional Child Care Licensing | | | | |
| 293938 | A | S | CF, Trumbull | Delete L.16 - 19: | 03/03 10:21 AM |

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|--------------|--|---|-------------|-------------------|----------------|
| Tab 7 | SB 664 by Burgess; (Identical to H 00757) Contracts Entered into by the Department of Children and Families | | | | |
| 317942 | A | S | CF, Burgess | Delete L.29 - 36: | 03/03 10:24 AM |

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, March 6, 2023
TIME: 1:00—3:00 p.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Building*

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

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|--|---|
| 1 | Presentation on the Florida Partnership to End Domestic Violence by Amanda Price, Executive Director | | |
| 2 | CS/SB 226 Judiciary / Berman (Similar H 813) | Support for Dependent Adult Children; Specifying that parents are responsible for supporting their dependent adult child; requiring that certain rights of the parents of a dependent adult child be established in a guardianship proceeding; specifying that a court may modify a child support order for adult children in certain circumstances; providing factors a court must consider when determining the amount of child support for a dependent adult child; authorizing a court to assign support to certain trusts established for a dependent adult child for a specified purpose, etc. | JU 02/07/2023 Fav/CS CF 03/06/2023 RC |
| 3 | SB 390 Garcia | Domestic Violence Task Force; Creating the Domestic Violence Task Force adjunct to the Department of Children and Families; specifying the task force's purpose; specifying duties of the task force; requiring the task force to submit reports to the Governor and the Legislature by certain dates; providing for future repeal, etc. | CF 03/06/2023 AHS FP |

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, March 6, 2023, 1:00—3:00 p.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|--|------------------|
| 4 | SB 404 Perry (Identical CS/H 273) | Public Records/Autopsy Reports of Minors Whose Deaths were Related to Acts of Domestic Violence; Citing this act as the "Rex and Brody Act"; 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 whose death was related to an act of domestic violence be given notice of petitions to view or copy the minor's autopsy report and the opportunity to be present and heard at related hearings under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. | |
| | | CF 03/06/2023 GO RC | |
| 5 | SB 536 Garcia (Similar H 1087) | Child Support; Revising requirements for the deferment of payment agreements for child support; revising the procedures for collection and distribution of court depository fees; removing exceptions to the prohibition on treating incarceration as voluntary employment; revising requirements for the Department of Revenue to commence proceedings regarding paternity and child support, etc. | |
| | | CF 03/06/2023 AEG FP | |
| 6 | SB 538 Trumbull (Identical H 1155) | Provisional Child Care Licensing; Requiring a local licensing agency or the Department of Children and Families to issue a provisional license or registration for a family day care home under certain circumstances, etc. | |
| | | CF 03/06/2023 MS RC | |
| 7 | SB 664 Burgess (Identical H 757) | Contracts Entered into by the Department of Children and Families; Revising requirements for contracts between the department and lead agencies, etc. | |
| | | CF 03/06/2023 GO RC | |

Other Related Meeting Documents



Florida Partnership to End Domestic Violence

History

Spring 2020

FCADV dissolves and is removed from statute after investigations into inappropriate employee salaries and lack of accurate financial records.

Summer 2020

In response to the dissolution of FCADV, DCF assumed temporary responsibility and oversight over federal DV funding.

Fall 2020

FPEDV was incorporated as a new membership-based DV coalition focused on transparency and inclusivity.

2021

Under the mentorship of the National Network to End Domestic Violence, FPEDV prepares for FVPSA Designation as Florida's Statewide DV Coalition. FPEDV works on key legislative initiatives, including criminal penalty for malicious disclosure of confidential DV shelter location.

2022

FPEDV continues to build the organization through policy and procedure development. The Program Council is formed with the first Convenor. FPEDV receives FVPSA Designation as Florida's Statewide DV Coalition. FPEDV hires staff, transitioning away from a volunteer only organization.



Florida Partnership to End Domestic Violence

Our Mission

Eliminate domestic violence by promoting safe families and communities through relationships, partnerships and collaboration across systems and the state.

Our Vision

A state free from domestic violence, where everyone is safe to live with equality, justice, and hope.

Our Values

- Transparency
- Integrity
- Inclusiveness



FPEDV Staff



Amanda Price

Chief Executive Officer



Stephen Manders
Director of Financial Services



Kishara Gipson
**Director of Training and
Technical Assistance**

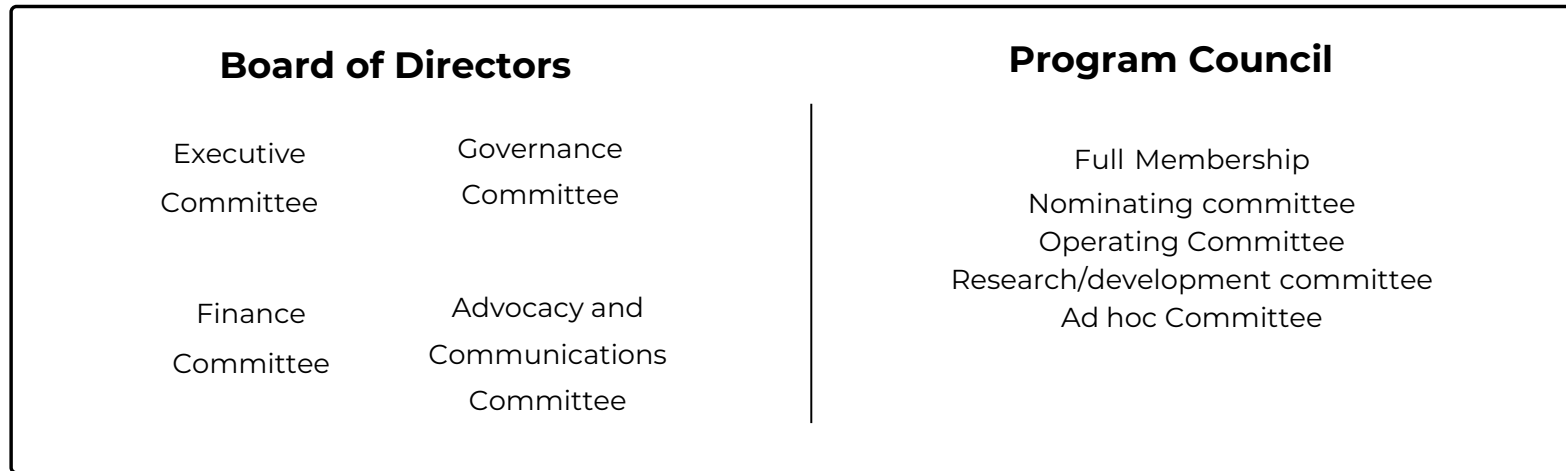


Andrianna Clark
Executive Assistant



FPEDV Governing Structure

FPEDV



Co-Equal Branches

Providing inclusive membership and committed to providing accountability and transparent governance and financial information to state and federal funding sources.

FPEDV Structure

Board of Directors

- Volunteer Board Members are elected by the Membership
- Meet Monthly
- Powers
 - Governance over the property and affairs of FPEDV
- Duties
 - Hire, fire, and evaluate the Chief Executive Officer
 - Approve agency policies
 - Approve and monitor annual budget
 - Lead external communications and public policy initiatives
 - Ensure adequate resources for FPEDV
 - Organizational strategic planning (with Program Council)

Program Council

- Comprised of Florida certified domestic violence programs
- Meet Monthly
- Powers
 - Organization membership
 - Inform FPEDV Service standards/practices
 - Inform FPEDV Training
 - Inform comms for IPV Social Change
- Duties
 - Approve membership
 - Implementation of goals
 - Inform Program development
 - Identify Program Council reps to fill Member Seats on the FPEDV BOD
 - Organizational strategic planning (with the BOD)
 - Meet participation & meeting requirements

Full Membership

- 3 Types of Members
 - Program Council Members
 - Allied Organizations
 - Allied Individuals
- Meet Quarterly
- Member Obligations
 - Remittance of Annual Dues
 - Attendance
- Applications for Membership are reviewed and approved by the Program Council Nominating Committee
- Each Membership Organization gets **one** vote



Meeting Schedule

Board Meetings

- Held Monthly on First Monday
- 3-4 pm
- On Zoom

Program Council

- Held Monthly on First Thursday
- 12-1:30 pm
- On Zoom

Membership Meetings

- Held Quarterly
- on First Thursday
- 12-1:30 pm
- On Zoom



FPEDV as a Coalition

- Promote quality, victim-centered services that focus on safety and self-determination;
- Advocate and educate on behalf of survivors, their children, and their advocates;
- Connect, train, and support local domestic violence programs;
- Facilitate partnerships among victim advocates, allied organizations, and state agencies, including law enforcement;
- Mobilize a state- or territory-wide voice on domestic violence, advocating for change both inside and outside of the government and the legislative process;
- Promote system change and reform;
- Improve laws and legislative advocacy by connecting local, state/territory, and national work; and
- Challenge the social, economic, and political conditions that sustain a culture of violence in which domestic violence is condoned.



FPEDV's Recent Progress

- Received HHS designation as statewide coalition
- Hired 4 staff positions
- Secured office space in Tallahassee
- Offering 2 trainings per month to member programs
- Developing a robust website for members and the public (*in progress*)



FPEDV'S Certified DV Center Services

- Shelter
- Hotline
- Support groups
- Children services
- Prevention
- Training
- Economic justice*
- Legal services*

* Items noted are not available at all 41 certified DV centers in FL



FPEDV's Current Priorities

- Grow membership to include non certified center service providers
- Continue building solid policies and processes
- Expand budget to allow for additional training opportunities
- Develop strong, collaborative partnerships statewide



By the Committee on Judiciary; and Senator Berman

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1 A bill to be entitled
2 An act relating to support for dependent adult
3 children; creating s. 61.1255, F.S.; defining the term
4 "dependent adult child"; specifying that parents are
5 responsible for supporting their dependent adult
6 child; requiring that certain rights of the parents of
7 a dependent adult child be established in a
8 guardianship proceeding; specifying individuals who
9 may file a suit to establish support for a dependent
10 adult child; specifying a timeframe during which such
11 suits may be filed; providing an exception; specifying
12 procedures for establishing support; specifying who
13 may receive such support before and after the
14 dependent adult child reaches the age of 18; providing
15 construction; authorizing the court to assign support
16 to certain trusts established for a dependent adult
17 child; prohibiting the Department of Revenue from
18 filing petitions to establish, modify, or enforce
19 certain support orders; amending s. 61.13, F.S.;
20 conforming a provision to changes made by the act;
21 specifying that a child support order does not
22 terminate on the child's 18th birthday in certain
23 circumstances; specifying that a court may modify a
24 child support order for adult children in certain
25 circumstances; authorizing either parent to consent to
26 mental health treatment for a child in certain
27 circumstances unless stated otherwise in the parenting
28 plan; amending s. 61.29, F.S.; providing that child
29 support guidelines do not apply to certain cases;

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30 amending s. 61.30, F.S.; conforming a provision to
31 changes made by the act; creating s. 61.31, F.S.;
32 providing factors a court must consider when
33 determining the amount of child support for a
34 dependent adult child; authorizing a court to assign
35 support to certain trusts established for a dependent
36 adult child for a specified purpose; requiring the
37 court to consider certain state and federal programs
38 and benefits when making its decisions; amending s.
39 393.12, F.S.; providing an additional circumstance
40 under which a guardian advocate must be represented by
41 an attorney in guardianship proceedings; specifying
42 that petitions to appoint a guardian advocate for a
43 person with disabilities may include certain requests
44 for support from the person's parents; amending ss.
45 742.031 and 742.06, F.S.; conforming provisions to
46 changes made by the act; creating s. 744.1013, F.S.;
47 assigning jurisdiction over petitions for support of
48 dependent adult children to the guardianship court;
49 specifying who may receive such support for dependent
50 adult children over the age of 18; authorizing a court
51 to assign support to certain trusts established for a
52 dependent adult child for a specified purpose;
53 specifying that such support orders supersede any
54 orders entered under certain other provisions;
55 amending s. 744.3021, F.S.; conforming provisions to
56 changes made by the act; creating s. 744.422, F.S.;
57 authorizing a guardian of a dependent adult child to
58 petition the court for certain support payments from

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59 the dependent adult child's parents in certain
60 circumstances; specifying that the amount of such
61 support is determined pursuant to certain provisions;
62 providing an effective date.

63
64 Be It Enacted by the Legislature of the State of Florida:

65
66 Section 1. Section 61.1255, Florida Statutes, is created to
67 read:

68 61.1255 Support for dependent adult children; powers of
69 court.—

70 (1) For purposes of this section, the term "dependent adult
71 child" means an unmarried adult who is incapable of self-support
72 as a result of a physical or mental incapacity that began before
73 the person reached the age of 18.

74 (2) The parents of a dependent adult child are responsible
75 for supporting that child.

76 (3) The right of a parent or other person to decide where
77 the dependent adult child will live must be established in a
78 guardianship proceeding brought under chapter 393 or chapter
79 744.

80 (4) A suit to establish support for a dependent adult child
81 may only be filed by one of the following:

82 (a) The dependent adult child or his or her agent under a
83 durable power of attorney, if the dependent adult child's right
84 to sue or defend lawsuits has not been removed by the court. Any
85 such action must be brought in the circuit court in the county
86 in which the child resides.

87 (b) A parent or other person on behalf of the dependent

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88 adult child. Any such action must be brought under chapter 393
89 or chapter 744.

90 (c) The dependent adult child's guardian advocate appointed
91 under chapter 393 or guardian appointed under chapter 744.

92 (5) A suit to establish support for a dependent adult child
93 may be filed at any time after he or she reaches the age of 17
94 years and 6 months, unless such an order is already in place,
95 having been established during the child's minority.

96 (6) If a court has jurisdiction over the parties because of
97 an issue of child support, the parents may agree in writing to
98 extend support in the existing case if the agreement is
99 submitted to the court for approval before the dependent adult
100 child reaches the age of 18. Otherwise, the amount of support to
101 be paid by one parent to the other must be established in a
102 guardianship proceeding or in a separate support proceeding in
103 circuit court pursuant to paragraph (4) (a). This section does
104 not preclude a court from establishing support, ordering
105 continued support, or enforcing or modifying support orders
106 established under this chapter absent an agreement by the
107 parents.

108 (7) Support ordered after the dependent adult child reaches
109 the age of 18 may be paid only to the dependent adult child or
110 his or her court-appointed guardian advocate, guardian, or agent
111 under a durable power of attorney. However, the court may
112 irrevocably assign the support to a special needs trust under 42
113 U.S.C. s. 1396p(d) (4) or to a pooled trust under 42 U.S.C. s.
114 1396p(d) (4) (C) established for the dependent adult child by the
115 dependent adult child, his or her agent under a durable power of
116 attorney, the court, a parent or grandparent, a guardian, or a

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117 guardian advocate who has been delegated those rights in order
118 to maintain the dependent adult child's means-based government
119 benefits.

120 (8) The Department of Revenue may not file a petition to
121 establish, modify, or enforce a support order under this
122 section.

123 Section 2. Paragraph (a) of subsection (1) and paragraph
124 (b) of subsection (2) of section 61.13, Florida Statutes, are
125 amended to read:

126 61.13 Support of children; parenting and time-sharing;
127 powers of court.—

128 (1) (a) In a proceeding under this chapter, the court may at
129 any time order either or both parents who owe a duty of support
130 to a child to pay support to the other parent or, ~~in the case of~~
131 ~~both parents,~~ to a third party who has custody in accordance
132 with the child support guidelines schedule in s. 61.30.

133 1. All child support orders and income deduction orders
134 entered on or after October 1, 2010, must provide:

135 a. For child support to terminate on a child's 18th
136 birthday unless the court finds or previously found that the
137 minor child, or the child who is dependent in fact and between
138 the ages of 18 and 19, is still in high school and is performing
139 in good faith with a reasonable expectation of graduation before
140 he or she reaches the age of 19 ~~s. 743.07(2) applies,~~ or the
141 continued support is otherwise agreed to by the parties;

142 b. A schedule, based on the record existing at the time of
143 the order, stating the amount of the monthly child support
144 obligation for all the minor children at the time of the order
145 and the amount of child support that will be owed for any

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146 remaining children after one or more of the children are no
147 longer entitled to receive child support; and

148 c. The month, day, and year that the reduction or
149 termination of child support becomes effective.

150 2. The court initially entering an order requiring one or
151 both parents to make child support payments has continuing
152 jurisdiction after the entry of the initial order to modify the
153 amount and terms and conditions of the child support payments
154 if: the modification is found by the court to be in the best
155 interests of the child; ~~when~~ the child reaches majority; ~~if~~
156 there is a substantial change in the circumstances of the
157 parties; the minor child, or the child who is dependent in fact
158 and between the ages of 18 and 19, is still in high school and
159 is performing in good faith with a reasonable expectation of
160 graduation before he or she reaches the age of 19 if s.
161 ~~743.07(2) applies; or the when~~ a child is emancipated, marries,
162 joins the armed services, or dies. The court initially entering
163 a child support order has continuing jurisdiction to require the
164 obligee to report to the court on terms prescribed by the court
165 regarding the disposition of the child support payments.

166 (2)

167 (b) A parenting plan approved by the court must, at a
168 minimum:

169 1. Describe in adequate detail how the parents will share
170 and be responsible for the daily tasks associated with the
171 upbringing of the child;

172 2. Include the time-sharing schedule arrangements that
173 specify the time that the minor child will spend with each
174 parent;

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175 3. Designate who will be responsible for:

176 a. Any and all forms of health care. If the court orders
177 shared parental responsibility over health care decisions, ~~the~~
178 ~~parenting plan must provide that~~ either parent may consent to
179 mental health treatment for the child unless stated otherwise in
180 the parenting plan.

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

183 c. Other activities; and

184 4. Describe in adequate detail the methods and technologies
185 that the parents will use to communicate with the child.

186 Section 3. Section 61.29, Florida Statutes, is amended to
187 read:

188 61.29 Child support guidelines; principles; application.-

189 (1) The following principles establish the public policy of
190 the State of Florida in the creation of the child support
191 guidelines:

192 (a)~~(1)~~ Each parent has a fundamental obligation to support
193 his or her minor or legally dependent child.

194 (b)~~(2)~~ The guidelines schedule is based on the parent's
195 combined net income estimated to have been allocated to the
196 child as if the parents and children were living in an intact
197 household.

198 (c)~~(3)~~ The guidelines encourage fair and efficient
199 settlement of support issues between parents and minimizes the
200 need for litigation.

201 (2) The guidelines in this section do not apply to support
202 for a dependent adult child as defined in s. 61.1255. The amount
203 of support for a dependent adult child is determined by s.

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204 61.31.

205 Section 4. Paragraph (a) of subsection (1) of section
206 61.30, Florida Statutes, is amended to read:

207 61.30 Child support guidelines; retroactive child support.-

208 (1) (a) The child support guideline amount as determined by
209 this section presumptively establishes the amount the trier of
210 fact must ~~shall~~ order as child support for a minor child, or a
211 child who is dependent in fact and between the ages of 18 and 19
212 and who is still in high school and is performing in good faith
213 with a reasonable expectation of graduation before he or she
214 reaches the age of 19, in an initial proceeding for such support
215 or in a proceeding for modification of an existing order for
216 such support, whether the proceeding arises under this or
217 another chapter. The trier of fact may order payment of child
218 support which varies, plus or minus 5 percent, from the
219 guideline amount, after considering all relevant factors,
220 including the needs of the child or children, age, station in
221 life, standard of living, and the financial status and ability
222 of each parent. The trier of fact may order payment of child
223 support in an amount which varies more than 5 percent from such
224 guideline amount only upon a written finding explaining why
225 ordering payment of such guideline amount would be unjust or
226 inappropriate. Notwithstanding the variance limitations of this
227 section, the trier of fact must ~~shall~~ order payment of child
228 support which varies from the guideline amount as provided in
229 paragraph (11) (b) whenever any of the children are required by
230 court order or mediation agreement to spend a substantial amount
231 of time with either parent. This requirement applies to any
232 living arrangement, whether temporary or permanent.

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233 Section 5. Section 61.31, Florida Statutes, is created to
234 read:

235 61.31 Amount of support for a dependent adult child.-

236 (1) In determining the amount of support to be paid after a
237 dependent adult child as defined in s. 61.1255 reaches the age
238 of 18, the specific terms and conditions of such support, and
239 the rights and duties of both parents with respect to the
240 support, the court shall determine and give consideration to all
241 of the following:

242 (a) The dependent adult child's income and assets.

243 (b) Any existing and future needs of the dependent adult
244 child which are directly related to his or her mental or
245 physical incapacity and the substantial care and personal
246 supervision directly required by or related to that incapacity.

247 (c) Whether a parent pays for or will pay for the care or
248 supervision of the dependent adult child or provides or will
249 provide substantial care or personal supervision to the
250 dependent adult child himself or herself.

251 (d) The financial resources available to each parent for
252 the support, care, and supervision of the dependent adult child.

253 (e) Any other financial resources or other resources or
254 programs available for the support, care, and supervision of the
255 dependent adult child.

256 (2) The court may irrevocably assign the support to a
257 special needs trust under 42 U.S.C. s. 1396p(d) (4) or to a
258 pooled trust under 42 U.S.C. s. 1396p(d) (4) (C) established for
259 the dependent adult child by the dependent adult child, his or
260 her agent under a durable power of attorney, the court, a parent
261 or grandparent, a guardian, or a guardian advocate who has been

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262 delegated those rights in order to maintain the dependent adult
263 child's means-based government benefits.

264 (3) In making its decisions, the court shall take into
265 consideration any state or federal programs and benefits that
266 the dependent adult child is receiving and the effect that the
267 court-ordered support would have on the dependent adult child's
268 continued eligibility for such programs and benefits.

269 Section 6. Paragraph (b) of subsection (2) and subsection
270 (3) of section 393.12, Florida Statutes, are amended to read:

271 393.12 Capacity; appointment of guardian advocate.—

272 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

273 (b) A person who is being considered for appointment or is
274 appointed as a guardian advocate is not required to ~~need not~~ be
275 represented by an attorney unless required by the court or if
276 the guardian advocate is delegated any rights regarding property
277 other than the right to be the representative payee for
278 government benefits or the right of a parent to receive periodic
279 payments for the support, care, maintenance, education, or other
280 needs of the person with a developmental disability. This
281 paragraph applies only to proceedings relating to the
282 appointment of a guardian advocate and the court's supervision
283 of a guardian advocate and is not an exercise of the
284 Legislature's authority under ~~pursuant to~~ s. 2(a), Art. V of the
285 State Constitution.

286 (3) PETITION.—

287 (a) A petition to appoint a guardian advocate for a person
288 with a developmental disability may be executed by an adult
289 person who is a resident of this state. The petition must be
290 verified and must:

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291 1.~~(a)~~ State the name, age, and present address of the
292 petitioner and his or her relationship to the person with a
293 developmental disability;

294 2.~~(b)~~ State the name, age, county of residence, and present
295 address of the person with a developmental disability;

296 3.~~(c)~~ Allege that the petitioner believes that the person
297 needs a guardian advocate and specify the factual information on
298 which such belief is based;

299 4.~~(d)~~ Specify the exact areas in which the person lacks the
300 decisionmaking ability to make informed decisions about his or
301 her care and treatment services or to meet the essential
302 requirements for his or her physical health or safety;

303 5.~~(e)~~ Specify the legal disabilities to which the person is
304 subject; and

305 6.~~(f)~~ State the name of the proposed guardian advocate, the
306 relationship of that person to the person with a developmental
307 disability; the relationship that the proposed guardian advocate
308 had or has with a provider of health care services, residential
309 services, or other services to the person with a developmental
310 disability; and the reason why this person should be appointed.
311 The petition must also state if a willing and qualified guardian
312 advocate cannot be located, ~~the petition shall so state.~~

313 (b) A petition to appoint a guardian advocate may include a
314 request for periodic payments from either or both parents of the
315 person with a developmental disability for the support, care,
316 maintenance, education, or other needs of that person.

317 Section 7. Subsection (1) of section 742.031, Florida
318 Statutes, is amended to read:

319 742.031 Hearings; court orders for support, hospital

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320 expenses, and attorney ~~attorney's~~ fee.-

321 (1) Hearings for the purpose of establishing or refuting
322 the allegations of the complaint and answer must ~~shall~~ be held
323 in the chambers and may be restricted to persons, in addition to
324 the parties involved and their counsel, as the judge in his or
325 her discretion may direct. The court shall determine the issues
326 of paternity of the child and the ability of the parents to
327 support the child. Each party's social security number must
328 ~~shall~~ be recorded in the file containing the adjudication of
329 paternity. If the court finds that the alleged father is the
330 father of the child, it must ~~shall~~ so order. If appropriate, the
331 court may ~~shall~~ order the father to pay the complainant, her
332 guardian, or any other person assuming responsibility for the
333 child moneys sufficient to pay reasonable attorney ~~attorney's~~
334 fees, hospital or medical expenses, cost of confinement, and any
335 other expenses incident to the birth of the child and to pay all
336 costs of the proceeding. Bills for pregnancy, childbirth, and
337 scientific testing are admissible as evidence without requiring
338 third-party foundation testimony, and ~~shall~~ constitute prima
339 facie evidence of amounts incurred for such services or for
340 testing on behalf of the child. The court shall order either or
341 both parents owing a duty of support to the child to pay support
342 under chapter 61 pursuant to s. 61.30. The court must ~~shall~~
343 issue, upon motion by a party, a temporary order requiring child
344 support for a minor child under ~~pursuant to~~ s. 61.30 pending an
345 administrative or judicial determination of parentage, if there
346 is clear and convincing evidence of paternity on the basis of
347 genetic tests or other evidence. The court may also make a
348 determination of an appropriate parenting plan, including a

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349 time-sharing schedule, in accordance with chapter 61.

350 Section 8. Section 742.06, Florida Statutes, is amended to
351 read:

352 742.06 Jurisdiction retained for future orders.—The court
353 shall retain jurisdiction of the cause for the purpose of
354 entering such other and further orders as changing circumstances
355 of the parties may in justice and equity require. Modifications
356 of child support and time-sharing are determined under chapter
357 61.

358 Section 9. Section 744.1013, Florida Statutes, is created
359 to read:

360 744.1013 Jurisdiction for support claims.—The court has
361 jurisdiction over claims for support of a dependent adult child
362 as defined in s. 61.1255 and shall adjudicate the financial
363 obligation, including health insurance, of the dependent adult
364 child's parents and enforce the financial obligation as provided
365 in chapter 61. All support required to be paid in relation to a
366 dependent adult child over the age of 18 must be paid to the
367 dependent adult child or his or her court-appointed guardian
368 advocate, guardian, or agent under a durable power of attorney.
369 However, the court may irrevocably assign the support to a
370 special needs trust under 42 U.S.C. s. 1396p(d) (4) or to a
371 pooled trust under 42 U.S.C. s. 1396p(d) (4) (C) established for
372 the dependent adult child by the dependent adult child, his or
373 her agent under a durable power of attorney, the court, a parent
374 or grandparent, a guardian, or a guardian advocate who has been
375 delegated those rights in order to maintain the dependent adult
376 child's means-based government benefits. Any order for support
377 entered in a proceeding under this chapter or chapter 393

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378 supersedes any support order entered under chapter 61.

379 Section 10. Subsection (4) of section 744.3021, Florida
380 Statutes, is amended to read:

381 744.3021 Guardians of minors.—

382 (4) If a petition is filed under ~~pursuant to~~ this section
383 requesting appointment of a guardian for a minor who is the
384 subject of any proceeding under chapter 39 or chapter 61 and who
385 is aged 17 years and 6 months or older, the court division with
386 jurisdiction over guardianship matters has jurisdiction over the
387 proceedings under s. 744.331. The alleged incapacitated minor
388 under this subsection must ~~shall~~ be provided all the due process
389 rights conferred upon an alleged incapacitated adult under
390 ~~pursuant to~~ this chapter and applicable court rules. The order
391 of adjudication under s. 744.331 and the letters of limited or
392 plenary guardianship may issue upon the minor's 18th birthday or
393 as soon thereafter as possible. Any proceeding under ~~pursuant to~~
394 this subsection must ~~shall~~ be conducted separately from any
395 other proceeding.

396 Section 11. Section 744.422, Florida Statutes, is created
397 to read:

398 744.422 Petition for child support for a dependent adult
399 child.—Pursuant to s. 61.1255, a guardian may petition the court
400 for an order requiring either or both parents to pay periodic
401 amounts for the support, care, maintenance, education, and any
402 other needs of a dependent adult child if not otherwise provided
403 for in the guardianship plan. The amount of support is
404 determined pursuant to s. 61.31.

405 Section 12. This act shall take effect July 1, 2023.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 226

INTRODUCER: Judiciary Committee and Senator Berman

SUBJECT: Support for Dependent Adult Children

DATE: March 3, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|--------------------|
| 1. | <u>Collazo</u> | <u>Cibula</u> | <u>JU</u> | <u>Fav/CS</u> |
| 2. | <u>Delia</u> | <u>Cox</u> | <u>CF</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 226 specifies procedures for effectuating the common law duty of parents to support a dependent adult child. In this context, a dependent adult child is an adult who is dependent on others for care or support because of a mental or physical incapacity that began before the age of 18. This duty of support is detailed in court opinions and is recognized in the Florida Statutes, but the procedures for a dependent adult child to obtain support are not clear.

This bill specifies that a suit to establish support may be initiated at any time by the dependent adult child, the child's parent, or another person, including an agent under the adult child's durable power of attorney, or the adult child's guardian or guardian advocate. In determining the amount of support, the court must consider the adult child's income and assets, existing and future needs, support provided by a parent, the financial resources of each parent, and the availability of other resources and programs to support the adult child. The court may order that support payments be made to the adult child, the adult child's guardian advocate, guardian, or agent under a durable power of attorney or a special needs or pooled trust.

The bill takes effect July 1, 2023.

II. Present Situation:

Support for Dependent Adult Children

Generally, the obligation of a parent to support a child ceases when the child reaches majority, but an exception arises when the child is, from physical or mental deficiencies, unable to support himself or herself.¹ State common law imposes a duty of support upon parents for a dependent adult child who is unable to support himself or herself because of a mental or physical incapacity that began prior to the child reaching majority.² This duty of support rests upon both parents throughout the dependency and throughout their lives.³

In 1973, the Legislature adopted s. 743.07, F.S., removing the disability of nonage, while preserving an exception for continued support of a certain class of dependent adults.⁴ In its present form, the statute provides as follows (emphases added):

743.07 Rights, privileges, and obligations of persons 18 years of age or older.—

(1) The disability of nonage is hereby removed for all persons in this state who are 18 years of age or older, and they shall enjoy and suffer the rights, privileges, and obligations of all persons 21 years of age or older except as otherwise excluded by the State Constitution immediately preceding the effective date of this section and except as otherwise provided in the Beverage Law.

(2) *This section shall not prohibit any court of competent jurisdiction from requiring support for a dependent person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to such person reaching majority or if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.*

(3) This section shall operate prospectively and not retrospectively, and shall not affect the rights and obligations existing prior to July 1, 1973.

The statute preserves a common law right to seek adult dependent support from a parent in a court of competent jurisdiction, if the dependency was the result of a mental or physical incapacity that began prior to the person reaching majority.⁵ The circuit court is the proper court for such adjudications.⁶ The right to support, and the corresponding right to bring the cause of action, belongs to the mentally or physically disabled adult whose disability began prior to

¹ *Perla v. Perla*, 58 So. 2d 689, 690 (Fla. 1952).

² *Brown v. Brown*, 714 So. 2d 475, 477 (Fla. 5th DCA 1998); *Monitzer v. Monitzer*, 600 So. 2d 575, 575 (Fla. 2d DCA 1992); *Fincham v. Levin*, 155 So. 2d 883, 884 (Fla. 1st DCA 1963).

³ *Fernandez v. Fernandez*, 306 So. 3d 1013, 1015 (Fla. 3d DCA 2020) (quoting *Hastings v. Hastings*, 841 So. 2d 484, 486 (Fla. 3d DCA 2003) (internal citations omitted)).

⁴ *Fernandez*, 306 So. 3d at 1015.

⁵ *Fernandez*, 306 So. 3d at 1016-17.

⁶ *Fernandez*, 306 So. 3d at 1015.

majority,⁷ although the child does not need to be adjudicated dependent before he or she reaches majority for the court to order extended support.⁸

In cases where the parents of a dependent adult child have dissolved their marriage, and one party has fulfilled his or her child support obligations through the age of majority as provided in the final judgment of dissolution, an independent action may nevertheless be brought to adjudicate that party's continuing support obligation for the dependent adult child.⁹

Aside from the above-described statute that recognizes the existence of a common law right to seek support for dependent persons, state statutes do not otherwise recognize or regulate any right to support for dependent adult children.

Kinds of Financial Support Available to Adult Dependent Children

Government Benefits

There are many government benefits available to individuals with special needs, and they vary significantly from state to state. Some of the major programs are:¹⁰

- *Medicaid*. Medicaid provides basic medical care to low-income individuals. Most states also have “waiver” Medicaid programs covering residential, day care, career, and other services.
- *Supplemental Security Income (SSI)*. SSI provides funds for food and shelter to individuals with disabilities. To qualify, a person must have less than \$2,000 in “countable assets.”
- *Social Security Disability Insurance (SSDI)*. SSDI requires that participants have been unable to work for at least a year due to their disability. Benefits are based on the individual's income history and the number of quarters they have worked and contributed to the program.
- *Disabled Adult Child (DAC)*. DAC requires a determination that the onset of the participant's disability occurred before age 22, that the person is unmarried, and that the participant has a parent who has a disability, is retired or deceased and who qualifies for Social Security himself or herself.
- *Supplemental Nutrition Assistance Program (SNAP/Food Stamps)*. SNAP has eligibility guidelines similar to SSI.
- *Section 8 Housing*. Section 8 Housing subsidizes residential rents for families for low-income families, which may include those with special needs. Eligibility is based on a sliding scale that considers income and family size.¹¹

Special Needs Trusts

A special needs trust, sometimes called a supplemental needs trust, is a legal vehicle enabling assets to be held on behalf of someone with disabilities without affecting their eligibility for

⁷ *Id.*

⁸ *Skelly v. Skelly*, 300 So. 3d 342, 345 (Fla. 5th DCA 2020) (confirming that s. 743.07(2), F.S., does not require that a child be adjudicated dependent before he or she reaches majority for the trial court to order extended support).

⁹ *Fernandez*, 306 So. 3d at 1015.

¹⁰ Special Needs Alliance, *Government Benefits*, available at <https://www.specialneedsalliance.org/special-needs-101/government-benefits/> (last visited Feb. 27, 2023).

¹¹ *Id.*

means-tested public benefits such as Medicaid or Supplemental Security Income.¹² Put another way, the essential purpose of a special needs trust is usually to improve the quality of an individual's life without disqualifying him or her from eligibility for public benefits.¹³

Special needs trusts are meant to supplement the funds and services available through government programs.¹⁴ While assets held by the trust are not “countable” for the purpose of qualifying for such programs, there are strict regulations regarding disbursements.¹⁵ To create a valid special needs trust, the trust must be established in a way that complies with the Federal law authorizing them.¹⁶ Specifically, a special needs trust must:

- Contain the assets of an individual under age 65;
- Be established for an individual who has a disability that makes him or her substantially unable to work;¹⁷
- Be established for the benefit of the individual;
- Be established by the individual's parent, grandparent, legal guardian, or a court; and
- Reimburse the state for all of the medical assistance paid on behalf of the individual from any remaining assets upon the individual's death.¹⁸

Special needs trusts can be either “first party” or “third party” trusts.¹⁹ A first-party special needs trust is created with assets belonging to an individual with disabilities, who becomes the “beneficiary.” The funds typically consist of a personal injury settlement or an inheritance. The person must be under 65 at the time that the trust is established. Funds remaining in the trust at the beneficiary's death must be used to reimburse Medicaid for services to that individual before they can be distributed to anyone else.²⁰

A third-party special needs trust is created with assets provided by anyone other than the beneficiary, such as parents, other relatives, or friends of the beneficiary.²¹ The trust can be created and funded during the life of the originator (“inter vivos”) or as part of a last will and testament (“testamentary”). Upon the beneficiary's death, there is no requirement to use residual funds to reimburse Medicaid for services provided to the individual, and “remainder” beneficiaries may be named to receive those assets.²²

¹² Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, available at <https://www.specialneedsalliance.org/> (last visited Feb. 27, 2023).

<https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited Feb. 27, 2023).

¹³ Special Needs Alliance, *Administering a Special Needs Trust: A Handbook for Trustees* (2022 Ed.), at p. 4, available at <https://www.specialneedsalliance.org/wp-content/uploads/2022/01/2022-SNA-Handbook.pdf>. (last visited Feb. 27, 2023)

¹⁴ Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, available at <https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited Feb. 27, 2023).

¹⁵ *Id.*

¹⁶ 42 U.S.C. s. 1396p(d)(4).

¹⁷ See 42 U.S.C. s. 1382c(a)(3) (providing full details of what constitutes a disability).

¹⁸ *Id.*

¹⁹ Special Needs Alliance, *Special Needs Trusts and Personal Injury Settlements*, available at <https://www.specialneedsalliance.org/special-needs-101/special-needs-trusts-and-personal-injury-settlements/> (last visited Feb. 27, 2023).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Pooled Trusts

A pooled trust is often a practical alternative for small estates or where it is difficult to identify a person who will agree to serve as trustee. Sub-accounts belonging to many beneficiaries are managed as a single entity, usually by nonprofit corporations, which call upon the experience of social workers, money managers, and attorneys specializing in special needs cases. Because many financial institutions do not handle small special needs trusts, or charge fees that are not cost-effective for modest trusts, pooled trusts can give families access to highly skilled trustees. Funds remaining at the beneficiary's death are typically divided between Medicaid and the nonprofit entity.²³

Similar to special needs trusts, pooled trusts must be established in a way that complies with the Federal law authorizing them.²⁴ Specifically, a pooled trust must:

- Contain the assets of an individual of any age who has a disability that makes him or her substantially unable to work;²⁵
- Be established for the benefit of the individual;
- Be established and managed by a nonprofit association;
- Maintain a separate account for each beneficiary but pool the funds for investment and management purposes;
- Be established by the parent, grandparent, or legal guardian of the individual, by the individual, or by a court; and
- Reimburse the state for all of the medical assistance paid on behalf of the individual from any remaining assets upon the individual's death to the extent the funds are not retained by the trust.²⁶

Child Support

In dissolution of marriage proceedings, the court may at any time order a parent to pay support to the other parent or to a third party who has custody.²⁷ The amount of child support is based on statutory child support guidelines.²⁸ These guidelines are intended to ensure support amounts are fair.²⁹

Child support guidelines are used the first time child support is ordered and every time the child support amount changes. They are also used to review the order to see if the support amount should be changed. Child support guidelines consider:

- The income of both parents;
- The child's health care and child care costs; and

²³ *Id.*

²⁴ 42 U.S.C. s. 1396p(d)(4)(C).

²⁵ 42 U.S.C. s. 1382c(a)(3).

²⁶ *Id.*

²⁷ Section 61.13(1)(a)1.a., F.S.

²⁸ Fla. Dep't of Rev., *Child Support Amounts*, available at https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx (last visited Feb. 27, 2023); *see also* s. 61.30, F.S. (providing the child support guidelines).

²⁹ Fla. Dep't of Rev., *Child Support Amounts*, available at https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx (last visited Feb. 27, 2023).

- The standard needs for the child.³⁰

A table of support amounts based on the child's age and net income of the parents is provided in statute.³¹

The court or agency establishing support must use the guidelines to decide the amount of child support that will go in the support order.³² In special circumstances, support amounts can be higher or lower than the guideline amounts. For example, a judge may consider a child's high medical expenses as a reason to change the support amount. In most cases, judges have to give written reasons why support amounts are different from the guideline amounts.³³

All child support orders and income deduction orders entered on or after October 1, 2010, must provide, among other things, for child support to terminate on a child's 18th birthday, unless the court finds or has previously found that child support should continue:

for a dependent person beyond the age of 18 years when such dependency is because of a mental or physical incapacity which began prior to such person reaching majority or if the person is dependent in fact, is between the ages of 18 and 19, and is still in high school, performing in good faith with a reasonable expectation of graduation before the age of 19.³⁴

Additionally, a court that initially enters an order requiring a parent to make child support payments has continuing jurisdiction after entry of the initial order to modify the amount and terms and conditions of the child support payments if:

- The modification is found by the court to be in the best interests of the child;
- There is a substantial change in the circumstances of the parties;
- The child support payments are for an adult child who is dependent due to a mental or physical incapacity that began before age 18;
- The child support payments are for a child who is between the ages of 18 and 19 and is reasonably expected to graduate before age 19; or
- The child is emancipated, marries, joins the armed services, or dies.³⁵

Guardianship

If a court finds that a person does not have the ability to safely manage the things that belong to him or her, or the ability to meet his or her basic health, safety, and self-care needs, the court will

³⁰ Fla. Dep't of Rev., *Child Support Amounts*, available at https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx (last visited Feb. 27, 2023); *see also* s. 61.30, F.S. (providing the child support guidelines).

³¹ *Id.*

³² Fla. Dep't of Rev., *Child Support Amounts*, available at https://floridarevenue.com/childsupport/child_support_amounts/Pages/child_support_amounts.aspx (last visited Feb. 27, 2023).

³³ *Id.*

³⁴ Section 743.07(2), F.S.

³⁵ Section 61.13(1)(a)2., F.S.

rule that this person is incapacitated.³⁶ In many cases, after a court decides that a person is incapacitated, it will choose someone else to make some or all the decisions for the incapacitated person. This is called a guardianship.³⁷

Being placed in a guardianship results in the loss of an individual's right to make his or her own life choices. The rights that a person can lose include the right to contract, vote, travel, marry, work, consent to treatment, sue or defend lawsuits, choose living arrangements, make decisions about their social life, have a driver's license, personally apply for benefits, and manage money or property.³⁸

Guardianships must be specific to the abilities and needs of the individual and should not be any more restrictive than necessary.³⁹ Consequently, there are different types of guardianships under state law. They include:⁴⁰

- Preneed guardian;⁴¹
- Voluntary guardianship;⁴²
- Emergency temporary guardianship;⁴³
- Limited guardianship;⁴⁴
- Guardian advocate for individuals who have a developmental disability;⁴⁵
- Guardian advocate for individuals receiving mental health treatment;⁴⁶ and
- Full (*i.e.* plenary) guardianship.⁴⁷

The powers and duties of a court-appointed guardian include, but are not limited to:

- Filing an initial plan and annual reports;⁴⁸
- Making provision for the medical, mental, rehabilitative, and personal care of the person;⁴⁹
- Making residential decisions on behalf of the person;⁵⁰
- Advocating on behalf of the person in institutional and other residential settings;⁵¹ and
- Making financial decisions on behalf of the person.⁵²

³⁶ See generally Part V, Ch. 744, F.S.; see also Disability Rights Florida, *What is Guardianship?*, available at https://disabilityrightsflorida.org/disability-topics/disability_topic_info/what_is_guardianship (last visited Feb. 27, 2023).

³⁷ See *id.*

³⁸ See 744.1012(1), F.S.; see also Disability Rights Florida, *Types of Guardianship*, available at https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship (last visited Feb. 27, 2023).

³⁹ Section 744.1012(2), F.S.; see also Disability Rights Florida, *Types of Guardianship*, available at https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship (last visited Feb. 27, 2023).

⁴⁰ See generally Disability Rights Florida, *Types of Guardianship*, available at https://disabilityrightsflorida.org/disability-topics/disability_topic_info/types_of_guardianship (last visited Feb. 27, 2023).

⁴¹ Sections 744.3045 and 744.3046, F.S.

⁴² Section 744.341, F.S.

⁴³ Section 744.3031, F.S.

⁴⁴ Section 744.441(1), F.S.; see also s. 744.102(9)(a), F.S. (defining "limited guardian").

⁴⁵ Sections 744.3085 and 393.12, F.S.

⁴⁶ Sections 744.3085 and 394.4598, F.S.

⁴⁷ Section 744.441(1), F.S.; see also s. 744.102(9)(b), F.S. (defining "plenary guardian").

⁴⁸ Section 744.361(6)-(7), F.S.

⁴⁹ Section 744.361(13)(f), F.S.

⁵⁰ Section 744.361(13)(h), F.S.

⁵¹ Section 744.361(13)(i), F.S.

⁵² Section 744.361(12), F.S.

Any resident of the state who is 18 years old and of sound mind is qualified to act as a guardian.⁵³ Additionally, a non-resident may serve if he or she is related to the person with a developmental disability by blood, adoption, or law.⁵⁴ Certain individuals, however, cannot be appointed to act as a guardian.⁵⁵

Guardians must file an initial guardianship report with the court within 60 days after appointment.⁵⁶ The initial guardianship report must consist of an initial guardianship plan,⁵⁷ which must include certain specified information for the person for whom the guardianship is being established. For example, the initial guardianship plan must include information regarding the provision of medical, mental, or personal care services for the welfare of the person, as well as the place and kind of residential setting best suited for the needs of the person.⁵⁸

Guardians must also file an annual guardianship report with the court.⁵⁹ The annual guardianship report must be filed within 90 days after the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. The annual guardianship report must include an annual guardianship plan⁶⁰ containing information regarding the residence of the person for whom the guardianship has been established; the medical and mental health conditions, treatment, and rehabilitation needs of the person; the social condition of the person; and a list of any preexisting orders not to resuscitate, or preexisting advance directives.⁶¹

Guardian Advocates

A “guardian advocate” is a person appointed by a written order of the court to represent a person with developmental disabilities.⁶² A “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.⁶³

Guardian advocacy is a circuit court process for family members, caregivers, or friends of individuals with a developmental disability to obtain the legal authority to act on their behalf if the person lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property, or if the person has voluntarily petitioned for the appointment of a guardian advocate.⁶⁴

⁵³ Section 744.309(1), F.S.

⁵⁴ Section 744.309(2), F.S.

⁵⁵ See generally ss. 744.309(3), (6), F.S.

⁵⁶ Sections 744.361(6) and 744.362(1), F.S.

⁵⁷ Section 744.362(1), F.S.

⁵⁸ See s. 744.363(1)(a)-(f), F.S.

⁵⁹ Section 744.367(1), F.S.

⁶⁰ Section 744.367(3)(a), F.S.

⁶¹ Section 744.3675, F.S.

⁶² Sections 393.063(21) and 393.12, F.S.

⁶³ Section 393.063(12), F.S.

⁶⁴ See s. 393.12(2)(a), F.S.; see also Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 1, available at https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf. (last visited Feb. 27, 2023)

State law recognizes the appointment of a guardian advocate as a less restrictive alternative to guardianship.⁶⁵ A guardian advocate can be appointed without having to declare the person with a developmental disability incapacitated.⁶⁶ The process of becoming a guardian advocate of a person with a developmental disability does not require the hiring of an attorney, although during the proceedings the court will appoint an attorney for the person with the developmental disability to ensure that his or her best interests are protected.⁶⁷

If the person lacks the capacity to make any decisions about his or her care, it may be more appropriate for the court to appoint a plenary guardian who is authorized to act on the person's behalf in all matters. The process of appointing a plenary guardian requires the court to determine that the person is incapacitated, and the person petitioning to become a plenary guardian must have an attorney.⁶⁸

A guardian advocate for a person with a developmental disability has the same powers, duties, and responsibilities required of a guardian under the guardianship statute or as defined by court order issued under the statute governing the appointment of guardian advocates.⁶⁹

The qualifications to serve as a guardian advocate are the same as those required of any guardian under the guardianship statute.⁷⁰ The court will also consider the wishes expressed by a developmentally disabled person as to whom will be appointed as his or her guardian advocate.⁷¹ A guardian advocate need not be the caregiver of the person with a disability.⁷²

III. Effect of Proposed Changes:

The common law and statutes of this state recognize that a parent has a duty to support a dependent adult child who has a mental or physical incapacity that began before the age of 18. Under current law, a dependent adult child may pursue support from a parent in court, but the procedures for doing so, proof required to obtain support, and standards governing awards are not clear. This bill clarifies those matters by creating or amending statutes relating to the

⁶⁵ Section 744.3085, F.S.

⁶⁶ Section 393.12(2)(a), F.S.

⁶⁷ Section 393.12(2)(b), F.S.; *see also* Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 2, available at https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf. (last visited Feb. 27, 2023)

⁶⁸ Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 1, available at https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf. (last visited Feb. 27, 2023)

⁶⁹ Section 393.12(10), F.S.

⁷⁰ Fifth Judicial Circuit, Lake County, Florida, *Florida Law and Guardian Advocacy: A Guide for Families and Friends of Developmentally Disabled Individuals* (Oct. 2014), at 2, available at <https://www.lakecountyclerk.org/forms/Guardianship/DavisGuardianAdvocacyManual.pdf> (last visited Feb. 27, 2023)

⁷¹ *Id.*

⁷² Eighteenth Judicial Circuit, Seminole County, Florida, *Florida Guardian Advocate Law and Information* (Jul. 2017), at 2, available at https://flcourts18.org/docs/sem/Florida_Guardian_Advocacy_Law_and_information_Guide.pdf. (last visited Feb. 27, 2023)

dissolution of marriage, support and time-sharing;⁷³ developmental disabilities;⁷⁴ determination of parentage;⁷⁵ and guardianship.⁷⁶

Amendments to Dissolution of Marriage, Support, and Time-Sharing Statutes

Within the statutes governing dissolution of marriage, support, and time-sharing, the bill creates s. 61.1255, F.S., entitled “Support for dependent adult children; powers of court,” to provide for the support of dependent adult children. Specifically, the bill:

- Defines the term “dependent adult child” to mean an unmarried adult who is incapable of self-support as a result of physical or mental incapacity that began before the person reached the age of 18.
- Establishes that the parents of a dependent adult child are responsible for supporting that child.
- Requires that any right of a parent or other person to decide where the dependent adult child will live be established in a guardianship proceeding brought under the statutes governing developmental disabilities or guardianship.
- Provides that a suit to establish support for a dependent adult child may only be filed by one of the following:
 - The dependent adult child or his or her agent under a durable power of attorney, if the dependent adult child’s right to sue or defend lawsuits has not been removed by the court. Any such action must be brought in the circuit court in the county in which the child resides.
 - A parent or other person on behalf of the dependent adult child. Any such action must be brought under the statutes governing developmental disabilities or guardianship.
 - The dependent adult child’s guardian advocate appointed under the statutes governing developmental disabilities, or guardian appointed under the statutes governing guardianship.
- Provides that a suit to establish support for a dependent adult child may be filed at any time after he or she reaches the age of 17 years and 6 months, unless such an order is already in place, having been established during the child’s minority.
- Provides that if a court has jurisdiction over the parties because of an issue of child support, the parents may agree in writing to extend support in the existing case if the agreement is submitted to the court for approval before the dependent adult child reaches the age of 18. Otherwise, the amount of support to be paid by one parent to the other must be established in a guardianship proceeding or in a separate support proceeding in circuit court pursuant to the bill. The bill does not preclude a court from establishing support, ordering continued support, or enforcing or modifying support orders established under the statutes governing dissolution of marriage, support, and time-sharing, absent an agreement by the parents.
- Provides that support ordered after the dependent adult child reaches the age of 18 may be paid only to the dependent adult child or his or her court-appointed guardian advocate, guardian, or agent under a durable power of attorney. However, the court may irrevocably

⁷³ Chapter 61, F.S.

⁷⁴ Chapter 393, F.S.

⁷⁵ Chapter 742, F.S.

⁷⁶ Chapter 744, F.S.

assign the support to a special needs trust or to a pooled trust under Federal law⁷⁷ established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits.

- Prohibits the Department of Revenue from filing a petition to establish, modify, or enforce a support order under the bill.

The bill also creates s. 61.31, F.S., entitled "Amount of support for a dependent adult child," to provide for the amount of support for dependent adult children. In determining the amount of support to be paid after a dependent adult child reaches the age of 18, the specific terms and conditions of such support, and the rights and duties of both parents with respect to support, the court must determine and give consideration to all of the following:

- The dependent adult child's income and assets;
- Any existing and future needs of the dependent adult child which are directly related to his or her mental or physical incapacity and the substantial care and personal supervision directly required by or related to that incapacity;
- Whether a parent pays for or will pay for the care or supervision of the dependent adult child or provides or will provide substantial care or personal supervision to the dependent adult child himself or herself;
- The financial resources available to each parent for the support, care, and supervision of the dependent adult child; and
- Any other financial resources or other resources or programs available for the support, care, and supervision of the dependent adult child.

The bill provides that the court may irrevocably assign the support to a special needs trust or to a pooled trust under Federal law⁷⁸ established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits. In making its decisions, the court must take into consideration any state or federal programs and benefits that the dependent adult child is receiving and the effect that the court-ordered support would have on the dependent adult child's continued eligibility for such programs and benefits.

The bill amends the statute governing child support and parenting⁷⁹ by replacing certain statutory cross-references⁸⁰ to s. 743.07(2), F.S., with specific language from the cross-referenced statute. The replacement of the cross-references with specific language from the cross-referenced statute is a technical change that does not create new rights or obligations relating to child support. The language inserted from the cross-referenced statute relates to the authority of a court to order child support for a child who is between 18 and 19 and is reasonably expected to graduate high school before age 19.

⁷⁷ See 42 U.S.C. s. 1396p(d)(4) (providing for special needs trusts); *see also* 42 U.S.C. s. 1396p(d)(4)(C) (providing for pooled trusts).

⁷⁸ *See id.*

⁷⁹ Section 61.13, F.S.

⁸⁰ Section 743.07(2), F.S.

The bill amends the statute governing child support and guidelines,⁸¹ to provide that the guidelines in that section do not apply to support for a dependent adult child, and that the amount of support for a dependent adult child must be determined with reference to the new statute created by the bill governing the amount of support for a dependent adult child.

The bill amends the statute governing child support guidelines and retroactive child support.⁸² The amendment clarifies that the existing child support guidelines apply to a child support order for a child who is dependent in fact and between the ages of 18 and 19 and who is still in high school and is performing in good faith with a reasonable expectation of graduation before he or she reaches the age of 19.

Amendments to Developmental Disabilities Statute

Within the statutes governing developmental disabilities, the bill amends the section governing the capacity and appointment of guardian advocates,⁸³ to provide that a person who is being considered for appointment or is appointed as a guardian advocate is not required to be represented by an attorney if he or she is delegated the right of a parent to receive periodic payments for the support, care, maintenance, education, or other needs of the person with a developmental disability.

The bill also provides that a petition to appoint a guardian advocate may include a request for periodic payments from either or both parents of the person with a developmental disability for the support, care, maintenance, education, or other needs of that person.

Amendments to Determination of Parentage Statute

Within the statutes governing the determination of parentage, the bill amends the section governing hearings and court orders for support, hospital expenses, and attorney fees,⁸⁴ to make conforming changes. The bill also amends the section governing the retention of jurisdiction for future orders,⁸⁵ to clarify that modifications of child support and time-sharing must be determined under the statutes governing dissolution of marriage, support, and time-sharing.

Amendments to Guardianship Statute

Within the statutes governing guardianship, the bill creates s. 744.1013, F.S., entitled “Jurisdiction for support claims,” to provide jurisdiction for dependent adult child-related support claims. The bill provides that the court has jurisdiction over claims for support of a dependent adult child and must adjudicate the financial obligation, including health insurance, of the dependent adult child’s parents and enforce the financial obligation as provided in the statute governing dissolution of marriage, support, and time-sharing. All support required to be paid in relation to a dependent adult child over the age of 18 must be paid to the dependent adult child or his or her court-appointed guardian advocate, guardian, or agent under a durable power of

⁸¹ Section 61.29, F.S.

⁸² Section 61.30, F.S.

⁸³ Section 393.12, F.S.

⁸⁴ Section 742.031, F.S.

⁸⁵ Section 742.06, F.S.

attorney. However, the court may irrevocably assign the support to a special needs trust or to a pooled trust under Federal law⁸⁶ established for the dependent adult child by the dependent adult child, his or her agent under a durable power of attorney, the court, a parent or grandparent, a guardian, or a guardian advocate who has been delegated those rights in order to maintain the dependent adult child's means-based government benefits. Any order for support entered in a proceeding under the statutes governing guardianship or developmental disabilities supersedes any support order entered under the statute governing the dissolution of marriage, support, and time-sharing.

The bill also creates s. 744.422, F.S., entitled "Petition for child support for a dependent adult child," to authorize the filing of petitions in court for child support for a dependent adult child. The bill provides that pursuant to the new statute created within the dissolution of marriage, support, and time-sharing statutes providing for the support of dependent adult children, a guardian may petition the court for an order requiring either or both parents to pay periodic amounts for the support, care, maintenance, education, and any other needs of a dependent adult child if not otherwise provided for in the guardianship plan. The amount of support must be determined pursuant to the new statute created within the dissolution of marriage, support, and time-sharing statutes providing for same.

The bill amends the statute governing guardians of minors,⁸⁷ to include a reference to the dissolution of marriage, support, and time-sharing statute.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

⁸⁶ See 42 U.S.C. s. 1396p(d)(4) (providing for special needs trusts); *see also* 42 U.S.C. s. 1396p(d)(4)(C) (providing for pooled trusts).

⁸⁷ Section 744.3021, F.S.

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

None.

B. Private Sector Impact:

By providing clear procedures to obtain support for adult dependent children, more suits seeking support will likely be pursued and more support obtained. However, the clear procedures may reduce the time and expense of obtaining awards.

C. Government Sector Impact:

According to the Office of the State Courts Administrator (OSCA), any additional workload on the courts as a result of the bill will apply only to a small number of cases. Moreover, OSCA reports that it does not have sufficient “data to quantifiably establish the increase in judicial time and workload as a result of additional court filings” that result from the bill.⁸⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 61.1255, 61.31, 744.1013, and 744.422.

This bill substantially amends the following sections of the Florida Statutes: 61.13, 61.29, 61.30, 393.12, 742.031, 742.06, and 744.3021.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on February 7, 2023:**

- Makes technical changes to s. 61.13(1)(a)2., F.S., to clarify that the provided list was intended to establish separate independent bases for which a court is authorized to modify the amount and terms and conditions of child support payments.
- Replaces references to “attorney in fact” with references to “agent under a durable power of attorney,” to ensure consistency within the bill and to use the more common

⁸⁸ Office of the State Courts Administrator, 2023 Judicial Impact Statement for SB 226 (Feb. 2, 2023).

and modern term to refer to a person having authority to act under a power of attorney.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 61.1255, Florida Statutes, is created to
read:

61.1255 Support for dependent adult children; legislative
intent; powers of court.—

(1) LEGISLATIVE INTENT.—

(a) It is the intent of the Legislature to:



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11 1. Codify and clarify existing common law and Florida case
12 law recognizing that the parents of a dependent adult child have
13 an obligation to support that child;

14 2. Provide procedures for establishing support for a
15 dependent adult child; and

16 3. Provide safeguards, when establishing court-ordered
17 support for a dependent adult child, to protect and preserve any
18 means-based government benefits the dependent adult child is
19 receiving or may be entitled to receive.

20 (2) POWERS OF COURT.—

21 (a) For purposes of this section, the term "dependent adult
22 child" means an unmarried adult who is incapable of self-support
23 as a result of a physical or mental incapacity that began before
24 the person reached the age of 18.

25 (b) The right of a parent or other person to decide where
26 the dependent adult child will live must be established in a
27 guardianship proceeding brought under chapter 393 or chapter
28 744. Nothing in this paragraph shall be construed to require a
29 guardianship under chapter 744 or guardian advocacy under
30 chapter 393 in order for a court to order support for a
31 dependent adult child.

32 (c) A suit to establish support for a dependent adult child
33 may only be filed by one of the following:

34 1. The dependent adult child or his or her agent under a
35 durable power of attorney. Any such action must be brought in
36 the circuit court in the county in which the dependent adult
37 child resides.

38 2. A parent or other person on behalf of the dependent
39 adult child. Any such action must be brought under chapter 393



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40 or chapter 744.

41 3. The dependent adult child's guardian advocate appointed
42 under chapter 393 or guardian appointed under chapter 744, if
43 the dependent adult child's right to sue or defend lawsuits has
44 been removed by the court.

45 (e) A suit to establish support for a dependent adult child
46 may be filed at any time after he or she reaches the age of 17
47 years and 6 months, unless such an order is already in place,
48 having been established during the child's minority.

49 (f) If a court has jurisdiction over the parties because of
50 an issue of child support, the parents may agree in writing to
51 provide for dependent adult support in the existing case if the
52 agreement is submitted to the court for approval before the
53 dependent adult child reaches the age of 18. Otherwise, the
54 amount of support to be paid by one or both parents must be
55 established in a guardianship proceeding or in a separate
56 support proceeding in circuit court pursuant to subparagraph
57 (c)1. This section does not preclude a court from establishing
58 support, ordering continued support, or enforcing or modifying
59 support orders established under this chapter.

60 (g) Support ordered after the dependent adult child reaches
61 the age of 18 may be paid only to the dependent adult child or
62 his or her court-appointed guardian advocate, guardian, or agent
63 under a durable power of attorney. However, the court may
64 irrevocably assign the support to a special needs trust under 42
65 U.S.C. s. 1396p(d) (4) or to a pooled trust under 42 U.S.C. s.
66 1396p(d) (4) (C) established for the dependent adult child by the
67 dependent adult child, his or her agent under a durable power of
68 attorney, the court, a parent or grandparent, a guardian, or a



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69 guardian advocate who has been delegated those rights in order
70 to maintain the dependent adult child's means-based government
71 benefits.

72 (h) The Department of Revenue may not file a petition to
73 establish, modify, or enforce a support order under this
74 section.

75 Section 2. Paragraph (a) of subsection (1) and paragraph
76 (b) of subsection (2) of section 61.13, Florida Statutes, are
77 amended to read:

78 61.13 Support of children; parenting and time-sharing;
79 powers of court.—

80 (1) (a) In a proceeding under this chapter, the court may at
81 any time order either or both parents who owe a duty of support
82 to a child to pay support to the other parent or, ~~in the case of~~
83 ~~both parents,~~ to a third party who has custody in accordance
84 with the child support guidelines schedule in s. 61.30.

85 1. All child support orders and income deduction orders
86 entered on or after October 1, 2010, must provide:

87 a. For child support to terminate on a child's 18th
88 birthday unless the court finds or previously found that the
89 minor child, or the child who is dependent in fact and between
90 the ages of 18 and 19, is still in high school and is performing
91 in good faith with a reasonable expectation of graduation before
92 he or she reaches the age of 19 ~~s. 743.07(2) applies,~~ or the
93 continued support is otherwise agreed to by the parties;

94 b. A schedule, based on the record existing at the time of
95 the order, stating the amount of the monthly child support
96 obligation for all the minor children at the time of the order
97 and the amount of child support that will be owed for any



98 remaining children after one or more of the children are no
99 longer entitled to receive child support; and

100 c. The month, day, and year that the reduction or
101 termination of child support becomes effective.

102 2. The court initially entering an order requiring one or
103 both parents to make child support payments has continuing
104 jurisdiction after the entry of the initial order to modify the
105 amount and terms and conditions of the child support payments
106 if: the modification is found by the court to be in the best
107 interests of the child; ~~when~~ the child reaches majority; ~~if~~
108 there is a substantial change in the circumstances of the
109 parties; the minor child, or the child who is dependent in fact
110 and between the ages of 18 and 19, is still in high school and
111 is performing in good faith with a reasonable expectation of
112 graduation before he or she reaches the age of 19 if s.
113 ~~743.07(2) applies;~~ or the ~~when~~ a child is emancipated, marries,
114 joins the armed services, or dies. The court initially entering
115 a child support order has continuing jurisdiction to require the
116 obligee to report to the court on terms prescribed by the court
117 regarding the disposition of the child support payments.

118 (2)

119 (b) A parenting plan approved by the court must, at a
120 minimum:

121 1. Describe in adequate detail how the parents will share
122 and be responsible for the daily tasks associated with the
123 upbringing of the child;

124 2. Include the time-sharing schedule arrangements that
125 specify the time that the minor child will spend with each
126 parent;



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127 3. Designate who will be responsible for:
128 a. Any and all forms of health care. If the court orders
129 shared parental responsibility over health care decisions, ~~the~~
130 ~~parenting plan must provide that~~ either parent may consent to
131 mental health treatment for the child unless stated otherwise in
132 the parenting plan.
133 b. School-related matters, including the address to be used
134 for school-boundary determination and registration.
135 c. Other activities; and
136 4. Describe in adequate detail the methods and technologies
137 that the parents will use to communicate with the child.
138 Section 3. Section 61.29, Florida Statutes, is amended to
139 read:
140 61.29 Child support guidelines; principles; application.-
141 (1) The following principles establish the public policy of
142 the State of Florida in the creation of the child support
143 guidelines:
144 (a)~~(1)~~ Each parent has a fundamental obligation to support
145 his or her minor or legally dependent child.
146 (b)~~(2)~~ The guidelines schedule is based on the parent's
147 combined net income estimated to have been allocated to the
148 child as if the parents and children were living in an intact
149 household.
150 (c)~~(3)~~ The guidelines encourage fair and efficient
151 settlement of support issues between parents and minimizes the
152 need for litigation.
153 (2) The guidelines in this section do not apply to support
154 for a dependent adult child as defined in s. 61.1255. The amount
155 of support for a dependent adult child is determined by s.



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156 61.31.

157 Section 4. Paragraph (a) of subsection (1) of section
158 61.30, Florida Statutes, is amended to read:

159 61.30 Child support guidelines; retroactive child support.-

160 (1) (a) The child support guideline amount as determined by
161 this section presumptively establishes the amount the trier of
162 fact must ~~shall~~ order as child support for a minor child, or a
163 child who is dependent in fact and between the ages of 18 and 19
164 and who is still in high school and is performing in good faith
165 with a reasonable expectation of graduation before he or she
166 reaches the age of 19, in an initial proceeding for such support
167 or in a proceeding for modification of an existing order for
168 such support, whether the proceeding arises under this or
169 another chapter. The trier of fact may order payment of child
170 support which varies, plus or minus 5 percent, from the
171 guideline amount, after considering all relevant factors,
172 including the needs of the child or children, age, station in
173 life, standard of living, and the financial status and ability
174 of each parent. The trier of fact may order payment of child
175 support in an amount which varies more than 5 percent from such
176 guideline amount only upon a written finding explaining why
177 ordering payment of such guideline amount would be unjust or
178 inappropriate. Notwithstanding the variance limitations of this
179 section, the trier of fact must ~~shall~~ order payment of child
180 support which varies from the guideline amount as provided in
181 paragraph (11) (b) whenever any of the children are required by
182 court order or mediation agreement to spend a substantial amount
183 of time with either parent. This requirement applies to any
184 living arrangement, whether temporary or permanent.



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185 Section 5. Section 61.31, Florida Statutes, is created to
186 read:

187 61.31 Amount of support for a dependent adult child.—

188 (1) In determining the amount of support to be paid after a
189 dependent adult child as defined in s. 61.1255 reaches the age
190 of 18, the specific terms and conditions of such support, and
191 the rights and duties of both parents with respect to the
192 support, the court shall determine and give consideration to all
193 of the following:

194 (a) The dependent adult child's income and assets.

195 (b) Any existing and future needs of the dependent adult
196 child which are directly related to his or her mental or
197 physical incapacity and the substantial care and personal
198 supervision directly required by or related to that incapacity.

199 (c) Whether a parent or other person pays for or will pay
200 for the care or supervision of the dependent adult child or
201 provides or will provide substantial care or personal
202 supervision to the dependent adult child himself or herself.

203 (d) The financial resources available to each parent for
204 the support, care, and supervision of the dependent adult child.

205 (e) Any other financial resources or other resources or
206 programs available for the support, care, and supervision of the
207 dependent adult child.

208 (2) The court may irrevocably assign the support to a
209 special needs trust under 42 U.S.C. s. 1396p(d) (4) or to a
210 pooled trust under 42 U.S.C. s. 1396p(d) (4) (C) established for
211 the dependent adult child by the dependent adult child, his or
212 her agent under a durable power of attorney, the court, a parent
213 or grandparent, a guardian, or a guardian advocate who has been



214 delegated those rights in order to maintain the dependent adult
215 child's means-based government benefits.

216 (3) In making its decisions, the court shall take into
217 consideration:

218 (a) Any state or federal programs and benefits that the
219 dependent adult child is receiving or may receive due to
220 reaching the age of majority; and

221 (b) The effect that the court-ordered support would have on
222 the dependent adult child's eligibility for such programs and
223 benefits.

224 (4) The court must not order support that will cause
225 ineligibility for programs in which the dependent adult child
226 currently participates, or programs and services they are
227 reasonably expected to become eligible for due to their reaching
228 the age of majority.

229 Section 6. Paragraph (b) of subsection (2) and subsection
230 (3) of section 393.12, Florida Statutes, are amended to read:

231 393.12 Capacity; appointment of guardian advocate.—

232 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

233 (b) A person who is being considered for appointment or is
234 appointed as a guardian advocate is not required to ~~need not~~ be
235 represented by an attorney unless required by the court or if
236 the guardian advocate is delegated any rights regarding property
237 other than the right to be the representative payee for
238 government benefits or the right of a parent to receive periodic
239 payments for the support, care, maintenance, education, or other
240 needs of the person with a developmental disability. This
241 paragraph applies only to proceedings relating to the
242 appointment of a guardian advocate and the court's supervision



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243 of a guardian advocate and is not an exercise of the
244 Legislature's authority under ~~pursuant to~~ s. 2(a), Art. V of the
245 State Constitution.

246 (3) PETITION.—

247 (a) A petition to appoint a guardian advocate for a person
248 with a developmental disability may be executed by an adult
249 person who is a resident of this state. The petition must be
250 verified and must:

251 1.~~(a)~~ State the name, age, and present address of the
252 petitioner and his or her relationship to the person with a
253 developmental disability;

254 2.~~(b)~~ State the name, age, county of residence, and present
255 address of the person with a developmental disability;

256 3.~~(c)~~ Allege that the petitioner believes that the person
257 needs a guardian advocate and specify the factual information on
258 which such belief is based;

259 4.~~(d)~~ Specify the exact areas in which the person lacks the
260 decisionmaking ability to make informed decisions about his or
261 her care and treatment services or to meet the essential
262 requirements for his or her physical health or safety;

263 5.~~(e)~~ Specify the legal disabilities to which the person is
264 subject; and

265 6.~~(f)~~ State the name of the proposed guardian advocate, the
266 relationship of that person to the person with a developmental
267 disability; the relationship that the proposed guardian advocate
268 had or has with a provider of health care services, residential
269 services, or other services to the person with a developmental
270 disability; and the reason why this person should be appointed.
271 The petition must also state if a willing and qualified guardian



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272 advocate cannot be located, ~~the petition shall so state.~~

273 (b) A petition to appoint a guardian advocate may include a
274 request for periodic payments from either or both parents of the
275 person with a developmental disability for the support, care,
276 maintenance, education, or other needs of that person pursuant
277 to chapter 61.1255. Nothing in this section shall be construed
278 to confer any obligation or duty for a guardian advocate to
279 pursue support for the person with a developmental disability.

280 Section 7. Subsection (1) of section 742.031, Florida
281 Statutes, is amended to read:

282 742.031 Hearings; court orders for support, hospital
283 expenses, and attorney ~~attorney's~~ fee.—

284 (1) Hearings for the purpose of establishing or refuting
285 the allegations of the complaint and answer must ~~shall~~ be held
286 in the chambers and may be restricted to persons, in addition to
287 the parties involved and their counsel, as the judge in his or
288 her discretion may direct. The court shall determine the issues
289 of paternity of the child and the ability of the parents to
290 support the child. Each party's social security number must
291 ~~shall~~ be recorded in the file containing the adjudication of
292 paternity. If the court finds that the alleged father is the
293 father of the child, it must ~~shall~~ so order. If appropriate, the
294 court may ~~shall~~ order the father to pay the complainant, her
295 guardian, or any other person assuming responsibility for the
296 child moneys sufficient to pay reasonable attorney ~~attorney's~~
297 fees, hospital or medical expenses, cost of confinement, and any
298 other expenses incident to the birth of the child and to pay all
299 costs of the proceeding. Bills for pregnancy, childbirth, and
300 scientific testing are admissible as evidence without requiring



301 third-party foundation testimony~~7~~ and ~~shall~~ constitute prima
302 facie evidence of amounts incurred for such services or for
303 testing on behalf of the child. The court shall order either or
304 both parents owing a duty of support to the child to pay support
305 under chapter 61 pursuant to s. 61.30. The court must ~~shall~~
306 issue, upon motion by a party, a temporary order requiring child
307 support for a minor child under pursuant to s. 61.30 pending an
308 administrative or judicial determination of parentage~~7~~ if there
309 is clear and convincing evidence of paternity on the basis of
310 genetic tests or other evidence. The court may also make a
311 determination of an appropriate parenting plan, including a
312 time-sharing schedule, in accordance with chapter 61.

313 Section 8. Section 742.06, Florida Statutes, is amended to
314 read:

315 742.06 Jurisdiction retained for future orders.—The court
316 shall retain jurisdiction of the cause for the purpose of
317 entering such other and further orders as changing circumstances
318 of the parties may in justice and equity require. Modifications
319 of child support and time-sharing are determined under chapter
320 61.

321 Section 9. Section 744.1013, Florida Statutes, is created
322 to read:

323 744.1013 Jurisdiction for support claims.—The court has
324 jurisdiction over claims for support of a dependent adult child
325 as defined in s. 61.1255 and shall adjudicate the financial
326 obligation, including health insurance, of the dependent adult
327 child's parents and enforce the financial obligation as provided
328 in chapter 61. All support required to be paid in relation to a
329 dependent adult child over the age of 18 must be paid to the



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330 dependent adult child or his or her court-appointed guardian
331 advocate, guardian, or agent under a durable power of attorney.
332 However, the court may irrevocably assign the support to a
333 special needs trust under 42 U.S.C. s. 1396p(d)(4) or to a
334 pooled trust under 42 U.S.C. s. 1396p(d)(4)(C) established for
335 the dependent adult child by the dependent adult child, his or
336 her agent under a durable power of attorney, the court, a parent
337 or grandparent, a guardian, or a guardian advocate who has been
338 delegated those rights in order to maintain the dependent adult
339 child's means-based government benefits. Any order for support
340 entered in a proceeding under this chapter or chapter 393
341 supersedes any support order entered under chapter 61.

342 Section 10. Subsection (4) of section 744.3021, Florida
343 Statutes, is amended to read:

344 744.3021 Guardians of minors.—

345 (4) If a petition is filed under ~~pursuant to~~ this section
346 requesting appointment of a guardian for a minor who is the
347 subject of any proceeding under chapter 39 or chapter 61 and who
348 is aged 17 years and 6 months or older, the court division with
349 jurisdiction over guardianship matters has jurisdiction over the
350 proceedings under s. 744.331. The alleged incapacitated minor
351 under this subsection must ~~shall~~ be provided all the due process
352 rights conferred upon an alleged incapacitated adult under
353 ~~pursuant to~~ this chapter and applicable court rules. The order
354 of adjudication under s. 744.331 and the letters of limited or
355 plenary guardianship may issue upon the minor's 18th birthday or
356 as soon thereafter as possible. Any proceeding under ~~pursuant to~~
357 this subsection must ~~shall~~ be conducted separately from any
358 other proceeding.



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359 Section 11. Section 744.422, Florida Statutes, is created
360 to read:

361 744.422 Petition for child support for a dependent adult
362 child.—Pursuant to s. 61.1255, a guardian may petition the court
363 for an order requiring either or both parents to pay periodic
364 amounts for the support, care, maintenance, education, and any
365 other needs of a dependent adult child if not otherwise provided
366 for in the guardianship plan. The amount of support is
367 determined pursuant to s. 61.31. Nothing in this section shall
368 be construed to confer any obligation or duty for a guardian to
369 pursue support on behalf of a ward.

370 Section 12. This act shall take effect July 1, 2023.

371
372 ===== T I T L E A M E N D M E N T =====

373 And the title is amended as follows:

374 Delete everything before the enacting clause
375 and insert:

376 A bill to be entitled
377 An act relating to support for dependent adult
378 children; creating s. 61.1255, F.S.; providing
379 legislative intent; defining the term "dependent adult
380 child"; requiring that certain rights of the parents
381 of a dependent adult child be established in a
382 guardianship proceeding; specifying that a
383 guardianship is not necessary for certain actions of
384 the court; specifying individuals who may file a suit
385 to establish support for a dependent adult child;
386 specifying a timeframe during which such suits may be
387 filed; providing an exception; specifying procedures



388 for establishing support; specifying who may receive
389 such support before and after the dependent adult
390 child reaches the age of 18; providing construction;
391 authorizing the court to assign support to certain
392 trusts established for a dependent adult child;
393 prohibiting the Department of Revenue from filing
394 petitions to establish, modify, or enforce certain
395 support orders; amending s. 61.13, F.S.; conforming a
396 provision to changes made by the act; specifying that
397 a child support order does not terminate on the
398 child's 18th birthday in certain circumstances;
399 specifying that a court may modify a child support
400 order for adult children in certain circumstances;
401 authorizing either parent to consent to mental health
402 treatment for a child in certain circumstances unless
403 stated otherwise in the parenting plan; amending s.
404 61.29, F.S.; providing that child support guidelines
405 do not apply to certain cases; amending s. 61.30,
406 F.S.; conforming a provision to changes made by the
407 act; creating s. 61.31, F.S.; providing factors a
408 court must consider when determining the amount of
409 child support for a dependent adult child; authorizing
410 a court to assign support to certain trusts
411 established for a dependent adult child for a
412 specified purpose; requiring the court to consider
413 certain state and federal programs and benefits when
414 making its decisions; prohibiting the court from
415 ordering support which will cause ineligibility for
416 certain programs; specifying that no obligations or



417 duties are conferred on guardian advocates to provide
418 support; amending s. 393.12, F.S.; providing an
419 additional circumstance under which a guardian
420 advocate must be represented by an attorney in
421 guardianship proceedings; specifying that petitions to
422 appoint a guardian advocate for a person with
423 disabilities may include certain requests for support
424 from the person's parents; amending ss. 742.031 and
425 742.06, F.S.; conforming provisions to changes made by
426 the act; creating s. 744.1013, F.S.; assigning
427 jurisdiction over petitions for support of dependent
428 adult children to the guardianship court; specifying
429 who may receive such support for dependent adult
430 children over the age of 18; authorizing a court to
431 assign support to certain trusts established for a
432 dependent adult child for a specified purpose;
433 specifying that such support orders supersede any
434 orders entered under certain other provisions;
435 amending s. 744.3021, F.S.; conforming provisions to
436 changes made by the act; creating s. 744.422, F.S.;
437 authorizing a guardian of a dependent adult child to
438 petition the court for certain support payments from
439 the dependent adult child's parents in certain
440 circumstances; specifying that the amount of such
441 support is determined pursuant to certain provisions;
442 specifying that no obligations or duties are conferred
443 on guardians to provide support; providing an
444 effective date.

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; specifying
7 the task force's purpose; specifying the composition
8 of the task force; specifying a timeframe for the
9 appointment of task force members; specifying
10 requirements for meetings; specifying duties of the
11 task force; authorizing the department to request
12 assistance from state departments and agencies and
13 requiring state departments and agencies to provide
14 requested assistance to the task force; requiring the
15 task force to submit reports to the Governor and the
16 Legislature by certain dates; providing for
17 dissolution of the task force; providing for future
18 repeal; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 39.909, Florida Statutes, is created to
23 read:

24 39.909 Domestic Violence Task Force.—

25 (1) CREATION.—The Domestic Violence Task Force, a task
26 force as defined in s. 20.03(8), is created adjunct to the
27 department. The department shall provide administrative and
28 support staff services relating to the functions of the task
29 force.

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30 (2) PURPOSE.—The purpose of the task force is to evaluate
31 the child welfare system in relation to domestic violence
32 investigations, consider proposed legislation, and recommend
33 changes to existing law, rules, and policies.

34 (3) MEMBERSHIP; APPOINTMENT; MEETINGS.—

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

36 1. The Secretary of Children and Families or the
37 secretary's designee, who shall serve as co-chair;

38 2. The president of the Florida Partnership to End Domestic
39 Violence or the president's designee, who shall serve as co-
40 chair;

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 October
63 1, 2023. Members are appointed to serve at the pleasure of the
64 appointing authority. A vacancy on the task force must be filled
65 in the same manner as the original appointment.

66 (c) The task force shall convene its first meeting by
67 November 1, 2023. The task force shall meet quarterly or upon
68 the call of the chair and hold its meetings by teleconference or
69 other electronic means.

70 (4) DUTIES.—

71 (a) The duties of the Domestic Violence Task Force include
72 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 domestic violence laws, and the level of
76 accountability of agencies and providers that conduct protective
77 investigations and that are responsible for handling dependency
78 cases for 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 violence abuse reports and delivery of
85 services to the victims and perpetrators of domestic violence
86 incidents, and addressing the specific challenges when such
87 incidents involve 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 the oversight of domestic violence services with a
97 goal of optimizing accountability.

98 6. Evaluating the appropriateness of establishing a model
99 diversion program for victims of domestic violence who are
100 subject to dependency proceedings related to a child in their
101 custody as a result of such domestic violence, which allows for
102 judicial oversight if certain criteria are met but which permits
103 the dependency petition to be dismissed without prejudice if the
104 victim completes narrowly tailored services related to domestic
105 violence which are deemed necessary to keep the child safe.

106 7. Determining the need for updated definitions and
107 corresponding provisions applicable to domestic violence abuse
108 reports and dependency cases, such as "failure to protect" and
109 "intimate partner violence."

110 8. Determining when a domestic violence victim's failure to
111 protect his or her child may be used as a basis to file a
112 shelter petition.

113 9. Evaluating steps needed, as appropriate, to ensure
114 proper implementation of and adherence to, as appropriate, the
115 Safe and Together model that has been used in this state.

116 10. Determining what steps should be taken during a

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117 domestic violence investigation to ensure a non-offending parent
118 who is a victim of domestic violence is aware of the option to
119 seek an injunction and remain in the home with the child, if
120 appropriate.

121 (b) The task force may request assistance in the
122 performance of its duties from appropriate departments and
123 agencies of the state, and such departments and agencies shall
124 provide such assistance in a timely manner.

125 (5) REPORTS.—By May 1, 2024, the task force shall submit an
126 interim report to the Governor, the President of the Senate, and
127 the Speaker of the House of Representatives which contains its
128 findings and recommendations on best practices, policies, and
129 procedures relating to domestic violence abuse reports and cases
130 involving children, as well as proposed changes to current
131 legislation to implement the task force's recommendations. The
132 task force shall submit its final report to the Governor, the
133 President of the Senate, and the Speaker of the House of
134 Representatives by November 1, 2024. The task force is dissolved
135 upon submission of the final report.

136 (6) REPEAL.—This section is repealed September 1, 2025,
137 unless reviewed and saved from repeal through reenactment by the
138 Legislature.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 390

INTRODUCER: Senator Garcia

SUBJECT: Domestic Violence Task Force

DATE: March 3, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|--------------------|
| 1. | Tuszynski | Cox | CF | Pre-meeting |
| 2. | _____ | _____ | AHS | _____ |
| 3. | _____ | _____ | FP | _____ |

I. Summary:

SB 390 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 to the Task Force.

The bill details the purposes of the Task Force:

- 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 consists of 11 members, including the Secretary of the DCF and the president of the Florida Partnership to End Domestic Violence, to serve as co-chairs, and nine other individuals appointed by the Governor or the Legislature.

The Task Force is required to hold its first meeting by November 1, 2023, and conduct quarterly meetings thereafter via teleconference or other electronic means. The Task Force may call upon state agencies for assistance in the discharge of its duties.

The Task Force must submit a final report on its findings and recommendations by November 1, 2024. Upon submission of the final report, the Task Force is dissolved and the corresponding statute that created it is repealed.

This bill will have an indeterminate but likely insignificant fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Domestic violence is a pervasive issue across the United States¹ and worldwide.² 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.³

Under Florida law, the term “domestic violence” means any assault,⁴ aggravated assault,⁵ battery,⁶ aggravated battery,⁷ sexual assault, sexual battery,⁸ stalking,⁹ aggravated stalking,¹⁰ kidnapping,¹¹ false imprisonment,¹² or any criminal offense resulting in physical injury or death of one family or household member by another family member or household member.¹³ 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

¹ National Conference of State Legislatures (NCSL), *Domestic Violence/Domestic Abuse Definitions and Relationships*, June 13, 2019, available at <https://www.ncsl.org/research/human-services/domestic-violence-domestic-abuse-definitions-and-relationships.aspx> (last visited February 15, 2023) (hereinafter cited as “NCSL DV”).

² World Health Organization, *Violence Against Women*, March 9, 2021, available at <https://www.who.int/news-room/factsheets/detail/violence-against-women> (last visited February 15, 2023).

³ U.S. Department of Justice, Office on Violence Against Women, *Domestic Violence*, available at <https://www.justice.gov/ovw/domestic-violence> (last visited February 15, 2023).

⁴ 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.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ 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: 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.

¹¹ 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.

¹² 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.

¹³ Section 741.28(2), F.S.

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.¹⁴ The use of threats, intimidation, isolation, and using children as pawns are examples of the tactics domestic violence perpetrators use against victims.¹⁵

Domestic violence harms all family members.¹⁶ Family violence harms the victim and presents dangers for immediate family members.¹⁷ Significant trauma, such as domestic violence, can interfere with brain and skill development of the young child.¹⁸ A child's emotional, psychological, or physical development can be harmed if he or she is exposed to violence at a young age.¹⁹ Children who witness violence are more likely to have difficulty in school, abuse drugs or alcohol, act aggressively, and suffer from depression.²⁰

Domestic Violence Data

Based on data from 2000 to 2018, approximately 26 percent of women 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.²¹ According to a national study conducted by the Centers for Disease Control and Prevention (CDC), approximately 1 in 3 women and men have experienced domestic violence acts including sexual violence, physical violence, or stalking in their lifetime, approximately 43 million women and 37 million men.²² Approximately 1 in 4 women and 1 in 9 men experience domestic violence with "related impact," meaning fear for safety, PTSD, injury, or needing services and 23.2% of women and 13.9% of men experience severe physical violence from an intimate partner during their lifetime.²³ The national cost of medical and mental health care services related to domestic violence is estimated to be over \$8 billion annually.²⁴

¹⁴ Section 741.28(3), F.S.

¹⁵ *Id.*

¹⁶ See Seifert, K. *Domestic Violence Harms All Family Members*, Psychology Today, October 30, 2012, available at <https://www.psychologytoday.com/us/blog/stop-the-cycle/201210/domestic-violence-harms-all-family-members> (last visited February 28, 2023) (hereinafter cited as "DV Harms Families").

¹⁷ U.S. Department of Justice, Office of Justice Programs, *Family Violence, Special Features*, available at <https://www.ojp.gov/feature/family-violence/overview> (last visited February 28, 2023) (hereinafter cited as "US DOJ Family Violence").

¹⁸ DV Harms Families.

¹⁹ US DOJ Family Violence.

²⁰ *Id.*

²¹ 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, available at: <https://www.who.int/publications/i/item/9789240026681> (last visited February 28, 2023).

²² The CDC, *The National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release*, pp. 7-9, Nov. 2018, available at <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf> (last visited February 28, 2023) (hereinafter cited as "CDC Study").

²³ National Coalition Against Domestic Violence, *Domestic Violence Fact Sheet*, 2020, available at https://assets.speakcdn.com/assets/2497/domestic_violence-2020080709350855.pdf?1596828650457 (last visited February 28, 2023).

²⁴ Huecker, M., King, K., & others, *Domestic Violence*. National Center for Biotechnology Information, Aug. 26, 2021, available at <https://www.ncbi.nlm.nih.gov/books/NBK499891/> (last visited February 28, 2023).

The National Domestic Violence Hotline (NDVH) is available to help by phone, live chat, and text 24 hours per day, 7 days per week.²⁵ The hotline receives more than 24,000 calls per month.²⁶

Stakeholders

There are several stakeholders who 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 are:

The Department of Children and Families (DCF)

The DCF is required to comply with child protection and child welfare outcomes, including:

- 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.²⁷

With respect to the duties and functions relating to domestic violence incidents, the DCF is statutorily responsible for the statewide domestic violence program. Section 39.903, F.S., requires the DCF to:

- 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 programs²⁸ ("BIP") that are used by the justice system to ensure statewide consistency, including but not

²⁵ NDVH, *Here for You*, available at <https://www.thehotline.org/> (last visited February 28, 2023).

²⁶ U.S. Department of Health & Human Services, Family and Youth Services Bureau, *The National Domestic Violence Hotline*, available at <https://www.acf.hhs.gov/fysb/ndvh> (last visited February 28, 2023).

²⁷ Section 409.986(2), F.S.

²⁸ 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*

limited to, developing criteria for the approval, suspension, or rejection of certification of BIPs.²⁹ In September of 2022, the DCF adopted rules to administer this section.³⁰

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.³¹ Federal law requires each state to have a State Domestic Violence Coalition to access federal funding provided for in the Family Violence Prevention and Services Act.³² The FPEDV is Florida’s federally recognized Domestic Violence Coalition.³³

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.³⁴

Implications for Policy, p. 1, Dec. 2017, available at <https://www.bwjp.org/assets/batterer-intervention-paper-final-2018.pdf> (last visited February 28, 2023).

²⁹ 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, L.O.F.

³⁰ Rules 65H-2.014 – 2.021, F.A.C.

³¹ 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 February 27, 2023).

³² 42 U.S.C. §10411(c).

³³ The Florida Partnership to End Domestic Violence, About Us, *Our Story*, available at <https://www.fpedv.org/about-us/#who> (last visited February 23, 2023).

³⁴ *Id.*

Domestic Violence Centers

Domestic violence centers provide services to survivors of domestic violence.³⁵ 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.³⁶

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 and case management.
- Education for community awareness.
- Nonresidential outreach.
- Training for law enforcement and other professionals.
- Other ancillary services such as relocation assistance, daycare, and transitional housing.³⁷

Domestic violence centers are certified by the DCF in order to receive state funding.³⁸ The DCF sets criteria for certification and minimum standards to ensure the health and safety of clients served.³⁹ To be eligible for certification as a domestic violence center, an applicant must apply to the DCF and be a not-for-profit entity.⁴⁰ 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.

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.⁴¹ 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.⁴² 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.⁴³

³⁵ Section 39.902(2), F.S.; Rule 65H-1.011, F.A.C.

³⁶ The Department of Children and Families, *Office of Domestic Violence*, available at <https://www.myflfamilies.com/services/abuse/domestic-violence/office-domestic-violence> (last visited February 23, 2023).

³⁷ *Id.*

³⁸ Section 39.905(6)(a), F.S.

³⁹ Sections 39.903(9) and 39.905(1), F.S.; Rule 65H-1, F.A.C.

⁴⁰ The DCF, *Domestic Violence Center Certification, Application for Certification, Form CF613*, p. 3, January 2015, available at https://www.myflfamilies.com/sites/default/files/2022-10/CF-613_Application-for-Certification.pdf (last visited February 23, 2023).

⁴¹ Section 39.905(1)(i), F.S.; Rule 65H-1.012, F.A.C.

⁴² Section 39.905(1)(h), F.S.; Rule 65H-1.012, F.A.C.

⁴³ Section 39.905(3), F.S.; Rule 65H-1.012, F.A.C.

During FY 2019-20, Florida's certified domestic violence centers⁴⁴ provided emergency shelter to 13,250 survivors of domestic violence and their children.⁴⁵

Law Enforcement

Law enforcement officers are often the first person 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.⁴⁶

Section 741.29, F.S., requires law enforcement officers investigating an alleged incident of domestic violence to perform certain actions 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 2020, there were 106,515 crimes of domestic violence reported to the Florida Department of Law Enforcement which resulted in 63,217 arrests.⁴⁷

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. Several circuits, such as the tenth, eleventh, and seventeenth, have domestic violence courts.⁴⁸ Some circuits have several judges who are assigned exclusively to hear domestic violence

⁴⁴ 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. The Department of Children and Families, *Office of Domestic Violence*, available at <https://www.myflfamilies.com/services/abuse/domestic-violence/office-domestic-violence> (last visited February 23, 2023).

⁴⁵ *Id.*

⁴⁶ See Stop Violence Against Women, *Role of Police*, available at 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 February 23, 2023).

⁴⁷ The DCF, *Domestic Violence Statistics*, available at <https://www.myflfamilies.com/services/abuse/domestic-violence/resources/domestic-violence-statistics> (last visited February 23, 2023) (hereinafter cited as "Florida DV Statistics") [citing the FDLE, *UCR Domestic Violence*, available at <https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence.aspx>, (last visited February 23, 2023)].

⁴⁸ See Tenth Judicial Circuit, *Domestic Violence*, available at <https://www.jud10.flcourts.org/domestic-violence>; Eleventh Judicial Circuit, *Domestic Violence*, available at <https://www.jud11.flcourts.org/About-the-Court/Court-Divisions/Domestic-Violence> (hereinafter cited as "11th Circuit DV Courts"); Seventeenth Judicial Circuit, *Domestic Violence*, available at <http://www.17th.flcourts.org/06-domestic-violence/> (hereinafter cited as "17th Circuit DV Courts") (all sites last visited February 23, 2023).

cases,⁴⁹ whereas other circuits do not specify the number of judges, if any, who are designated exclusively as domestic violence courts.⁵⁰ 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.⁵¹

Batterers' Intervention Program (BIP)

BIPs emerged in the United States in the late 1970's as one component of the social response to domestic violence.⁵² BIPs are designed to address the root cause of domestic violence and deter participants from committing acts of domestic violence in the future.⁵³

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
- 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.⁵⁴

There are several BIP providers throughout the state.⁵⁵ A list of them may be found on the Department of Children and Families (DCF) website.⁵⁶

⁴⁹ See 11th Circuit DV Courts noting that there are seven judges who exclusively hear domestic violence cases. *See also* 17th Circuit DV Courts noting that there are four judges who are assigned to criminal and civil domestic violence divisions.

⁵⁰ Florida Second Judicial Circuit, *Navigating the Court System*, available at <http://2ndcircuit.leoncountyfl.gov/courtSystem.php> (last visited February 23, 2023) (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 <https://circuit8.org/wp-content/uploads/9.03-v2022-General-Assignments-Effective-January-1-2022-December-31-2022.pdf> (list visited February 23, 2023).

⁵¹ *See* the OSCA, *Florida's Domestic Violence Benchbook*, June 2020, available at <https://www.flcourts.org/content/download/719254/file/Domestic-Violence-Benchbook-2020.pdf> (last visited February 28, 2023).

⁵² 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 February 28, 2023) (hereinafter cited as "Research on BIP and Policy Implications").

⁵³ *Id.* at p. 3, 6.

⁵⁴ Section 741.325(1)(e), F.S., provides an exception that allows for batterers' intervention programs to also be partially or wholly funded by local, state, or federal programs.

⁵⁵ The DCF, *Find a Local Batterers Intervention Program*, available at <https://www.myflfamilies.com/services/abuse/domestic-violence/resources/find-local-batterers-intervention-program> (last visited February 28, 2023).

⁵⁶ *Id.*

Child Protective Investigations

The DCF is required to investigate reports of known or suspected child abuse, abandonment, or neglect that are determined to require investigation by the central abuse hotline.⁵⁷ A child protective investigator has certain responsibilities, including, in part:

- Conducting investigations relating to allegations of abuse, abandonment, and/or special conditions for children;
- Assessing danger threats, child vulnerabilities and caregiver protective capacities in order to determine whether a child is safe or not safe;
- Working closely with law enforcement;
- Collecting information through observation and interviews with certain persons, including the children and parents;
- Providing written present and impending danger assessments; and
- Completing a Risk Assessment on families investigated and explaining risk score to family.⁵⁸

Currently, seven county sheriff offices conduct child protective investigations through a grant agreement with the DCF, including Pinellas, Pasco, Manatee, Hillsborough, Broward, Seminole, and Walton.⁵⁹ In February 2023, the DCF announced plans to transition all child protective investigative functions back to the DCF and committed to working with the Florida Legislature to formulate a plan that ensures as smooth of a transition as possible.⁶⁰

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 welfare system.⁶¹ The DCF enters into 5-year contracts with lead agencies for the procurement of services.⁶² There are minimum requirements with which lead agencies must comply to be eligible to contract with the DCF.⁶³

The lead agencies are obligated to perform several duties, which apply to domestic violence reports and cases, including, in part, to:

- 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;

⁵⁷ Section 39.301, F.S.

⁵⁸ The DCF, *Child Protective Investigator*, available at <https://www.myflfamilies.com/about/careers/job-opportunities/child-protective-investigator> (last visited February 28, 2023).

⁵⁹ The DCF, *Sheriff Offices Conducting Child Protective Investigations*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/sheriff-offices-conducting-child-protective> (last visited February 28, 2023).

⁶⁰ Letter from Secretary Shevaun Harris announcing the transition of CPI duties back to the DCF from Sheriff Offices currently in charge of child protective investigations. February 17, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁶¹ Section 409.986(3)(d), F.S.

⁶² Section 409.987(3), F.S.

⁶³ See s. 409.987(4), F.S.

- 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.⁶⁴

The DCF contracts with the following lead agencies as illustrated in the table and map below:⁶⁵

| <u>Lead Agency</u> | <u>Circuit(s)</u> |
|---|------------------------------|
| Northwest Florida Health Network | 1 |
| Northwest Florida Health Network | 2 & 14 |
| Partnership for Strong Families | 3 & 8 |
| Family Support Services of North Florida | 4 (Duval, Nassau) |
| Kids First of Florida | 4 (Clay) |
| Kids Central | 5 |
| Family Support Services of SunCoast | 6 |
| Children’s Network Of Hillsborough | 13 |
| St Johns County Board of County Commissioners | 7 (St Johns) |
| Community Partnership for Children | 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 |

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.⁶⁶ A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse,⁶⁷ abandonment,⁶⁸ or

⁶⁴ Section 409.988(1), F.S.

⁶⁵ The DCF, *Lead Agency Information*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information> (last visited February 28, 2023).

⁶⁶ Section 39.201(1), F.S.

⁶⁷ 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.

⁶⁸ 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

neglect.⁶⁹ 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.⁷⁰

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.⁷¹ The dependency court process is summarized in the table below.

The Dependency Court Process

| Dependency Proceeding | Description of Process | Controlling Statute |
|--|---|------------------------------------|
| Removal | A child protective investigation determines a child is unsafe in his or her home 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. |
| 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. |
| Post-disposition hearing | The court may change temporary placement at a post disposition 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. |

to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

⁶⁹ 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.

⁷⁰ Section 39.101(2), F.S.

⁷¹ 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 |
|---|--|---|
| 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 proceeding 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 non-offending 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.⁷²

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.⁷³

⁷² Child Welfare.gov, *FACT Sheets, Domestic Violence: A Primer for Child Welfare Professionals*, December 2020, p. 2-3, available at https://www.childwelfare.gov/pubPDFs/domestic_violence.pdf (last visited February 28, 2023).

⁷³ *Id.* at p. 3.

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.⁷⁴

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.⁷⁵ 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.⁷⁶

Safe & Together Model (SATM)

The SATM was developed by the Safe & Together Institute (SATI) and is an internationally recognized model designed to increase child welfare professionals' proficiency in domestic violence informed practice and advanced training options, including certification programs.⁷⁷ Child welfare professionals and domestic violence advocates throughout the state have received domestic violence training and technical assistance.⁷⁸ The SATI has worked with child welfare professionals and local community partners in several states, including Florida, to implement the SATM.⁷⁹

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.⁸⁰ The circuit court has jurisdiction to hear a petition for injunction. 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.⁸¹ 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

⁷⁴ *Id.* at p. 6.

⁷⁵ Section 39.8055, F.S.

⁷⁶ Sections 39.806 and 39.811(6), F.S.

⁷⁷ The SATI, *Model Overview*, available at <https://safeandtogetherinstitute.com/the-sti-model/model-overview/> (last visited February 28, 2023).

⁷⁸ The SATI, *Florida co-located advocates, Florida DCF and Safe and Together model combine to reduce removal of children from domestic violence survivors in half*, available at <https://safeandtogetherinstitute.com/florida-co-located-advocates-florida-dcf-and-safe-and-together-model-combine-to-reduce-removal-of-children-from-domestic-violence-survivors-in-half/> (last visited February 28, 2023).

⁷⁹ The SATI, *Model Effectiveness and Results*, available at <https://safeandtogetherinstitute.com/the-sti-model/model-effectiveness-and-results/> (last visited February 28, 2023).

⁸⁰ Section 741.30(1), F.S.

⁸¹ Section 741.30(1)(a), F.S.

whom the petitioner had a child.⁸² A person is not precluded from requesting an injunction because he or she is not a spouse.⁸³ 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.⁸⁴

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.⁸⁵ If an action is filed under ch. 61, F.S., regarding dissolution of marriage, support and time-sharing, any order 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.⁸⁶

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.⁸⁷ Effective October 1, 2002, the clerk of the court may not assess a fee for filing a petition for protection against domestic violence.⁸⁸ 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.⁸⁹

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.⁹⁰ 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.⁹¹

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.⁹²

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;

⁸² Section 741.30(3)(f), F.S.

⁸³ Section 741.30(1)(e), F.S.

⁸⁴ Section 741.30(1)(i), F.S.

⁸⁵ Section 741.30(1)(b), F.S.

⁸⁶ Section 741.30(1)(c), F.S.

⁸⁷ Section 741.30(3)(a), F.S.

⁸⁸ Section 741.30(2)(a), F.S.

⁸⁹ *Id.*

⁹⁰ Brenda D. Forman, Clerk of Courts (COC), *Domestic Violence Forms and Self-Help*, available at <https://www.browardclerk.org/Divisions/DomesticViolence#FormsAndSelfHelp> (last visited February 28, 2023).

⁹¹ Section 741.30(3)(b), F.S.

⁹² Section 741.30(3)(d), F.S.

- 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
- 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.⁹³

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.⁹⁴ 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;⁹⁵
- 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.⁹⁶

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.⁹⁷ 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.⁹⁸

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;

⁹³ Section 741.30(6)(b), F.S.

⁹⁴ Section 741.30(6)(a), F.S.

⁹⁵ Section 741.30(6)(a)6., F.S., requires the court to provide the petitioner with a list of certified domestic centers.

⁹⁶ Section 741.30(6)(a), F.S.

⁹⁷ Section 741.30(6)(c), F.S., provides that any party may move to modify or dissolve the injunction at any time.

⁹⁸ Section 741.30(6)(a)4., F.S.

- 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;⁹⁹ 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.¹⁰⁰

The court may also include in the injunction an order that the respondent attend a BIP, and must order it in certain circumstances.¹⁰¹ When the court orders the alleged perpetrator to participate in a BIP, the court must provide a list of batterers’ intervention programs.¹⁰²

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.¹⁰³

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, 2011.¹⁰⁴
- Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse, 2010.¹⁰⁵
- Governor’s Blue Ribbon Panel on Child Protection, 2003 (Rilya Wilson).¹⁰⁶

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 a Task Force, as the term “task force” is defined in current law, adjunct to the Department of Children and Families (DCF), which must provide administrative and support staff services for the Task Force.

⁹⁹ Section 741.30(6)(d), F.S.

¹⁰⁰ Section 741.30(6)(g), F.S.

¹⁰¹ Section 741.30(6)(e), F.S.

¹⁰² Section 741.30(6)(a)5., F.S.

¹⁰³ Section 20.30(8), F.S.

¹⁰⁴ Lawrence, D., Martinez, R., and Sewell, J., *The Nubia Report, The Investigative Panel’s Findings and Recommendations*, available at <https://www2.myflfamilies.com/service-programs/child-welfare/kids/publications/docs/taskforce/NubiasStory.pdf> (last visited March 3, 2023).

¹⁰⁵ The DCF, *Report of Gabriel Myers Work Group*, available at <https://myflfamilies.com/sites/default/files/2022-12/Gabriel%20Myers%20COC%20Report%20May%2014%202010.pdf> (last visited March 3, 2023).

¹⁰⁶ The DCF, *Governor’s Blue Ribbon Panel on Child Protection*, available at <https://www2.myflfamilies.com/service-programs/child-welfare/kids/publications/docs/taskforce/BlueRibbonFinal110703.pdf> (last visited March 3, 2023).

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 Task Force is comprised of eleven members. Two members are specifically provided for by title, and serve as co-chairs, including the Secretary of the DCF, 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 nine members must be appointed by October 1, 2023, 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 November 1, 2023, 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;¹⁰⁷
- 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 is required to submit an interim report by May 1, 2024, and a final report by November 1, 2024, 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 set to dissolve upon submission of its final report. The new section created under the bill to establish the Task Force is repealed on November 1, 2025, unless saved from repeal through reenactment by the Legislature.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰⁷ There currently is no diversion program model in Florida for domestic violence victims related to dependency cases. No such model has been identified as being used in any other state.

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 fiscal impact on state government. However, the DCF, which is responsible for providing administrative and support services to the Task Force, can likely absorb any workload or support costs through its existing base budget.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the 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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 404

INTRODUCER: Senator Perry

SUBJECT: Public Records/Autopsy Reports of Minors Whose Deaths were Related to Acts of Domestic Violence

DATE: March 3, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------|-----------------------------|
| 1. | <u>Tuszynski</u> | <u>Cox</u> | <u>CF</u> | <u>Pre-meeting</u> |
| 2. | <u> </u> | <u> </u> | <u>GO</u> | <u> </u> |
| 3. | <u> </u> | <u> </u> | <u>RC</u> | <u> </u> |

I. Summary:

SB 404, the “Rex and Brody Act”, creates 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 makes all provisions of s. 406.135, F.S., subject to the Open Government Sunset Review Act and provides that the section will be repealed on October 2, 2028 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. 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.¹ 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.²

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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ 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.⁵

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2022-2024)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ 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.”⁶

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.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

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.⁹ 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.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

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*.¹³ 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.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

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

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *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).

¹¹ *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).

¹² *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).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.¹⁹ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- The release of sensitive personal information would be defamatory or jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ 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.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ Section 119.15(6)(a), F.S. The specific 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?

²⁴ FLA. CONST. art. I, s. 24(c).

allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

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,²⁶ agency investigations,²⁷ and security and firesafety,²⁸ Agency Personnel Information,²⁹ and other personal information.³⁰ There are several other provisions public records exemptions found throughout the Florida Statutes.³¹

Exemptions related to Sensitive Photos, 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.³² If there is no surviving spouse, current law provides that the surviving parent must have access to such records.³³ If there is no surviving spouse and no surviving parent, then an adult child is required to have access to such records.³⁴ 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.³⁵

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.³⁶

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.³⁷ The court may impose any restrictions or stipulations that it deems appropriate.³⁸ 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;

²⁵ Section 119.15(7), F.S.

²⁶ Section 119.071(1), F.S.

²⁷ Section 119.071(2), F.S.

²⁸ Section 119.071(3), F.S.

²⁹ Section 119.071(4), F.S.

³⁰ Section 119.071(5), F.S.

³¹ See e.g., ss 39.0132(4)(a)1. and 63.022(4)(i), F.S.

³² Section 406.135(2), F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ Section 406.135(3)(b), F.S.

³⁶ Section 406.135(3)(c), F.S.

³⁷ Section 406.135(4)(a), F.S.

³⁸ *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.³⁹

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.⁴⁰

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.⁴¹

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.⁴² 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.⁴³

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.⁴⁴ 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.⁴⁵

The exemption under s. 406.135, F.S. is given retroactive application.⁴⁶ 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.⁴⁷

³⁹ Section 406.135(4)(b), F.S.

⁴⁰ Section 406.135(5)(c), F.S.

⁴¹ Section 406.135(5), F.S.

⁴² 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.

⁴³ Section 406.135(6)(b), F.S.

⁴⁴ Section 406.135(7), F.S.

⁴⁵ *Id.*

⁴⁶ Section 406.135(8), F.S.

⁴⁷ 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 duties⁴⁸ or the killing of a victim of mass violence confidential and exempt public records requirements.⁴⁹ 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.⁵⁰

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.⁵¹

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

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.

⁴⁸ Section 119.071(2)(p)1.a., F.S., defines “killing of a law enforcement officer who was acting in accordance with his or her official duties” to mean all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

⁴⁹ Section 119.071(2)(p)1.b., 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.

⁵⁰ Section 119.071(2)(p)2., F.S.

⁵¹ See s. 119.071(2)(p)4.-6., F.S.

officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, regardless of whether the killing of the person occurred before, on, or after May 23, 2019.⁵²

Reinhart Case

On May 4, 2021, law enforcement began searching for Paul Reinhart and his two sons, Rex and Brody, as part of a wellness check that was requested by a family member after Mr. Reinhart posted a series of “cryptic” Facebook updates and sent family members “concerning” text messages. Authorities later found them dead inside Mr. Reinhart’s second home in Dixie County that was in flames when they arrived on scene.⁵³ News stations obtained a copy of the children’s autopsy reports. Several outlets published some of its findings in August 2021 after the surviving mother states she had expressed to such outlets that she did not want to know the nature of her children’s deaths and requested the news stations not to publish the information contained in them.⁵⁴

III. Effect of Proposed Changes:

The bill, which may be cited as the “Rex and Brody Act”, 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,

⁵² 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.

⁵³ Syed, Camille, *Autopsy Report Shows Rex and Brody Reinhart Were Shot by Father*, 20WCJB, Aug. 31, 2021, available at <https://www.wcjb.com/2021/08/31/autopsy-report-shows-rex-brody-reinhart-were-shot-by-father/>; Swirko, Cindy, *Paul Reinhart shot his two sons and then himself, autopsies conclude*, Gainesville Sun, August 31, 2021, available at <https://www.gainesville.com/story/news/2021/08/31/paul-reinhart-shot-sons-and-then-himself-autopsies-conclude/5668557001/>; Weber, Thomas, *Dad Suspected of Killing 2 Sons, Including UF Bat Boy, Burning Home, and Killing Himself*, WJCT News, May 4, 2021, available at <https://news.wjct.org/state-news/2021-05-04/dad-suspected-of-killing-2-sons-including-uf-bat-boy-burning-home-and-killing-himself> (all sites last visited February 27, 2023).

⁵⁴ *Id.*

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 provides that s. 406.135, F.S., is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2028, 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:

[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:**

None.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 406.135

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

36-01203-23

2023536__

1 A bill to be entitled
 2 An act relating to child support; amending s. 61.046,
 3 F.S.; conforming a cross-reference; revising the
 4 definition of the term "depository"; amending s.
 5 61.13016, F.S.; revising requirements for the
 6 deferment of payment agreements for child support;
 7 amending s. 61.181, F.S.; revising the procedures for
 8 collection and distribution of court depository fees;
 9 amending s. 61.1811, F.S.; conforming a cross-
 10 reference; amending s. 61.30, F.S.; removing
 11 exceptions to the prohibition on treating
 12 incarceration as voluntary employment; amending s.
 13 409.256, F.S.; revising requirements for the
 14 Department of Revenue to commence proceedings
 15 regarding paternity and child support; amending s.
 16 409.2563, F.S.; requiring and specifying procedures
 17 for the clerk of the court to credit depository
 18 accounts for collections received by another state;
 19 providing an effective date.

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

22
 23 Section 1. Subsections (2) and (4) of section 61.046,
 24 Florida Statutes, are amended to read:

25 61.046 Definitions.—As used in this chapter, the term:
 26 (2) "Clerk of Court Child Support Collection System" or
 27 "CLERC System" means the automated system established pursuant
 28 to s. 61.1811 ~~s. 61.181(2)(b)1.~~, integrating all clerks of court
 29 and depositories and through which payment data and State Case

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30 Registry data is transmitted to the department's automated child
31 support enforcement system.

32 (4) "Depository" means the ~~central governmental~~ depository
33 established by the clerk of the circuit court pursuant to s.
34 ~~61.181, created by special act of the Legislature or other~~
35 ~~entity established before June 1, 1985, to perform depository~~
36 ~~functions and to receive, record, report, disburse, monitor, and~~
37 otherwise handle alimony and child support payments not
38 otherwise required to be processed by the State Disbursement
39 Unit.

40 Section 2. Subsection (1) of section 61.13016, Florida
41 Statutes, is amended to read:

42 61.13016 Suspension of driver licenses and motor vehicle
43 registrations.—

44 (1) The driver license and motor vehicle registration of a
45 support obligor who is delinquent in payment or who has failed
46 to comply with subpoenas or a similar order to appear or show
47 cause relating to paternity or support proceedings may be
48 suspended. When an obligor is 15 days delinquent making a
49 payment in support or failure to comply with a subpoena, order
50 to appear, order to show cause, or similar order in IV-D cases,
51 the ~~Title~~ IV-D agency may provide notice to the obligor of the
52 delinquency or failure to comply with a subpoena, order to
53 appear, order to show cause, or similar order and the intent to
54 suspend by regular United States mail that is posted to the
55 obligor's last address of record with the Department of Highway
56 Safety and Motor Vehicles. When an obligor is 15 days delinquent
57 in making a payment in support in non-IV-D cases, and upon the
58 request of the obligee, the depository or the clerk of the court

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59 must provide notice to the obligor of the delinquency and the
60 intent to suspend by regular United States mail that is posted
61 to the obligor's last address of record with the Department of
62 Highway Safety and Motor Vehicles. In either case, the notice
63 must state all of the following:

64 (a) The terms of the order creating the support
65 obligation.†

66 (b) The period of the delinquency and the total amount of
67 the delinquency as of the date of the notice or describe the
68 subpoena, order to appear, order to show cause, or other similar
69 order that has not been complied with.†

70 (c) That notification will be given to the Department of
71 Highway Safety and Motor Vehicles to suspend the obligor's
72 driver license and motor vehicle registration unless, within 20
73 days after the date that the notice is mailed, the obligor:

74 1.a. Pays the delinquency in full and any other costs and
75 fees accrued between the date of the notice and the date the
76 delinquency is paid;

77 b. Enters into a written agreement for payment with the
78 obligee in non-IV-D cases or with the ~~Title~~ IV-D agency in IV-D
79 cases; or in IV-D cases, complies with a subpoena or order to
80 appear, order to show cause, or a similar order, which may
81 include a reasonable period of payment deferral to accommodate
82 an obligor's good faith job-seeking or job training efforts;

83 c. Files a petition with the circuit court to contest the
84 delinquency action;

85 d. Demonstrates that he or she receives reemployment
86 assistance or unemployment compensation pursuant to chapter 443;

87 e. Demonstrates that he or she is disabled and incapable of

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88 self-support or that he or she receives benefits under the
89 federal Supplemental Security Income program or Social Security
90 Disability Insurance program;

91 f. Demonstrates that he or she receives temporary cash
92 assistance pursuant to chapter 414; or

93 g. Demonstrates that he or she is making payments in
94 accordance with a confirmed bankruptcy plan under chapter 11,
95 chapter 12, or chapter 13 of the United States Bankruptcy Code,
96 11 U.S.C. ss. 101 et seq.; and

97 2. Pays any applicable delinquency fees.
98

99 If an obligor in a non-IV-D case enters into a written agreement
100 for payment before the expiration of the 20-day period, the
101 obligor must provide a copy of the signed written agreement to
102 the depository or the clerk of the court. If an obligor seeks to
103 satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-
104 subparagraph 1.f., or sub-subparagraph 1.g. before expiration of
105 the 20-day period, the obligor must provide the applicable
106 documentation or proof to the depository or the clerk of the
107 court.

108 Section 3. Paragraph (a) of subsection (1), subsection (2),
109 paragraph (a) of subsection (3), and subsections (4), (8), and
110 (9) of section 61.181, Florida Statutes, are amended to read:

111 61.181 Depository for alimony transactions, support,
112 maintenance, and support payments; fees.—

113 (1)(a) The office of the clerk of the court shall operate a
114 depository ~~unless the depository is otherwise created by special~~
115 ~~act of the Legislature or unless, prior to June 1, 1985, a~~
116 ~~different entity was established to perform such functions.~~ The

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117 department shall, ~~no later than July 1, 1998,~~ extend
118 participation in the federal child support cost reimbursement
119 program to the ~~central~~ depository in each county, to the ~~maximum~~
120 extent allowable ~~possible~~ under ~~existing~~ federal law. The
121 depository shall receive reimbursement for services provided
122 under a cooperative agreement with the department pursuant to s.
123 61.1826. Each depository shall participate in the State
124 Disbursement Unit and shall implement all statutory and
125 contractual duties imposed on the State Disbursement Unit. Each
126 depository shall receive from and transmit to the State
127 Disbursement Unit required data through the Clerk of Court Child
128 Support Enforcement Collection System. Payments on non-IV-D non-
129 ~~Title IV-D~~ cases without income deduction orders may not ~~shall~~
130 ~~not~~ be sent to the State Disbursement Unit.

131 (2) (a) The depository shall impose and collect a fee on
132 payments on non-IV-D cases. The fee is 4 percent of the payment,
133 except no fee may be less than \$1 or more than \$5.25 ~~For~~
134 ~~payments not required to be processed through the State~~
135 ~~Disbursement Unit, the depository shall impose and collect a fee~~
136 ~~on each payment made for receiving, recording, reporting,~~
137 ~~disbursing, monitoring, or handling alimony or child support~~
138 ~~payments as required under this section. For non-Title IV-D~~
139 ~~cases required to be processed by the State Disbursement Unit~~
140 ~~pursuant to this chapter, the State Disbursement Unit shall, on~~
141 ~~each payment received, collect a fee, and shall transmit to the~~
142 ~~depository in which the case is located 40 percent of such~~
143 ~~service charge for the depository's administration, management,~~
144 ~~and maintenance of such case. If a payment is made to the State~~
145 ~~Disbursement Unit which is not accompanied by the required fee,~~

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146 ~~the State Disbursement Unit shall not deduct any moneys from the~~
147 ~~support payment for payment of the fee. The fee shall be a flat~~
148 ~~fee based, to the extent practicable, upon estimated reasonable~~
149 ~~costs of operation. The fee shall be reduced in any case in~~
150 ~~which the fixed fee results in a charge to any party of an~~
151 ~~amount greater than 3 percent of the amount of any support~~
152 ~~payment made in satisfaction of the amount which the party is~~
153 ~~obligated to pay, except that no fee shall be less than \$1 nor~~
154 ~~more than \$5 per payment made. The court shall consider the fee~~
155 ~~shall be considered by the court in determining the amount of~~
156 ~~support that the obligor is, or may be, required to pay. A fee~~
157 ~~may not be imposed on payments on IV-D cases.~~

158 (b)1. ~~The fee imposed in paragraph (a) shall be increased~~
159 ~~to 4 percent of the support payments which the party is~~
160 ~~obligated to pay, except that no fee shall be more than \$5.25.~~
161 ~~The fee shall be considered by the court in determining the~~
162 ~~amount of support that the obligor is, or may be, required to~~
163 ~~pay. Notwithstanding the provisions of s. 145.022, the fee for~~
164 ~~non-IV-D cases must be distributed 75 percent of the additional~~
165 ~~revenues generated by this paragraph shall be remitted monthly~~
166 ~~to the Clerk of the Court Child Support Enforcement Collection~~
167 ~~System Trust Fund administered by the department as provided in~~
168 ~~subparagraph 2., calculated as follows:~~

169 a. For each support payment of less than \$33, 18.75 cents.

170 b. For each support payment between \$33 and \$140 inclusive,
171 an amount equal to 75 percent of the difference between 4
172 percent of the payment amount not to exceed \$5.25 and 3 percent
173 of the payment amount not to exceed \$5.00.

174 c. For each support payment in excess of \$140, 18.75 cents.

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175
176 These funds must ~~shall~~ be used exclusively for the development,
177 implementation, and operation of the Clerk of the Court Child
178 Support Enforcement Collection System to be operated by the
179 depositories, including the automation of civil case information
180 necessary for the State Case Registry. The department shall
181 contract with the Florida Association of Court Clerks and the
182 depositories to design, establish, operate, upgrade, and
183 maintain the automation of the depositories to include, but not
184 be limited to, the provision of online electronic transfer of
185 information to the IV-D agency as otherwise required by this
186 chapter. The department's obligation to fund the automation of
187 the depositories is limited to the state share of funds
188 available in the Clerk of the Court Child Support Enforcement
189 Collection System Trust Fund. Each depository created under this
190 section must ~~shall~~ fully participate in the Clerk of the Court
191 Child Support Enforcement Collection System and transmit data in
192 a readable format as required by the contract between the
193 Florida Association of Court Clerks and the department.

194 2. For payments not processed through the State
195 Disbursement Unit, the clerk of the court shall retain the
196 balance of the fee for receiving, recording, reporting,
197 disbursing, monitoring, or handling alimony or child support
198 payments as required under this section.

199 3. For payments processed through the State Disbursement
200 Unit, the clerk of the court shall retain 40 percent of the fee
201 for the depository's administration, management, and maintenance
202 of the case. After retaining 40 percent of the fee and paying
203 the amount due to the Clerk of the Court Child Support

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204 Enforcement Collection System Trust Fund, the clerk of the court
205 shall transmit the balance of the fee to the department for
206 handling as program income under s. 61.1814.

207 (c) Moneys to be remitted under subparagraphs (b)1. and 3.
208 must be remitted no less often than monthly in accordance with
209 s. 28.245 to the Clerk of the Court Revenue Remittance System.

210 ~~(d) Moneys to be remitted to the department by the~~
211 ~~depository shall be done daily by electronic funds transfer and~~
212 ~~calculated as follows:~~

213 ~~a. For each support payment of less than \$33, 18.75 cents.~~

214 ~~b. For each support payment between \$33 and \$140, an amount~~
215 ~~equal to 18.75 percent of the fee charged.~~

216 ~~c. For each support payment in excess of \$140, 18.75 cents.~~

217 ~~3.~~ The fees established by this section shall be set forth
218 and included in every order of support entered by a court of
219 this state which requires payment to be made into the
220 depository.

221 (3) (a) For payments not required to be processed through
222 the State Disbursement Unit, the depository shall collect and
223 distribute all support payments paid into the depository to the
224 appropriate party. ~~On or after July 1, 1998,~~ If a payment is
225 made on a ~~Title~~ IV-D case which is not accompanied by the
226 required transaction fee, the depository may ~~shall~~ not deduct
227 any moneys from the support payment for payment of the fee.
228 Nonpayment of the required fee shall be considered a
229 delinquency, and when the total of fees and costs which are due
230 but not paid exceeds \$50, the judgment by operation of law
231 process set forth in s. 61.14(6) (a) shall become applicable and
232 operational. As part of its collection and distribution

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233 functions, the depository shall maintain records listing:

234 1. The obligor's name, address, social security number,
235 place of employment, and any other sources of income.

236 2. The obligee's name, address, and social security number.

237 3. The amount of support due as provided in the court
238 order.

239 4. The schedule of payment as provided in the court order.

240 5. The actual amount of each support payment received, the
241 date of receipt, the amount disbursed, and the recipient of the
242 disbursement.

243 6. The unpaid balance of any arrearage due as provided in
244 the court order.

245 7. Other records as necessary to comply with federal
246 reporting requirements.

247 ~~(4) The depository shall provide to the IV-D agency, at~~
248 ~~least once a month, a listing of IV-D accounts which identifies~~
249 ~~all delinquent accounts, the period of delinquency, and total~~
250 ~~amount of delinquency. The list shall be in alphabetical order~~
251 ~~by name of obligor, shall include the obligee's name and case~~
252 ~~number, and shall be provided at no cost to the IV-D agency.~~

253 (7) ~~(8)~~ ~~On or before July 1, 1994,~~ The depository shall
254 provide information required by this chapter to be transmitted
255 to the ~~Title~~ IV-D agency by online electronic transmission
256 ~~pursuant to rules promulgated by the Title IV-D agency.~~

257 ~~(9) If the increase in fees as provided by paragraph (2) (b)~~
258 ~~expires or is otherwise terminated, the depository shall not be~~
259 ~~required to provide the Title IV-D agency the date provided by a~~
260 ~~payor as required by s. 61.1301.~~

261 Section 4. Section 61.1811, Florida Statutes, is amended to

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262 read:

263 61.1811 Clerk of the Court Child Support Enforcement
264 Collection System Trust Fund.—There is hereby created the Clerk
265 of the Court Child Support Enforcement Collection System Trust
266 Fund to be used to deposit the department's share of the fees
267 generated in s. 61.181(2)(b)1 ~~s. 61.181(2)(b)~~.

268 Section 5. Paragraph (c) of subsection (2) of section
269 61.30, Florida Statutes, is amended to read:

270 61.30 Child support guidelines; retroactive child support.—

271 (2) Income shall be determined on a monthly basis for each
272 parent as follows:

273 (c) ~~Except for incarceration for willful nonpayment of~~
274 ~~child support or for an offense against a child or person who is~~
275 ~~owed child support,~~ Incarceration may not be treated as
276 voluntary unemployment in establishing or modifying a support
277 order. However, the court may deviate from the child support
278 guideline amount as provided in paragraph (1)(a).

279 Section 6. Paragraph (a) of subsection (2) of section
280 409.256, Florida Statutes, is amended to read:

281 409.256 Administrative proceeding to establish paternity or
282 paternity and child support; order to appear for genetic
283 testing.—

284 (2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO
285 THE COURTS.—

286 (a) The department may commence a paternity proceeding or a
287 paternity and child support proceeding as provided in subsection

288 (4) if:

289 1. The child's paternity has not been established.

290 2. No one is named as the father on the child's birth

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291 certificate or the person named as the father is the putative
292 father named in an affidavit or a written declaration as
293 provided in subparagraph 5.

294 3. The child's mother was unmarried when the child was
295 conceived and born.

296 4. The department is providing services under Title IV-D of
297 the Social Security Act.

298 5. The child's mother, caregiver, or a putative father has
299 stated in an affidavit, or in a written declaration as provided
300 in s. 92.525(2), that the putative father is or may be the
301 child's biological father. The affidavit or written declaration
302 must set forth the factual basis for the allegation of paternity
303 as provided in s. 742.12(2).

304 Section 7. Subsection (8) of section 409.2563, Florida
305 Statutes, is amended to read:

306 409.2563 Administrative establishment of child support
307 obligations.—

308 (8) FILING WITH THE CLERK OF THE CIRCUIT COURT; OFFICIAL
309 PAYMENT RECORD; JUDGMENT BY OPERATION OF LAW.—The department
310 shall file with the clerk of the circuit court a copy of an
311 administrative support order rendered under this section. The
312 depository operated pursuant to s. 61.181 for the county where
313 the administrative support order has been filed shall:

314 (a) Act as the official recordkeeper for payments required
315 under the administrative support order;

316 (b) Establish and maintain the necessary payment accounts;

317 (c) Upon a delinquency, initiate the judgment by operation
318 of law procedure as provided by s. 61.14(6); and

319 (d) Perform all other duties required of a depository with

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320 respect to a support order entered by a court of this state.
321
322 When a proceeding to establish an administrative support order
323 is commenced under subsection (4), the department shall file a
324 copy of the initial notice with the depository. The depository
325 shall assign an account number and provide the account number to
326 the department within 4 business days after the initial notice
327 is filed. When the department receives a payment record from a
328 IV-D agency or a court in another state, as the term "state" is
329 defined by s. 88.1011, and the payment record shows the obligor
330 made a payment in that state pursuant to an administrative
331 support order rendered by the department, the department shall
332 file the payment record with the clerk of the court depository,
333 requesting the clerk to review the record and update the clerk's
334 payment accounts, applying credit for payments made to the other
335 state for which the clerk has not previously provided credit. If
336 the payment record from the other state indicates the obligor
337 has made payments that are not reflected in the clerk's payment
338 accounts, the clerk must credit the account in the amount of the
339 payment made to the other state. A party to the administrative
340 proceeding may dispute the application of credit in a subsequent
341 proceeding concerning payment under the administrative support
342 order.

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



2023 FDLE LEGISLATIVE BILL ANALYSIS



BILL INFORMATION

| | |
|------------------------|---------------------------|
| BILL NUMBER: | SB 532 |
| BILL TITLE: | Money Services Businesses |
| BILL SPONSOR: | Senator Burton |
| EFFECTIVE DATE: | July 1, 2023 |

COMMITTEES OF REFERENCE

| |
|--------------------------|
| 1) Banking and Insurance |
| 2) Commerce and Tourism |
| 3) Rules |
| 4) |
| 5) |

CURRENT COMMITTEE

| |
|-----------------------|
| Banking and Insurance |
|-----------------------|

SIMILAR BILLS

| | |
|---------------------|--|
| BILL NUMBER: | |
| SPONSOR: | |

PREVIOUS LEGISLATION

| | |
|---------------------|--|
| BILL NUMBER: | |
| SPONSOR: | |
| YEAR: | |
| LAST ACTION: | |

IDENTICAL BILLS

| | |
|---------------------|-----------------------|
| BILL NUMBER: | HB 607 |
| SPONSOR: | Representative Stelle |

Is this bill part of an agency package?

| |
|----|
| No |
|----|

BILL ANALYSIS INFORMATION

| | |
|-------------------------------|-----------------------------|
| DATE OF ANALYSIS: | February 24, 2023 |
| LEAD AGENCY ANALYST: | Lucy Saunders |
| ADDITIONAL ANALYST(S): | Ashley Black, Becky Bezemek |
| LEGAL ANALYST: | Jim Martin, Jason Harrison |
| FISCAL ANALYST: | Elizabeth Martin |

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Revises definition of term "control person" for purposes of ch. 560, F.S.; defines "governing documents."

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Section s. 560.103, F.S., provides definitions used throughout chapter 560, F.S. Additionally, s. 560.141, F.S., outlines the licensure requirements for applicants of money service businesses which include fingerprint-based, state and national criminal history record checks for each control person, as provided in s. 560.103(10), F.S. The Office of Financial Regulation's (OFR) Division of Consumer Finance must review the results of the record check to determine whether the applicant meets licensure requirements. The Federal Bureau of Investigation (FBI) previously approved the Florida Department of Financial Services (DFS) to submit money service business applicants for state and national criminal history record checks, pursuant to s. 560.141, F.S.
2. **EFFECT OF THE BILL:** Amends s. 560.103, F.S., to revise the definition of the term "control person" for the purposes of Chapter 560, F.S., thus attempting to provide clarity on the scope of populations that are subject to the respective regulations of licensure contained within Chapter 560, F.S.

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

| | |
|---|--|
| If yes, explain: | |
| What is the expected impact to the agency's core mission? | |
| Rule(s) impacted (provide references to F.A.C., etc.): | |

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

| | |
|--|--|
| List any known proponents and opponents: | |
| Provide a summary of the proponents' and opponents' positions: | |

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

| | |
|--------------------------------|--|
| If yes, provide a description: | |
| Date Due: | |
| Bill Section Number: | |

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

| | |
|-------------------|--|
| Board: | |
| Board Purpose: | |
| Who Appointments: | |

| | |
|-------------------------|--|
| Appointee Term: | |
| Changes: | |
| Bill Section Number(s): | |

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y N

| | |
|---|--|
| Revenues: | |
| Expenditures: | |
| Does the legislation increase local taxes or fees? | |
| 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? | |

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y N

| | |
|--|--|
| Revenues: | |
| Expenditures: | |
| Does the legislation contain a State Government appropriation? | |
| If yes, was this appropriated last year? | |

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

| | |
|---------------|--|
| Revenues: | |
| Expenditures: | |
| Other: | |

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

| | |
|---|--|
| Does the bill increase taxes, fees or fines? | |
| Does the bill decrease taxes, fees or fines? | |
| What is the impact of the increase or decrease? | |

| | |
|----------------------|--|
| Bill Section Number: | |
|----------------------|--|

TECHNOLOGY IMPACT

1. DOES THE LEGISLATION IMPACT THE AGENCY’S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y N

| | |
|--|--|
| If yes, describe the anticipated impact to the agency including any fiscal impact. | |
|--|--|

FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

| | |
|--|--|
| If yes, describe the anticipated impact including any fiscal impact. | |
|--|--|

LEGAL - GENERAL COUNSEL’S OFFICE REVIEW

| | |
|--|-------------------------------------|
| Issues/concerns/comments and recommended action: | No additional comments or concerns. |
|--|-------------------------------------|

ADDITIONAL COMMENTS

- If the intent of the bill is to continue to require applicants to undergo fingerprint-based, state and national criminal history record checks (i.e., Level 2 background checks), the Florida Department of Law Enforcement (FDLE) recommends updating certain language within the bill, in accordance with guidance from the Federal Bureau of Investigation’s (FBI) Criminal Justice Information Law Unit (CJILU). It should be noted that continued access to national criminal history record information is reliant upon the FBI’s approval of the legislative changes.

Several categories provided within the definition of the term “control person”, as written within the current language of s. 560.103, F.S., and HB 607, are considered by the FBI’s CJILU to be overly broad and must be defined. The bill’s language should clarify the population(s) within these categories as specifically as possible to ensure compliance with the criteria set forth in Public Law 92-544:

- Lines 14-17: As written, the category of “compliance officer”.
- Lines 18-20: As written, the categories “officer”, “manager”, and “managing member”.
- Lines 27-28: As written, the category of “director”.

- In order to facilitate fingerprint-based, state and national criminal history record checks, the following language should be included within the applicable sections of Chapter 560, F.S., which address licensure screening requirements:

An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall initially submit the fingerprints to the Department of Law Enforcement for state processing, and thereafter the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

- While the impact of this bill does not necessitate additional FTE or other resources, this bill, in combination with additional criminal history record check bills, could rise to the level requiring additional staffing and other resources.



2023 AGENCY LEGISLATIVE BILL ANALYSIS

DEPARTMENT OF REVENUE

BILL INFORMATION

| | |
|------------------------|----------------|
| BILL NUMBER: | SB 536 |
| BILL TITLE: | Child Support |
| BILL SPONSOR: | Senator Garcia |
| EFFECTIVE DATE: | July 1, 2023 |

COMMITTEES OF REFERENCE

| |
|--------|
| 1) TBD |
| 2) |
| 3) |
| 4) |
| 5) |

CURRENT COMMITTEE

| |
|--|
| |
|--|

SIMILAR BILLS

| | |
|---------------------|-----|
| BILL NUMBER: | n/a |
| SPONSOR: | |

IDENTICAL BILLS

| | |
|---------------------|-----|
| BILL NUMBER: | n/a |
| SPONSOR: | |

PREVIOUS LEGISLATION

| |
|--|
| YEAR/BILL NUMBER/SPONSOR/LAST ACTION: CS/CS 1532, chapter 2021-103, § 4, Laws of Fla. |
|--|

BILL ANALYSIS INFORMATION

| | |
|--------------------------|----------------------------|
| DATE OF ANALYSIS: | February 13, 2023 |
| AGENCY CONTACT: | Alec Yarger (850) 717-6153 |

POLICY ANALYSIS

1. ANALYSIS OF EACH SECTION THAT AFFECTS THE DEPARTMENT OF REVENUE.Section 1**PRESENT SITUATION**

Section 61.046(2), F.S., defines “Clerk of Court Child Support Collection System” or “CLERC System” to mean the automated system established pursuant to s. 61.181(2)(b)1., integrating all clerks of court and depositories and through which payment data and State Case Registry data is transmitted to the Department of Revenue’s automated child support enforcement system.

Section 61.046(4), F.S., defines “Depository” to mean the central governmental depository established pursuant to s. 61.181, created by special act of the Legislature or other entity established before June 1, 1985, to perform depository functions and to receive, record, report, disburse, monitor, and otherwise handle alimony and child support payments not otherwise required to be processed by the State Disbursement Unit.

EFFECT OF THE BILL

The definition of the term “Clerk of Court Child Support Collection System” or “CLERC System” changes the cross-reference to the statute by which the CLERC System is established, deleting s. 61.181(2)(b)1., and inserting s. 61.1811.

The definition of the term “Depository” as amended is consistent with section 3 of the bill, clarifies that the depository required by s. 61.181, F.S., is established by the clerk of the circuit court and deletes obsolete material.

Section 2**PRESENT SITUATION**

When the Department is providing child support services, it is authorized by s. 61.13016(1), F.S., to initiate a driver license suspension action for nonpayment of child support when a parent is 15 days delinquent in making legally ordered support payments. The notice of intent to suspend informs the parent who is ordered to pay support (“the obligor”) that within 20 days he or she must pay the delinquency, contact the Department to work out a payment agreement if they are unable to pay the delinquency in full, or file a petition contesting the action in circuit court.

If the obligor pays the delinquency, enters into a payment agreement (which may include a reasonable period of payment deferral to accommodate an obligor’s good faith job-seeking efforts), or contests the action in circuit court, the obligor’s license is not suspended. If a license is suspended for nonpayment, it can be reinstated when the obligor pays the delinquency, enters into a payment agreement or obtains a court order for reinstatement.

EFFECT OF THE BILL

Section 2 of the bill amends s. 61.13016(1)(c)1.b., F.S., to authorize a payment agreement with a deferred start date when the obligor is participating in good faith in job training. Assisting obligors in this manner is consistent with the Responsible Fatherhood Initiative, chapter 2022-67, ss. 8, 9, 12-14, Laws of Florida, which provides for grants to organizations that assist parents who are unemployed or underemployed and have difficulty meeting child support obligations.

Section 3**PRESENT SITUATION**

Each clerk of the circuit court operates a child support depository as provided by s. 61.181(1)(a), F.S. Section 61.1826(2), F.S., requires the Department and each clerk depository to enter into a standard, uniform cooperative agreement mutually developed by the Department and FACC for purposes of providing federal reimbursement to the clerks for work performed in support of the state's child support program. Sections 61.181(2)(b)1. and 61.1826(3), F.S., require the Department to contract with the Florida Association of Court Clerks (FACC) and the depositories for operation and maintenance of the CLERC system, which includes electronic data transmissions to the Department and the SDU. The CLERC system, defined in s. 61.046(2), is an application owned and operated by FACC that clerks use to establish and manage child support payment accounts. The CLERC system supports the daily operation of the State Disbursement Unit (SDU) created pursuant to s. 61.1824(1), F.S., by transmitting data to and from the clerks to the Department's automated system and the SDU through FACC's Central Site.

For eligible costs attributed to Title IV-D cases, which are cases handled by the Department, clerk depositories receive federal matching funds under the cooperative agreements with the Department provided for pursuant to s. 61.1826(2), F.S. Federal funding for payment processing in non Title IV-D cases is limited to income withholding payments received by the SDU. Non-Title IV-D cases are private cases, which are not handled by the Department as the state Title IV-D agency under s. 409.2557(1), F.S.

Under s. 61.181(2)(a), F.S., there are two types of depository fees on non-IV-D child support payments:

(1) For payments in private cases that are not required to be processed through the SDU (payments in non-IV-D cases not made by income deduction), the depository shall impose and collect a fee on each payment made for receiving, recording, reporting, disbursing, monitoring, or handling alimony of child support payments as required by the statute.

(2) For payments in private cases that are required to be processed through the SDU (payments in non-IV-D cases made by income deduction), on each payment received, the SDU shall collect a fee and transmit to the depository in which the case is located 40 percent of the fee (or service charge) for the depository's administration, management and maintenance of the case.

Under s. 61.181(2)(b)1., F.S., the fee for both payment types is 4% of the support payment not to exceed \$5.25. The statute further provides that part of the fee must be remitted monthly to the Department for deposit into the Child Support Enforcement Collection System Trust Fund (Trust Fund) established under 61.1811, F.S. Under s. 61.181(2)(b)1., the CLERC allocation is defined as 75% of the additional 1% increase in the fee from 3% to 4%, while s. 61.181(2)(b)2., provides a different formulation for calculating the CLERC allocation (for each support payment of less than \$33, 18.75 cents; for each support payment between \$33 and \$140, an amount equal to 18.75 percent of the fee charged; and for each support payment in excess of \$140, 18.75 cents). The different methods for calculating the part of the fee that goes to the Trust Fund have resulted in a hybrid calculation performed by the CLERC system.

The Trust Fund money is to be used exclusively for the development, implementation and operation of the CLERC system used by the depositories. The Department's obligation to fund CLERC and the automation of the depositories is limited to the state share of funds available in the Trust Fund. The Department contracts with FACC as required by the statute for data processing services necessary for the operation of the child support program and for the purpose of paying FACC the state share of the trust fund balances for operation and maintenance of CLERC.

Under the Department's contract with the Florida Association of Court Clerks (Contract CC700), which is required by s. 61.1826(3), for non-IV-D cases required to be processed by the SDU (income withholding payments in non-IV-D cases), the SDU transmits each payment to the Depository. The Depository in which the case is located collects the clerk's statutory fee, 40% of which is retained by the Depository for the administration, management and maintenance of the case.

The current practice for collecting, retaining, distributing, accounting for and reporting clerk fees in private cases on payments received directly by the depository and by the SDU have been in place for many years, are consistent with how the CLERC system is programmed, and are reflected in the Department's contracts with the Florida Association of Court Clerks for services in support of the depositories and the SDU.

EFFECT OF THE BILL

Section 3 of the bill amends s. 61.181, F.S., to:

- Re-organize material in current law to improve logical flow.
- Clarify that for payments not processed through the SDU, the clerk of court retains the clerk's share of the fee for receiving, recording, reporting, disbursing, monitoring, or handling alimony or child support payments. [s. 61.181(2)(b)2.]
- Provide that for payments processed through the SDU, the clerk of court retains 40 percent of the fee for the depository's administration, management, and maintenance of the case and that after retaining 40 percent of the fee and paying the amount due to the Clerk of the Court Child Support Enforcement Collection System Trust Fund, the clerk of court transmits the balance of the fee to the Department for handling as program income under s. 61.1814, F.S. [s. 61.181(2)(b)3.]
- Specify how the amount of the fee allocated to the operation and maintenance of the CLERC system is calculated by applying the methodology used by the CLERC system and deleting the methodologies specified in s. 61.181(2)(b).
- Provide that moneys remitted to the Department by the depository are remitted no less often than monthly through the Clerk of the Court Revenue Remittance System operated under s. 28.245, F.S. [s. 61.181(2)(b)4.]
- Clarify that depository fees are payable on payments in all non-IV-D cases, not only those that are not required to be processed through the SDU. [s. 61.181(2)(a)]
- Clarify that a depository fee may not be imposed on payments on IV-D cases. [s. 61.181(2)(a)]
- Delete a requirement for the SDU to collect and transmit fees on non-IV-D payments to the depository. [s. 61.181(2)(a)]
- Delete a requirement for the depository to provide the Title IV-D agency with a monthly report of IV-D payment accounts. [s. 61.181(4)]
- Delete a provision relieving the depository from the duty to provide the IV-D agency the date provided by a payor of income (e.g., employer) as required by s. 61.1301, F.S., if the fee increases under (2)(b) expire or are otherwise terminated. [s. 61.181(9)]
- Delete archaic references to past dates.
- Amend the definition of "Depository" in s. 61.046(4), F.S., to remove references to past dates, obsolete references, and clarify that the depository is established by the clerk of the circuit court.
- Amend a cross-reference in s. 61.1811, F.S., Clerk of the Court Child Support Enforcement Collection System Trust Fund.

The bill resolves the inconsistency in s. 61.181(2)(b) concerning the amount of the allocation for operation and maintenance of the CLERC system while having no impact on the current longstanding allocation methodology as programmed in CLERC. The hybrid methodology used by CLERC has been in effect for many years and differs only slightly from the two different formulas in current law. The proposed changes in section three will not increase net fee collection or individual fee amounts, and are therefore not subject to the requirements of Article VII, Section 19 of the Florida Constitution.

Section 4

PRESENT SITUATION

Section 61.1811, F.S., establishes the Clerk of the Court Child Support Enforcement Collection System Trust Fund used by the Department for deposit of its share of the clerk of court depository payment fees as provided by s. 61.181(2)(b), F.S.

EFFECT OF THE BILL

Section 4 is a conforming amendment that updates a cross-reference to s. 61.181(2)(b), F.S., consistent with section 3 of the bill.

Section 5

PRESENT SITUATION

Current law prohibits treating incarceration as voluntary unemployment when a support order is established or modified, except when incarceration is for intentional nonpayment of child support or an offense against a child or person who is owed child support. However, the court may deviate from the child support guideline amount as provided in s. 61.30(1)(a), F.S.

The federal Office of Child Support Enforcement (OCSE) objects to Florida's inclusion of exceptions to the federal rule that the state's child support guidelines must provide that incarceration may not be treated as voluntary unemployment when establishing or modifying support orders [45 CFR 302.56(c)(3)]. The exceptions for incarceration for intentional nonpayment of child support and offenses against a child or person who is owed child support were included in a proposed federal rule that was withdrawn by OCSE after current law was enacted and became law on October 1, 2021 (85 FR 58029, 9/17/2020 and 86 FR 62502, 11/10/2021).

OCSE has informed the Department that it will not approve Florida's Title IV-D State Plan for compliance with federal child support guidelines requirements unless the exceptions are removed from Florida law. Without an approved Title IV-D State Plan, the state is ineligible to receive federal Title IV-D matching funds and performance-based federal incentive payments. The Child Support Program's State Fiscal Year 2022-23 appropriations for these funds are \$174.6 million and \$42.2 million, respectively. Not having an approved Title IV-D State Plan also results in a penalty to the Title IV-A TANF (Temporary Assistance for Needy Families) Grant. For the first year of noncompliance, the penalty is 1-2% of TANF funds; for the second year, the penalty is 2-3% of TANF funds and for the third and subsequent years, the penalty is 3-5% of the amounts otherwise payable to the state. Florida's TANF Grant is \$560.5 million.

As a condition of the state's Title IV-D State Plan and continued receipt of federal Title IV-D matching funds, the state must comply with federal Title IV-D regulations. [42 USC 655(a)(1)(A); 45 CFR 302.56(a)]. The "Federal Compliance Date" for Florida to comply with 45 CFR 302.56(c)(3) is on or about June 30, 2023. Based on past experience, this is the expected completion date of the first quadrennial guideline review that commences more than one year after publication of the final rule. [81 Federal Register 93492 (12/20/2016)].

EFFECT OF THE BILL

The bill amends current law to delete exceptions to the rule that prohibits treating incarceration as voluntary unemployment in establishing or modifying a support order. Exceptions when incarceration is for intentional nonpayment of child support or an offense against a child or person who is owed child support are deleted, however, the court may deviate from the guideline amount as provided by s. 61.30(1)(a), F.S., if the court makes written findings in its order explaining why ordering payment of the guideline amount would be unjust or inappropriate.

Section 6

PRESENT SITUATION

Section 409.256(2)(a)5., F.S., authorizes the Department to commence an administrative proceeding to determine paternity or paternity and child support only when the child's mother or putative father has stated in an affidavit or written declaration under penalty of perjury that the putative father is or may be the child's biological father.

When the child resides with the mother or putative father, the Department is usually able to obtain an affidavit or written declaration of paternity that names the putative father or fathers. Obtaining the necessary affidavit or

written declaration is more difficult when the child resides with a nonparent caregiver. In such cases the mother and putative father may be unavailable to provide a written declaration or unwilling to cooperate.

The most common caregiver relationship is where the caregiver is the child's grandmother, and the caregiver is receiving public assistance for the child. Without an affidavit or written declaration of paternity from the mother or putative father, the administrative process is not available, and the Department proceeds in circuit court to determine paternity and child support. As of January 13, 2023, the Department was responsible for establishing paternity for a total of 48,075 children. Of that number 45,059 children were living with a parent and 3,016 were living with a nonparent caregiver. In the nonparent caregiver cases, 2,632 (87%) children received some form of public assistance (cash assistance, food assistance, and/or Medicaid).

The Department currently uses a "Paternity Statement by Non-Parent" form to serve as the basis for a paternity action in circuit court when a paternity affidavit or written declaration is not available from the mother or putative father ([Reference Material Home - Florida Administrative Rules, Law, Code, Register - FAC, FAR, eRulemaking \(flrules.org\)](#)). Nonparent caregivers often have knowledge of the child's paternity, especially grandparents and other close relatives. When making the statement, which is signed under penalty of perjury, the caregiver provides the factual basis for the allegation that the putative father named may be the father of the child in question. For example, the child's mother may have told the caregiver who the father is, the putative father may have admitted to the caregiver he is the father, or the mother and putative father may have lived together in the caregiver's home.

EFFECT OF THE BILL

Section 6 of the bill amends s. 409.256(2)(a)5., F.S., to authorize the Department to commence an administrative proceeding to determine paternity or paternity and child support based on an affidavit or written declaration completed by a nonparent caregiver of the child who has knowledge of the child's paternity.

Section 7

PRESENT SITUATION

Each clerk of the circuit court operates a child support depository as provided by s. 61.181(1)(a), F.S. The depository's duties include establishing and maintaining payment accounts for support orders in all cases for which the Department of Revenue provides child support services. The clerk's depository updates the payment accounts based on daily collection files provided by the Department, records of tax refund offsets and other one-time payments provided by the Department, and payments received directly by the clerk. Each clerk of court receives federal Title IV-D matching funds from the Department for providing these services.

For cases in which the obligor lives or works in another state, the clerk may not credit the obligor's account for collections receipted by another state without a Florida court order approving the credit. Because a Florida administrative support order is not a court order, a circuit court case is typically not available in which a motion for credit can be filed with the court. In some cases in which payments are being made to another state, the Department also receives support payments from federal offsets and other one-time collections. The Department reports these collections to the depository and the clerk credits the payments to the obligor's account. The absence of a complete accounting of payments at the depository gives the appearance that payments were not made. This can result in misunderstandings by the parties, the clerk and the Department, which may result in inappropriate enforcement or collection actions, including judgments by operation of law initiated by the depository under s. 61.14(6), F.S.

EFFECT OF THE BILL

Section 7 of the bill amends s. 409.256(3)(8) to provide that when the Department receives a payment record from a Title IV-D agency or a court in another state, as the term "state" is defined by s. 88.1011, and the payment record shows the obligor made a payment in that state pursuant to an administrative support order rendered by the Department, the Department files the payment record with the clerk of court depository, requesting the clerk to review the record and update the clerk's payment accounts, applying credit for payments made to the other

state for which the clerk has not previously provided credit. If the payment record from the other state indicates the obligor has made payments that are not reflected in the clerk’s payment accounts, the clerk credits the account in the amount of the payment made to the other state. A party to the administrative proceeding may dispute the application of credit in a subsequent proceeding concerning payment under the administrative support order.

Section 8

Provides an effective date of July 1, 2023.

- 2. DOES THE DEPARTMENT EXPECT TO DEVELOP, ADOPT, MODIFY OR ELIMINATE ANY RULES, REGULATIONS, POLICIES, OR PROCEDURES?** YES NO

| | |
|--|--|
| If yes, explain: | Amend rules to update forms and make conforming changes. |
| Rule(s) impacted (provide references to F.A.C., etc.): | Rules 12E-1.023 and 12E-1.036, F.A.C. |

- 3. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?** N/A

- 4. DOES THE BILL REQUIRE THE DEPARTMENT TO SUBMIT, MODIFY OR DELETE ANY REPORTS, STUDIES OR PLANS?** YES NO

| | |
|--------------------------------|--|
| If yes, provide a description: | |
| Date Due: | |
| Bill Section Number(s): | |

- 5. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** YES NO

| | |
|-------------------------|--|
| Board: | |
| Board Purpose: | |
| Who Appoints: | |
| Changes: | |
| Bill Section Number(s): | |

FISCAL ANALYSIS

- 6. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to local governments.

7. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

| | |
|--|--|
| Revenues: | The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact, if any, to state government. |
| Expenditures: <i>(Department of Revenue expenditures and operational impacts)</i> | <input type="checkbox"/> NO IMPACT <input type="checkbox"/> LESS THAN \$25,000 <input type="checkbox"/> MORE THAN \$25,000 <input type="checkbox"/> UNABLE TO DETERMINE <input checked="" type="checkbox"/> OPERATIONAL IMPACT ONLY |
| Does the legislation contain an appropriation to the Department? | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |

8. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? The Department of Revenue does not conduct this analysis.

9. DOES THE BILL INCREASE OR DECREASE TAXES, FEES OR FINES? The Department of Revenue does not conduct this analysis. The Revenue Estimating Conference will determine the revenue impact on state and local government, if any.

TECHNOLOGY IMPACT

If any, see attached Fiscal Impact Analysis.

FEDERAL IMPACT

If any, see Additional Comments section below.

ADDITIONAL COMMENTS

10. STATUTE(S) AFFECTED: ss. 61.046, 61.13016, 61.181, 61.1811, 61.30, 409.256, 409.2563, F.S.

11. HAS BILL LANGUAGE BEEN ANALYZED EARLIER THIS SESSION? YES NO

If no, go to #12. If yes:

A. Identify bill number or source.

B. Were issues/problems identified? YES NO

a. If yes, have they been resolved? YES NO If no, briefly explain.

C. Are new issues/problems created? YES NO If yes, briefly identify.

12. DOES THE BILL PRESENT DIFFICULTY IN IMPLEMENTATION, ADMINISTRATION OR ENFORCEMENT? YES NO

If yes, describe administrative problems, technical errors, or other difficulties:

13. RECOMMENDED CORRECTIONS:Section 1

The amended cross-reference included in section 1 of the bill amending the definition of “Clerk of Court Child Support Collection System” or “CLERC System” appears to be incorrect. Section 61.1811 establishes the Clerk of the Court Child Support Enforcement Collection System Trust Fund, not the Clerk of Court Child Support Collection System. The deleted cross-reference, s. 61.181(2)(b)1, references the Clerk of the Court Child Support Enforcement Collection System operated by the depositories.

The Department recommends that lines 26-31 be removed from the bill.

Section 5

The “Federal Compliance Date” for Florida to comply with the federal rule that a state’s child support guidelines must provide that incarceration may not be treated as voluntary unemployment when establishing or modifying support orders [45 CFR 302.56(c)(3)] is on or about June 30, 2023.

The Department recommends that the effective date for Section 5 of the bill be changed to “upon becoming law” by making the following revisions:

- Delete lines 268-269 and insert:

Effective upon becoming law, paragraph (c) of subsection (2) of section 61.30, Florida Statutes, is amended to read:

- Delete line 343 and insert:

Section 8. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2023.

14. OTHER: The proposed changes in section 3 do not increase net fee collection or individual fee amounts, and therefore are not subject to the requirements of Article VII, Section 19 of the Florida Constitution.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 536

INTRODUCER: Senator Garcia

SUBJECT: Child Support

DATE: March 3, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Delia | Cox | CF | Pre-meeting |
| 2. | | | AEG | |
| 3. | | | FP | |

I. Summary:

SB 536 makes numerous changes to the Child Support Program, which is administered by the Department of Revenue (DOR), Florida’s Title IV-D agency. As the state’s Title IV-D agency, the DOR is responsible for collecting and enforcing child support. To receive services from the Child Support Program, families either complete an application for services, or are automatically referred because a parent is receiving cash or food assistance.

The bill makes the following changes to the Child Support Program:

- Amends the definition of ‘depository’ to clarify that the depository required by statute is established by the clerk of the circuit court;
- Expands the circumstances when a payment agreement with a deferred start date may be used to include when an obligor is making a good faith effort to participate in job training;
- Removes existing exceptions to the federal prohibition on treating involuntary incarceration as voluntary unemployment when establishing or modifying a support order;
- Authorizes the DOR to commence an administrative proceeding to determine paternity or paternity and child support based on an affidavit or written declaration completed by a nonparent caregiver of the child who has knowledge of the child’s paternity;
- Requires the clerk of court to credit a depository payment account for collections received by another state while enforcing the Florida administrative support order associated with the account;
- Resolves inconsistency in statute concerning the amount of the allocation for operations and maintenance of the Clerk of Court Child Support Collection System (CLERC) system by reorganizing statutes to reflect the current, more efficient practice for collecting, retaining, distributing, accounting for and reporting clerk fees in private child support cases; and
- Requires the clerk of court to credit a depository payment account for collections received by another state while enforcing the Florida administrative support order associated with the accounts. The clerk must apply credit in the amount indicated by a record from another

state's Title IV-D agency or court that is provided to the clerk by the DOR and that documents collections made or received by the other state.

The DOR states that the fiscal impact of the bill is indeterminate. See Section V Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

III. Effect of Proposed Changes:

Depository Service Fees (Sections 3 and 4)

Present Situation

Title IV-D cases

Title IV-D (IV-D) refers to Title IV, Part D of the Social Security Act, which is the federally funded, state administered child support enforcement program.¹ The IV-D program is administered by the federal Office of Child Support Enforcement (OCSE), within the United States Department of Health and Human Services. The OCSE oversees the national child support program and partners with state and local child support agencies to encourage parental responsibility so that children receive financial, emotional, and medical support from both parents, even when they live in separate households.² The OCSE does not provide services directly to families, but helps state child support agencies develop, manage, and operate their child support programs effectively and according to federal law.³

As Florida's IV-D agency,⁴ the DOR is responsible for collecting and enforcing child support.⁵ The Child Support Program provides child support services to over one million children and collects over a billion dollars in child support each year. The Child Support Program works with parents, employers, financial institutions, the Internal Revenue Service, state and local agencies, and courts throughout the state to receive timely child support payments and also works with families and partners to:

- Locate parents, employers, and assets;
- Establish paternity;
- Establish and modify child support orders;

¹ 42 U.S.C. s. 651, et. seq.

² *Id.*

³ U.S. Department of Health & Human Services, Office of Child Support Enforcement (OCSE), *About the Office of Child Support Enforcement*, (February 2, 2021) available at <https://www.acf.hhs.gov/css/about> (last visited February 27, 2023).

⁴ Section 409.2557(1), F.S.

⁵ *See* s. 61.13, F.S.

- Collect and disburse child support payments; and
- Monitor and enforce child support orders.⁶

Child support services are available even if a parent lives in another state or country.⁷ The DOR offers child support services in all but two Florida counties, partnering with the State Attorney's Office for services in Miami-Dade County and the Manatee County Clerk of Court for services in Manatee County.⁸

Depository Role in IV-D Cases

Once a judge orders child support, the obligor may pay the obligee directly or payments can be made through an Income Withholding Order. If an Income Withholding Order is issued, the payments will be processed at the State Disbursement Unit (SDU)⁹ administered by the DOR. The clerks of courts act as record keepers for payments processed at the SDU. Obligor must make all child support payments in IV-D cases to the SDU.¹⁰

Each clerk of the circuit court operates a child support depository.¹¹ The DOR extends participation in the federal child support cost reimbursement program to the central depository¹² in each county, to the maximum extent possible under existing federal law.¹³ The depository receives reimbursement for services provided under a cooperative agreement with the DOR, and each depository is required to participate in the SDU.¹⁴

Upon request of the parties in a child support case, the court may order that child support payments be made through the depository or directly to the obligee if it is in the child's best interest.¹⁵ If such an order is made, any party or the DOR in a IV-D case may file an affidavit with the depository that alleges the obligor has defaulted on his or her child support payment obligations and request that the payments be made through the depository.¹⁶ The party must submit a copy of the affidavit to the court and to all parties.¹⁷ Fifteen days after receipt of the

⁶ The Department of Revenue (DOR), *About the Child Support Program*, available at https://floridarevenue.com/childsupport/about_us/Pages/about_us.aspx (last visited February 27, 2023).

⁷ *Id.*

⁸ *Id.*

⁹ Section 61.046(20), F.S., provides that the "State Disbursement Unit" means the unit established and operated by the Title IV-D agency to provide one central address for collection and disbursement of child support payments made in cases enforced by the DOR pursuant to Title IV-D of the Social Security Act and in cases not being enforced by the DOR in which the support order was initially issued in this state on or after January 1, 1994, and in which the obligor's child support obligation is being paid through income deduction order.

¹⁰ Sections 61.1824(1)(a), 61.1824(6), and 409.2559, F.S., and 42 U.S.C. s. 654b(a)(1)(A).

¹¹ Section 61.181(1)(a), F.S.

¹² Section 61.046(4), F.S., provides "depository" means the central governmental depository established pursuant to s. 61.181, F.S., created by special act of the Legislature or other entity established before June 1, 1985, to perform depository functions and to receive, record, report, disburse, monitor, and otherwise handle alimony and child support payments not otherwise required to be processed by the State Disbursement Unit.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 61.13(1)(d), F.S.

¹⁶ Section 61.13(1)(d)3., F.S.

¹⁷ *Id.*

affidavit, the depository must notify all parties that future payments will be paid through the depository, except income deduction payments must be made through the SDU.¹⁸

The DOR must contract with the Florida Association of Court Clerks (FACC) and the clerk depositories for operation and maintenance of the Clerk of Court Child Support Collection System (CLERC) System.¹⁹ The CLERC System integrates all clerk of court and depositories and transmits payment data and State Case Registry Data to the DOR's automated child support enforcement system.²⁰ When a private case with a support order payable directly to the parent who is owed support becomes an IV-D case, the depository must create payment accounts on the CLERC System for payments to be disbursed to the parent owed support and for the payment data to be sent to the DOR.²¹

Depository Role in Non-IV-D Cases

Two types of depository fees are levied on non-IV-D child support payments. For payments not required to be processed through the SDU, depositories must impose and collect a fee on each payment made for receiving, recording, reporting, disbursing, monitoring, or handling alimony or child support payments.²²

For non-IV-D cases processed by the SDU, the SDU collects a fee for each payment received and transmits 40 percent of the service charge to the depository in which the case is located for the depository's administration, management, and maintenance of such case.²³ If a payment is made to the SDU which is not accompanied by the required fee, the SDU is not permitted to deduct any moneys from the support payment for payment of the fee.²⁴ The fee must be a flat fee based, to the extent practicable, upon estimated reasonable costs of operation.²⁵ The fee is then reduced in any case in which the fixed fee results in a charge to any party of an amount greater than 3 percent of the amount of any support payment made in satisfaction of the amount which the party is obligated to pay, except that no fee is permitted to be less than \$1 nor more than \$5 per payment made.²⁶ The fee must be considered by the court in determining the amount of support that the obligor is, or may be, required to pay.²⁷

The fee for both payment types is 4% of the support payment and may not exceed \$5.25, and part of the fee must be remitted monthly to the DOR for deposit into the Child Support Enforcement Collection System Trust Fund (Trust Fund).²⁸

¹⁸ *Id.*

¹⁹ Section 61.1826(3), F.S.

²⁰ Section 61.046(2), F.S.

²¹ The DOR, *Senate Bill 536 Agency Analysis*, p. 3, (March 1, 2023) (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The DOR SB 536 Analysis").

²² Section 61.181(2)(a), F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 61.181(2)(b)1., F.S. The Child Support Enforcement Collection System Trust Fund is established pursuant to s. 61.1811, F.S., and is used to deposit the DOR's share of fees in non-IV-D cases.

Under s. 61.181(2)(b)1., F.S., the CLERC allocation is established to be 75% of the additional 1% increase in the fee from 3% to 4%. Section 61.181(2)(b)2., provides a different method for determining the CLERC allocation (for each support payment of less than \$33, 18.75 cents; for each support payment between \$33 and \$140, an amount equal to 18.75 percent of the fee charged; and for each support payment in excess of \$140, 18.75 cents).²⁹ According to the DOR, the different methods used to determine the portion of the fee which is transmitted the Trust Fund have resulted in the CLERC system utilizing a hybrid calculation.³⁰

Money deposited into the Trust Fund may only be used for the development, implementation and operation of the CLERC system.³¹ The DOR's requirement to fund the CLERC System and the automation of depositories is limited to the state share of funds available in the Trust Fund.³² The DOR and the FACC contract for data processing services as necessary for the operation of the child support program and for the purpose of paying the FACC the state share of the trust fund balances for operation and maintenance of CLERC System.³³

Pursuant to the DOR's current contract with the FACC (Contract CC700) for income withholding payments in non-IV-D cases, the SDU transmits all payments to the relevant depository for each case.³⁴ The depository collects the clerk's statutory fee and retains 40% for the administration, management and maintenance of the case.³⁵

According to the DOR, the current practice for collecting, retaining, distributing, accounting for and reporting clerk fees in non-IV-D cases on payments received directly by the depository and by the SDU has been in place for several years, coincides with programming of the CLERC System, and is reflected in the DOR's contracts with the FACC for services in support of the SDU and the depositories.³⁶

Effect of Bill

The bill amends s. 61.181, F.S., making the following changes:

- Applies the methodology currently utilized by the CLERC system to determine how the amount of the fee allocated to the operation and maintenance of the CLERC system is calculated;
- Removes existing references to unused methodologies specified in s. 61.181(2)(b);
- Clarifies that the clerk of court maintains its share of the fee for receiving, recording, reporting, disbursing, monitoring, or handling alimony or child support payments which are not processed through the SDU.

²⁹ The DOR SB 536 Analysis, p. 3.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ The DOR SB 532 Analysis, p. 3.

³⁵ *Id.*

³⁶ *Id.*

- Provides that for payments processed through the SDU, the clerk of court retains 40 percent of the fee for the depository's administration, management, and maintenance of the case for payments processed through the SDU
- Requires the clerk of court to transmit the balance of the fee to the DOR for handling as program income after retaining 40 percent of the fee and paying the amount due to the Trust Fund;
- Requires the DOR to transfer funds received from the depository at least monthly through the Clerk of the Court Revenue Remittance System operated under s. 28.245, F.S.;³⁷
- Provides that depository fees are payable on payments in all non-IV-D cases, not just those that are not required to be processed through the SDU;
- Prohibits depository fees from being imposed on payments on IV-D cases;
- Removes the existing requirement for the SDU to collect and remit fees to the depository on non-IV-D payments;
- Removes the existing requirement for the depository to provide the DOR with a monthly report of IV-D payment accounts;
- Removes a provision which specifies that the depository is not required to provide the IV-D agency with the date provided by a payor of income as required by s. 61.1301, F.S., if the fee increases, expires, or otherwise terminates. As a result, the depository must now provide the DOR with the date provided by a payor;
- Deletes obsolete language relating to prior dates;
- Changes the meaning of "depository" as defined in s. 61.046(4), F.S., to remove references to past dates and obsolete references;
- Clarifies that the depository is established by the clerk of the circuit court;
- Reorganizes current statutory provisions consistent with other changes made by the bill;
- Amends a cross-reference in s. 61.1811, F.S; and
- Updates a cross-reference to s. 61.181(2)(b), F.S.

The bill also corrects inconsistency in s. 61.181(2)(b) regarding allocation amounts for operation and maintenance of the CLERC System without altering the existing allocation methodology of the CLERC System.

Driver License Suspension (Section 2)

Present Situation

If an obligor is 15 days delinquent in making a support payment, notice to the obligor of the delinquency must be provided by the DOR (in IV-D cases) or the clerk of the court (in non-IV-D cases).³⁸ The notice must state that the DOR or the clerk of the court will request the

³⁷ Section 28.245, F.S., provides that notwithstanding any other provision of law, all moneys collected by the clerks of the court as part of the clerk's court-related functions for subsequent distribution to any state entity must be transmitted electronically, by the 10th day of the month immediately after the month in which the moneys are collected, to the DOR for appropriate distribution. A uniform remittance form provided by the DOR detailing the specific amounts due each fund must accompany such submittal. All moneys collected by the clerks of court for remittance to any entity must be distributed pursuant to the law in effect at the time of collection.

³⁸ Section 61.13016(1), F.S.

Department of Highway Safety and Motor Vehicles (DHSMV) to suspend the obligor's driver license within 20 days after the date that the notice is mailed.³⁹ The notice lists several ways for an obligor to stop suspension of his or her license, including:

- Paying the delinquency in full;
- Entering into a written agreement for payment (with the obligee⁴⁰ or the DOR);
- Contesting the delinquency notice;
- Demonstrating that he or she is on reemployment assistance (unemployment compensation);
- Demonstrating that he or she is disabled and incapable of self-support;
- Demonstrating that he or she receives temporary cash assistance; or
- Demonstrating that he or she is making bankruptcy payments.⁴¹

The obligor may enter into a payment agreement, which may include a reasonable period of payment deferral to accommodate the obligor's good faith job-seeking efforts, in order to avoid license suspension.⁴² If an obligor in a non-IV-D case enters into a written agreement for payment before the expiration of the 20-day period, the obligor must provide a copy of the signed written agreement to the depository or the clerk of the court.⁴³

Effect of Bill

The bill amends s. 61.13016(1)(c)1.b., F.S., to permit payment agreements which include a deferred start date in instances where the obligor is shown to be participating in job training in good faith.

Child Support Guidelines; Incarceration as Voluntary Unemployment (Section 5)

Present Situation

As the state's IV-D agency, federal law authorizes the head of the DOR, or its designee, to obtain consumer reports to determine an individual's income, establish that individual's capacity to make support payments, or determine the appropriate amount of child support the individual pays. Additionally, s. 61.1354(3), F.S., specifies that, to obtain the information, the head of the IV-D agency, or its designee, must certify that:

- The consumer report is needed for the purpose of determining an individual's income and establishing an individual's capacity to make support payments or determining the appropriate amount of child support payment to be made by the individual;
- Paternity of the child of the individual whose report is sought, if that individual is the father of the child, has been established or acknowledged pursuant to Florida law;

³⁹ Section 61.13016(1)(c), F.S.

⁴⁰ Section 61.046, F.S. defines "obligee" as the person to whom payments are made pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.

⁴¹ Section 61.13016(1)(c)1., F.S.

⁴² Section 61.13016(1)(c)1.b., F.S.

⁴³ Section 61.13016(1)(c), F.S.

- The individual whose report is sought was provided with at least 15 days' prior notice by certified or registered mail to the individual's last known address that the report was requested; and
- The consumer report will be used solely for the purpose specified.⁴⁴

In *DOR v. Jackson*,⁴⁵ the Florida Supreme Court held that a parent may not automatically have his or her child support payment obligations modified based solely on a reduction in income resulting from incarceration. The trial court has some discretion, but the child's interest in receiving support must generally supersede the obligor parent's substantial change in circumstances resulting from incarceration.

The District Courts of Appeal are not in agreement on whether income can be imputed when determining *an initial* child support order when the parent is in prison or going to prison.

In *McCall v. Martin*,⁴⁶ the Fourth District Court of Appeal reversed the trial court's order refusing to impute income to the father during his incarceration for committing battery on his wife, citing his absence of income. Relying on *Jackson* and *Mascola v. Lusskin*,⁴⁷ which was approved by the Supreme Court in *Jackson*, the Fourth District held that the father's child support order may not be modified based on his incarceration due to a conviction for attempting to kill the mother to avoid child support.

However, in *DOR v. Llamas*,⁴⁸ the First District Court of Appeal affirmed an order declining to impose a child support obligation upon the father who was going to prison. The First DCA certified conflict with the Fourth DCA's opinion in *McCall*, finding that the administrative law judge reasonably applied the law and did not abuse his discretion in declining to impute income to the father. Subsequently, in *Wilkerson v. Wilkerson*,⁴⁹ the Fifth DCA aligned itself with *McCall* and certified conflict with *Llamas*, holding that a court does not abuse its discretion in setting an initial child support obligation by imputing income to an incarcerated parent. The court in *Wilkerson* believed that an individual's actions that lead to incarceration are voluntary for purposes of s. 61.30(2)(b), F.S., and that s. 61.30, F.S., was not intended to operate as a shield to avoid having an initial support obligation established while the parent is incarcerated.

In 2016, Federal law was amended to prohibit state laws from treating incarceration as voluntary unemployment for purposes of establishing or modifying child support orders.⁵⁰ On September 17, 2020, the OCSE proposed two optional exceptions to allow incarceration to be treated as voluntary unemployment under child support guidelines, including incarceration which results from:

⁴⁴ Section 61.1354(3), F.S.

⁴⁵ 846 So. 2d 486 (Fla. 2003).

⁴⁶ 34 So. 3d 121 (Fla. 4th DCA 2010).

⁴⁷ 727 So. 2d 328 (Fla. 4th DCA 1999).

⁴⁸ 196 So.3d 1267 (Fla. 1st DCA 2016).

⁴⁹ 220 So. 3d 480 (Fla. 5th DCA 2017).

⁵⁰ See 45 CFR 302.56(c)(3).

- Intentional nonpayment of child support resulting from a criminal case or civil contempt action; or
- Any offense of which the individual's dependent child or the child support recipient was the victim.⁵¹

Since 2021, Florida law has prohibited treating incarceration as voluntary unemployment when a support order is established or modified, unless incarceration is for intentional nonpayment of child support or an offense against a child or person who is owed child support, or the court or administrative tribunal deviates from the guideline amount as provided under current law.⁵² The DOR has stated that the OCSE objects to Florida's exceptions to the Federal rule that a state's child support guidelines may not treat incarceration as voluntary unemployment when establishing or modifying support orders.⁵³ The OCSE has recently informed the DOR that it will not approve Florida's Title IV-D State Plan for compliance with federal child support guidelines requirements unless the exceptions are removed from Florida law.⁵⁴

Florida is ineligible to receive federal IV-D matching funds and performance-based federal incentive payments if the state lacks an approved Title IV-D State Plan.⁵⁵ According to the DOR, the Child Support Program's State Fiscal Year 2022-23 appropriations for these funds are \$174.6 million and \$42.2 million, respectively.⁵⁶ The state will also incur a penalty to the Title IV-A TANF (Temporary Assistance for Needy Families) Grant without an approved Title IV-D State Plan.⁵⁷ For the first year of noncompliance, the penalty is 1-2% of TANF funds; for the second year, the penalty is 2-3% of TANF funds; and for the third and subsequent years, the penalty is 3-5% of the amounts otherwise payable to the state.⁵⁸ Florida's TANF Grant is currently \$560.5 million.⁵⁹

As a condition of the state's IV-D State Plan and in order to continue receiving federal IV-D matching funds, Florida is obligated to comply with Federal IV-D regulations.⁶⁰ The "Federal Compliance Date" for Florida to comply with 45 CFR 302.56(c)(3) is approximately June 30, 2023.⁶¹

Effect of Bill

The bill makes changes to conform to the requirements of Federal law by deleting existing provisions of state law which prohibit classifying incarceration as voluntary unemployment when establishing or modifying a support order. As a result, incarceration will no longer be

⁵¹ 85 FR 58029 (September 17, 2020).

⁵² Section 61.30(2)(c), F.S.; Ch. 2021-103, s. 4, L.O.F.

⁵³ The DOR SB 536 Analysis, p. 4-5.

⁵⁴ *Id.*

⁵⁵ The DOR SB 536 Analysis, p. 5.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See 42 USC 655(a)(1)(A) and 45 CFR 302.56(a).

⁶¹ The DOR SB 536 Analysis, p. 5.

treated as voluntary unemployment for the purposes of support orders. The bill removes exceptions in instances where incarceration occurs as a result of intentional nonpayment of child support or an offense against a child or person who is owed child support; however, maintains the court's discretion to deviate from the guideline amount as provided by s. 61.30(1)(a), F.S., if the court makes written findings in its order explaining why ordering payment of the guideline amount would be unjust or inappropriate.

Determining Paternity or Paternity and Child Support (Section 6)

Present Situation

The DOR is authorized pursuant to s. 409.256(2)(a)5., F.S., to commence administrative proceedings to determine paternity or paternity and child support only in cases where a child's mother or putative father has executed an affidavit or written declaration under penalty of perjury stating that the putative father is, or may be, the child's biological father. The affidavit or written declaration must set forth the factual basis for the allegation of paternity.⁶²

In instances where a child lives with their mother or putative father, the DOR can often obtain an affidavit or written declaration of paternity that names the putative father or fathers.⁶³ The DOR has stated that obtaining proper documented authorization is problematic in cases where a child lives with a nonparent caregiver.⁶⁴ The mother and putative father may be unavailable to provide a written declaration or unwilling to cooperate in such instances.⁶⁵

According to the DOR, the most common caregiver relationship involves instances where the caregiver is the child's grandmother and she is receiving public assistance for the child.⁶⁶ An administrative proceeding cannot be commenced without an affidavit or written declaration of paternity from the mother or putative father, and the DOR must file the case in circuit court to determine paternity and child support.⁶⁷ As of January 13, 2023, the DOR was responsible for establishing paternity for 48,075 children living with a nonparent caregiver of which 45,059 lived with a parent and 3,016 lived with a nonparent caregiver.⁶⁸ In nonparent caregiver cases, (87%) received some form of public assistance (cash assistance, food assistance, and/or Medicaid).⁶⁹

The DOR uses a "Paternity Statement by Non-Parent" form to serve as the basis for a paternity action in circuit court when a paternity affidavit or written declaration is not available from the mother or putative father.⁷⁰ According to the DOR, nonparent caregivers often have knowledge

⁶² Section 409.256(2)(a)5., F.S.

⁶³ The DOR SB 536 Analysis, p. 5.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Rule 12E-1.039, F.A.C.; the "Paternity Statement by Non-Parent" form is referenced in the Florida Administrative Code as CS-PO34 and available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-08655>.

of the child's paternity.⁷¹ The caregiver signs the statement under penalty of perjury and provides the factual basis for the allegation that the putative father named may be the father of the child at issue in the case.⁷²

Effect of Bill

The bill amends s. 409.256(2)(a)5., F.S., to permit the DOR to initiate an administrative proceeding to determine paternity, or paternity and child support, where an affidavit or written declaration is executed by a nonparent caregiver of the child who has knowledge of the child's paternity.

Credit for Payments Made to Another State (Section 7)

Present Situation

Since enactment of Title IV-D of the Social Security Act in January 1975, states have been required to cooperate with one another in locating absent parents, establishing paternity, and obtaining and enforcing support owed by absent parents to their children.⁷³ Pursuant to the Full Faith and Credit for Child Support Order Act and the Uniform Interstate Family Support Act (UIFSA), courts of all U.S. territories, states, and tribes must give full faith and credit to a child support order issued by another state or tribe that had jurisdiction over the parties and the subject matter.⁷⁴

In Florida, the DOR may request each depository to establish an account for the receipt and disbursement of support payments for IV-D interstate cases.⁷⁵ The DOR is required to provide a copy of the other state's order with the request, and the depository must advise the DOR of the account number in writing within 4 business days after receipt of the request.⁷⁶

In child support cases where an obligor lives and works in a state other than Florida, a clerk of court may not credit the obligor's account for payments made to another state without prior approval from a Florida court.⁷⁷ Florida administrative support orders are not court orders and therefore a circuit court case is typically not available in which a motion for credit can be filed with the court.⁷⁸

In some interstate IV-D cases, the DOR also receives support payments from federal offsets and other one-time collections.⁷⁹ The DOR reports such payments to the appropriate depository and

⁷¹ The DOR SB 536 Analysis, p. 6.

⁷² *Id.*

⁷³ The OCSE, *Final Rule: Provision of Services in Interstate IV-D Cases*, available at <https://www.acf.hhs.gov/css/policy-guidance/final-rule-provision-services-interstate-iv-d-cases> (last visited February 27, 2023).

⁷⁴ The OCSE, *Child Support Handbook Chapter 7: Working Across Borders* at p. 1, available at https://www.acf.hhs.gov/sites/default/files/documents/ocse/chapter7_0.pdf (last visited February 27, 2023).

⁷⁵ Section 61.181(1)(b), F.S.

⁷⁶ *Id.*

⁷⁷ The DOR SB 536 Analysis, p. 6.

⁷⁸ *Id.*

⁷⁹ *Id.*

the clerk credits the payments to the obligor's account.⁸⁰ The absence of a complete accounting of payments at the depository makes it appear that payments were not made, which may result in inappropriate enforcement or collection actions, including judgments by operation of law initiated by the depository under s. 61.14(6), F.S.⁸¹

Effect of Bill

The bill amends s. 409.2563(8), F.S., to provide that when the DOR receives a record of a payment from a IV-D agency or a court in another state and the record shows the obligor made a payment in that state pursuant to a DOR-issued support order, the DOR is required to file a record of the payment with the appropriate depository. The DOR must request that the clerk review the record and update relevant payment accounts.

The bill requires the DOR to apply credit for payments made in another state if the clerk has not previously done so. If the other state's payment record reflects payments which are not shown in the clerk's payment accounts, the clerk must credit the obligor's account in an amount equal to that of the payment made to the other state. The bill allows parties to the administrative proceeding to dispute the application of credit in subsequent proceedings regarding payment under the support order.

Updated Definitions and Cross-References (Sections 1 and 4)

Section 1 of the bill amends the definition of "Depository" in s. 61.046(4), F.S., consistent with section 3 of the bill. The bill clarifies that each depository is established by the appropriate clerk of the circuit court. Section 4 of the bill updates a cross-reference consistent with section 3 of the bill.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸⁰ *Id.*

⁸¹ *Id.*

D. State Tax or Fee Increases:

The DOR states that the proposed changes in section 3 of the bill will likely not increase net fee collection or individual fee amounts, and therefore are not subject to the requirements of Article VII, Section 19 of the Florida Constitution.⁸²

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 DOR states that the Revenue Estimating Conference will determine any potential impact on state and local government.⁸³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 61.046, 61.13016, 61.181, 61.1811, 61.30, 409.256, and 409.2563 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.

⁸² The DOR, *Senate Bill 536 Analysis*, p. 8 (January 3, 2023).

⁸³ *Id.*

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 268 - 343

and insert:

Section 5. Effective upon becoming law, paragraph (c) of subsection (2) of section 61.30, Florida Statutes, is amended to read:

61.30 Child support guidelines; retroactive child support.—

(2) Income shall be determined on a monthly basis for each parent as follows:



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11 (c) ~~Except for incarceration for willful nonpayment of~~
12 ~~child support or for an offense against a child or person who is~~
13 ~~owed child support,~~ Incarceration may not be treated as
14 voluntary unemployment in establishing or modifying a support
15 order. However, the court may deviate from the child support
16 guideline amount as provided in paragraph (1) (a).

17 Section 6. Paragraph (a) of subsection (2) of section
18 409.256, Florida Statutes, is amended to read:

19 409.256 Administrative proceeding to establish paternity or
20 paternity and child support; order to appear for genetic
21 testing.—

22 (2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO
23 THE COURTS.—

24 (a) The department may commence a paternity proceeding or a
25 paternity and child support proceeding as provided in subsection
26 (4) if:

27 1. The child's paternity has not been established.

28 2. No one is named as the father on the child's birth
29 certificate or the person named as the father is the putative
30 father named in an affidavit or a written declaration as
31 provided in subparagraph 5.

32 3. The child's mother was unmarried when the child was
33 conceived and born.

34 4. The department is providing services under Title IV-D of
35 the Social Security Act.

36 5. The child's mother, caregiver, or a putative father has
37 stated in an affidavit, or in a written declaration as provided
38 in s. 92.525(2), that the putative father is or may be the
39 child's biological father. The affidavit or written declaration



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40 must set forth the factual basis for the allegation of paternity
41 as provided in s. 742.12(2).

42 Section 7. Subsection (8) of section 409.2563, Florida
43 Statutes, is amended to read:

44 409.2563 Administrative establishment of child support
45 obligations.—

46 (8) FILING WITH THE CLERK OF THE CIRCUIT COURT; OFFICIAL
47 PAYMENT RECORD; JUDGMENT BY OPERATION OF LAW.—The department
48 shall file with the clerk of the circuit court a copy of an
49 administrative support order rendered under this section. The
50 depository operated pursuant to s. 61.181 for the county where
51 the administrative support order has been filed shall:

52 (a) Act as the official recordkeeper for payments required
53 under the administrative support order;

54 (b) Establish and maintain the necessary payment accounts;

55 (c) Upon a delinquency, initiate the judgment by operation
56 of law procedure as provided by s. 61.14(6); and

57 (d) Perform all other duties required of a depository with
58 respect to a support order entered by a court of this state.

59

60 When a proceeding to establish an administrative support order
61 is commenced under subsection (4), the department shall file a
62 copy of the initial notice with the depository. The depository
63 shall assign an account number and provide the account number to
64 the department within 4 business days after the initial notice
65 is filed. When the department receives a payment record from a
66 IV-D agency or a court in another state, as the term "state" is
67 defined by s. 88.1011, and the payment record shows the obligor
68 made a payment in that state pursuant to an administrative



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69 support order rendered by the department, the department shall
70 file the payment record with the clerk of the court depository,
71 requesting the clerk to review the record and update the clerk's
72 payment accounts, applying credit for payments made to the other
73 state for which the clerk has not previously provided credit. If
74 the payment record from the other state indicates the obligor
75 has made payments that are not reflected in the clerk's payment
76 accounts, the clerk must credit the account in the amount of the
77 payment made to the other state. A party to the administrative
78 proceeding may dispute the application of credit in a subsequent
79 proceeding concerning payment under the administrative support
80 order.

81 Section 8. Except as otherwise expressly provided in this
82 act, this act shall take effect July 1, 2023.

By Senator Trumbull

2-00561A-23

2023538__

1 A bill to be entitled
2 An act relating to provisional child care licensing;
3 amending s. 402.309, F.S.; requiring a local licensing
4 agency or the Department of Children and Families to
5 issue a provisional license or registration for a
6 family day care home under certain circumstances;
7 providing an effective date.

8

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

10

11 Section 1. Present subsections (3), (4), and (5) of section
12 402.309, Florida Statutes, are redesignated as subsections (4),
13 (5), and (6), respectively, and a new subsection (3) is added to
14 that section, to read:

15 402.309 Provisional license or registration.—

16 (3) A local licensing agency or the department, whichever
17 is authorized to license child care facilities in a county, must
18 issue a provisional license or registration for a family day
19 care home when the operator provides evidence of training
20 pursuant to United States Department of Defense Instruction
21 6060.02 and background screening by the United States Department
22 of Defense pursuant to 34 U.S.C. s. 20351 and 32 C.F.R. part 86.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 538

INTRODUCER: Senator Trumbull

SUBJECT: Provisional Child Care Licensing

DATE: February 22, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|--------------------|
| 1. | Tuszynski | Cox | CF | Pre-meeting |
| 2. | _____ | _____ | MS | _____ |
| 3. | _____ | _____ | RC | _____ |

I. Summary:

SB 538 requires the Department of Children and Families (DCF) or local licensing agency to issue a provisional license or registration to operate a family day care home when the operator of that home provides evidence of training and background screening that meets the requirements of the Department of Defense (DoD) for a family child care home.

This change will increase access to child care for military families by decreasing the time to operation for Family Child Care home operators who complete DoD-required training and background screening to begin serving military families immediately. The provisional license allows a Family Child Care home operator to provide child care services while simultaneously completing the DCF licensure requirements for a family day care home, to include a Level 2 background screen through the Care Provider Background Screening Clearinghouse.

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

The bill takes effect upon becoming law.

II. Present Situation:

Child Care Licensure

The Department of Children and Families (DCF) is charged with regulating child care facilities, family day care homes, and large family child care homes.¹

¹ See generally ss. 402.301 through 402.319, F.S.

Child care facilities are child care centers or child care arrangements that provide child care for more than five children unrelated to the operator, and receive payment, fee, or grant funds for the children receiving care, whether or not operated for profit.²

Family day care homes are occupied residences which regularly provide children from at least two unrelated families child care, and receive payments, fees, or grants for the children receiving care, whether or not operated for profit.³

Large family child care homes are occupied residences that regularly provide children from at least two unrelated families child care; receive payments, fees, or grants for the children receiving care, whether or not operated for profit; and have at least two full-time child care personnel on the premises during the hours of operation.⁴

The DCF licenses and regulates child care facilities and large family child care homes in 62 of the 67⁵ counties in Florida, establishing licensing standards that each licensed child care facility in the state must meet.⁶ The remaining five counties have local licensing authority and must meet or exceed the DCF standards: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota Counties.⁷

As of February 27, 2023, the DCF licenses 4,687 child care facilities, 725 family day care homes, and 235 large family child care homes.⁸

Current law requires all providers' personnel meet specific licensure standards, training, credentials, and good moral character based upon background screening.⁹ Child care facilities with religious affiliation and certain family day care homes are exempt from licensure, but must register with the DCF. Although exempt from licensure, these specific operators and staff are still subject to the Level 2 background screening standards required under s. 435.04, F.S.¹⁰

Provisional Licensure

The DCF may issue a provisional license or registration for child care facilities, family day care homes, or large family homes.¹¹ The conditions and procedures under which a provisional license or registration may be issued is detailed in administrative rule.¹² A provisional license cannot exceed 6 months and can be renewed one time for unusual circumstances beyond the

² Section 402.302(2), F.S.

³ Section 402.302(8), F.S.

⁴ Section 402.302(11), F.S.

⁵ Office of Program Policy Analysis and Government Accountability, Department of Children and Families, Child Care Regulation, *What are the program's responsibilities?*, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5011> (last viewed March 1, 2023).

⁶ Section 402.305, F.S.

⁷ Section 402.306, F.S.

⁸ Email from Chad Corcoran, Deputy Director of Legislative Affairs, the Florida Department of Children and Families, *RE: Child care licensure numbers*, February 27, 2023 (on file with the Committee on Children, Families, and Elder Affairs).

⁹ Section 402.305, F.S.

¹⁰ Section 402.316, F.S.

¹¹ Section 402.309, F.S.

¹² Section 402.309(5), F.S., and Rule 65C-22.001, F.A.C., that incorporates by reference the Department of Children and Families, *Child Care Facility Handbook*, October 2021.

control of the applicant.¹³ A provisional license is barred if the background screening for child care personnel is not complete.¹⁴

Background Screening

Florida law details two levels of background screening for the purposes criminal history record checks. These levels convey both the method of the record check and the extent of data searched:

- **Level 1** — a state-only name-based check through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website;¹⁵ and
- **Level 2** — a state and national fingerprint-based check through FDLE and the Federal Bureau of Investigation’s (FBI) National Crime Information Center (NCIC).¹⁶

Both Level 1 and Level 2 checks may also include local criminal history record checks through local law enforcement agencies.¹⁷

Level 1 and 2 are terms that pertain only to Florida and are not used by the FBI, the NCIC, or other states. They are defined in Chapter 435, F.S., and require any person required by law to be screened to not have an arrest awaiting final disposition; been found guilty of, regardless of adjudication; entered a plea of nolo contendere to; or been adjudicated delinquent and the record has not be sealed or expunged for any offense prohibited under s. 435.04(2), F.S.¹⁸ Levels 1 and 2 are used throughout statute without definition and with additional disqualifying offenses¹⁹ as well as a process for a screened person to obtain an exemption from disqualification.²⁰

Care Provider Background Screening Clearinghouse

All child care licensees and registrants are required to have a Level 2 background screen through Florida’s Care Provider Background Screening Clearinghouse (Clearinghouse). The Clearinghouse is a single data source, administered by the Agency for Health Care Administration, for persons that are statutorily required to obtain a Level 2 screen for candidacy as an employee, independent contractor, or volunteer that provides care to children, elderly, disabled, and other vulnerable individuals.²¹ The Clearinghouse allows the sharing of fingerprints and results of Level 2 criminal history checks among participating agencies to reduce duplication and costs. The Clearinghouse provides other benefits, one of which is the

¹³ Section 402.309(3), F.S.

¹⁴ Section 402.309(2), F.S.

¹⁵ Section 435.03(1), F.S.

¹⁶ Section 435.04(1), F.S.

¹⁷ See ss. 435.03(1) and 435.04(1)(a), F.S.

¹⁸ Section 435.04(2), F.S., details 52 distinct criminal offenses including broad categories of offenses related to violence, deception, and neglect of vulnerable persons.

¹⁹ See generally s. 413.208, F.S., related to employment by the Agency for Persons with Disabilities; s. 397.4073, F.S., related to employment as a substance abuse services provider; s. 381.986(9), F.S., related to individuals working with medical marijuana; and s. 744.3135(1), F.S., relating to employment as a professional guardian.

²⁰ Section 435.07, F.S.

²¹ The Agency for Health Care Administration, *Care Provider Background Screening Clearinghouse*, available at https://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/BGS_results.shtml (last viewed February 28, 2023).

retention of fingerprint data and participation in the FBI's Next Generation Identification continuous evaluation or "Rap Back" Service.

Next Generation Identification (NGI) — Rap Back Service

An agency may submit fingerprints of applicants, licensees, and other individuals in positions of public trust *on a periodic basis* for national NCIC checks to determine if the individual has engaged in criminal conduct that would prohibit the holding of a position or license.²² With the implementation of the FBI's NGI, an authorized agency may submit fingerprints for retention and subscription into the Rap Back service, an ongoing review or continuous evaluation of the criminal history status of each individual as long as the individual remains in a position of trust.²³

The Rap Back Service retains the fingerprint record and continuously evaluates it, rather than an agency periodically resubmitting fingerprints.²⁴ This Rap Back Service results in close to real-time notification of any criminal activity subsequent to the initial criminal history records search, removing any gaps in review caused by the periodic submission and screening of fingerprints.

Department of Defense Child Care Certification

The Department of Defense (DoD) certifies four distinct child care programs:²⁵

- **Child Development Centers** — are centers located on military installations that provide child care services for infants, pretoddlers, toddlers, and preschoolers. They operate Monday through Friday during standard work hours, and depending on the location offer full-day, part-day, and hourly care.
- **Family Child Care (FCC)** — provided by qualified child care professionals in their homes. Designed for infants through school agers, each FCC provider determines what care they offer, which may include full-day, part-day, school year, summer camp, 24/7, and extended care. Some FCC providers offer flexible operating hours, and are able to adjust their hours to accommodate requests from parents.
- **24/7 Centers** — child care for infants through school age children in a home-like setting during both traditional and non-traditional hours on a regular basis. The program is designed to support watch standers or shift workers who work rotating or non-traditional schedules (i.e., evenings, overnights, and weekends). While other families may use a 24/7 Center if space is available, priority is given to sponsors who require 24/7 care.
- **School Age Care (SAC)** — facility-based care for children from the start of kindergarten through the end of the summer after seventh grade. This program type operates Monday through Friday during standard work hours. SAC programs provide both School Year Care and Summer Camp.

²²See Federal Bureau of Investigation, Privacy Impact Assessment, *Next Generation Identification Rap Back Service*, December 15, 2016, available at <https://www.fbi.gov/file-repository/pia-ngi-rap-back-service.pdf> (last viewed February 28, 2023).

²³ *Id.*

²⁴ *Id.*

²⁵ The Department of Defense, Military Childcare, *Military-Operated Child Care Programs*, available at <https://public.militarychildcare.csd.disa.mil/mcc-central/mcchome/military-operated-child-care-programs> (last viewed February 27, 2023). (hereinafter referred to as DoD MC)

The DoD FCC homes are most analogous to Florida’s Family Day Care homes. These FCC home operators must be certified family child care providers who are licensed, have obtained favorable background checks, and maintain a DoD-issued certificate to operate.²⁶ Each installation’s FCC program ensures all providers complete a comprehensive training program that promotes developmentally appropriate intellectual, social, emotional, and physical learning.²⁷

Required screenings, inspections, and checks for an FCC home include:

- Criminal history background checks for the applicant and all residents over 18 years old;
- Health screening and proof of immunizations for the provider and residents;
- Home inspections for fire, safety, sanitation, and preventative medicine;
- Monthly visits by an FCC staff member to observe, mentor and provide support;
- Pet certificate if the provider has a pet to show that it has the appropriate vaccinations and is safe to be around children; and
- Proof of liability insurance.²⁸

FCC home providers that are located off military installations are required to meet any requirements to be licensed, registered, or certified by the state.²⁹

Florida and DoD Comparison

The requirements of the DoD to certify an FCC home and the DCF to license or register a Family Day Care home are substantially similar. Both require 40 hours of introductory training focusing on health and safety, child development, behavioral health, and abuse and neglect.³⁰ Both also require training in first aid, CPR, fire prevention, safe sleep / SIDS, and ongoing annual in-service training updates.³¹

However, Florida requires that all Family Day Care Home providers receive a Florida Level 2 background screen pursuant to s. 435.04, F.S., using the Clearinghouse. The general comparison of the state Level 2 requirements and a federal Tier One Child Care are as follows:

| Florida’s Level 2 for Child Care | Federal Tier One Child Care ³² |
|---|---|
| Federal fingerprint-based NCIC criminal history check. | Same. |
| Federal fingerprint-based NCIC Sex Offender Registry check. | Same. |

²⁶ DoD MC, *About Military Child Care*, available at <https://public.militarychildcare.csd.disa.mil/mcc-central/mcchome/about#program-quality-standards-93> (last viewed February 27, 2023).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See generally Rule 65C-22.001, F.A.C. and the Department of Defense Instruction 6060.02, available at <https://www.militaryonesource.mil/leaders-service-providers/children-youth-and-teens/department-of-defense-policies-children-youth-teens/> (last viewed February 25, 2023).

³¹ *Id.*

³² See 34 U.S.C. s. 20351 and 32 C.F.R. part 86.

| Florida’s Level 2 for Child Care | Federal Tier One Child Care ³² |
|---|--|
| A search of each state’s criminal records for all states in which the person has resided in the previous five years. | Same.* |
| State sex-offender registry or repository for all states in which the person has resided in the previous five years. | Same.* |
| State child abuse and neglect registry and database for all states in which the person has resided in the previous five years. | Same.* |
| Background screens processed through the Florida Care Provider Background Screening Clearinghouse. | Processing through the Clearinghouse is not required. |
| No DoD installation record checks. | DoD installation records check of all prior affiliations. |
| * The Department of Air Force reports they check the repository of all states in which the person has <i>ever</i> resided, not just the previous 5 years. | |

As detailed above, the background screening requirements are almost identical between federal and state law. However, the main relevant difference is Florida’s requirement to use the Clearinghouse. The use of the Clearinghouse provides the Rap Back Service that gives close to real time notification of any criminal activity of an employee or licensee with retained fingerprint records.

III. Effect of Proposed Changes:

The bill requires the DCF or local licensing agency to issue a provisional license or registration to operate a family day care home when the operator of that home provides evidence, with his or her application, of completion of training and background screening that meets the requirements of the DoD for a family child care home.

This change will decrease the time to operation for FCC home operators who complete the DoD-required training and background screening and allow those operators to begin serving military families immediately upon applying to the DCF or local licensing agency for licensure or registration. The provisional license allows a FCC home operator to provide child care services while simultaneously completing the DCF licensure requirements for a Family Day Care home, including a Level 2 background screen through the Clearinghouse.

As with other Family Day Care Home providers who are licensed or registered, the bill ensures that these DoD FCC home operators will be included in the Clearinghouse upon completion of the state application process and therefore subject to the Rap Back Service.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The bill will likely have an indeterminate positive fiscal impact on the private sector by allowing private operators of child care homes to begin doing business much sooner than currently able.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 402.309 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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



293938

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 16 - 19

and insert:

(3) Notwithstanding subsection (2), a local licensing agency or the department, whichever is authorized to license child care facilities in a county, must issue a provisional license or registration for a family day care home when the applicant provides evidence that he or she has completed, within the previous 6 months, training

By Senator Burgess

23-00402-23

2023664__

1 A bill to be entitled
2 An act relating to contracts entered into by the
3 Department of Children and Families; amending s.
4 409.996, F.S.; revising requirements for contracts
5 between the department and lead agencies; providing an
6 effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:
9

10 Section 1. Present paragraph (f) of subsection (1) of
11 section 409.996, Florida Statutes, is redesignated as paragraph
12 (h), and new paragraphs (f) and (g) are added to that
13 subsection, to read:

14 409.996 Duties of the Department of Children and Families.—
15 The department shall contract for the delivery, administration,
16 or management of care for children in the child protection and
17 child welfare system. In doing so, the department retains
18 responsibility for the quality of contracted services and
19 programs and shall ensure that, at a minimum, services are
20 delivered in accordance with applicable federal and state
21 statutes and regulations and the performance standards and
22 metrics specified in the strategic plan created under s.
23 20.19(1).

24 (1) The department shall enter into contracts with lead
25 agencies for the performance of the duties by the lead agencies
26 established in s. 409.988. At a minimum, the contracts must do
27 all of the following:

28 (f) Require lead agencies to annually provide written and
29 published plans that detail timelines and procedures to maximize

23-00402-23

2023664__

30 the use of concurrent case planning, minimize the time to
31 complete preliminary and final adoptive home studies, streamline
32 data entry into the statewide child welfare information system,
33 and reduce time to permanency.

34 (g) Require lead agencies to complete preliminary and final
35 adoptive home studies no later than 90 days after the filing of
36 the petition for termination of parental rights.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 664

INTRODUCER: Senator Burgess

SUBJECT: Contracts Entered into by the Department of Children and Families

DATE: March 3, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|--------------------|
| 1. | Tuszynski | Cox | CF | Pre-meeting |
| 2. | _____ | _____ | GO | _____ |
| 3. | _____ | _____ | RC | _____ |

I. Summary:

SB 664 expands the contract requirements of the Department of Children and Families under s. 409.996, F.S., requiring a lead agency to annually provide and publish plans detailing timelines and procedures to maximize the use of concurrent planning, minimize the time to complete preliminary and final adoptive home studies, and streamline data entry into the statewide child welfare information system.

The bill also requires a lead agency to complete a preliminary and final adoptive home study no later than 90 days after the filing of a petition for termination of parental rights.

The bill will likely have an indeterminate but insignificant fiscal impact on the private sector. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Florida's Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children. Out-of-home placements can include a temporary placement with a family member, family foster home, residential child-caring agency, a permanent adoptive placement with a family previously unknown to the child.¹

¹ Section 409.175, F.S.

Community-Based Care Organizations and Services

The DCF contracts for case management, out-of-home care (foster care), adoption, and other related services with lead agencies, also known as community-based care organizations (CBCs). The CBC model is designed to increase local community ownership of service delivery and design of child welfare services.²

The DCF, through the CBCs, administers a system of care³ for children that is directed toward:

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

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

² The Department of Children and Families, *About Community-Based Care*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care> (last visited February 27, 2023) (hereinafter cited as "DCF").

³ *Id.*

⁴ *Id.*; Also see generally s. 409.988, F.S.

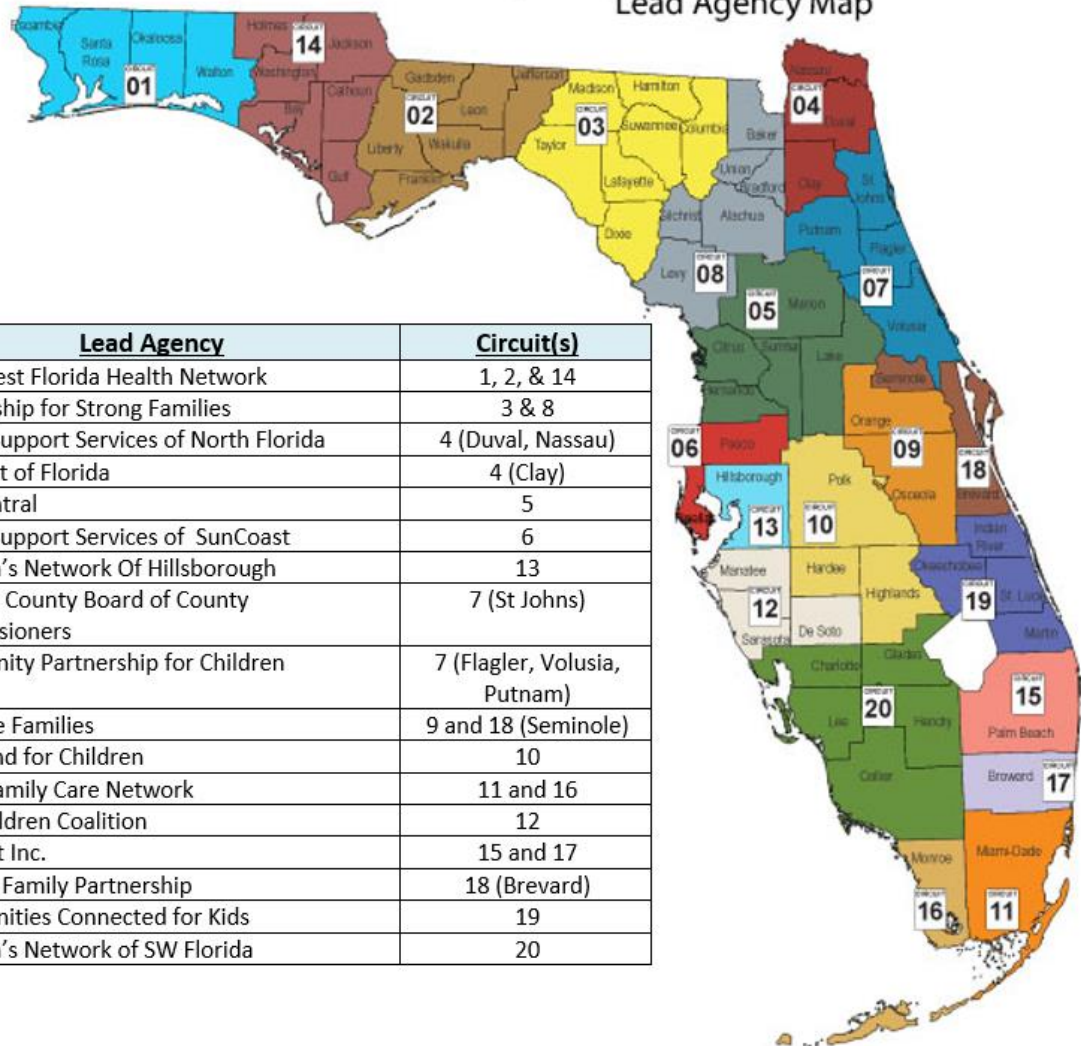
⁵ Section 409.988(3), F.S.

⁶ The DCF, *Lead Agency Information*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information> (last visited February 27, 2023).

⁷ Section 409.988(1), F.S.

The DCF contracts with the following lead agencies as illustrated in the table and map below:

Community-Based Care Lead Agency Map



| <u>Lead Agency</u> | <u>Circuit(s)</u> |
|---|------------------------------|
| Northwest Florida Health Network | 1, 2, & 14 |
| Partnership for Strong Families | 3 & 8 |
| Family Support Services of North Florida | 4 (Duval, Nassau) |
| Kids First of Florida | 4 (Clay) |
| Kids Central | 5 |
| Family Support Services of SunCoast | 6 |
| Children’s Network Of Hillsborough | 13 |
| St Johns County Board of County Commissioners | 7 (St Johns) |
| Community Partnership for Children | 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 |

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.⁸ A child protective investigation begins if the

⁸ Section 39.201(1), F.S.

hotline determines the allegations meet the statutory definition of abuse,⁹ abandonment,¹⁰ or neglect.¹¹ 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.¹²

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.¹³ The dependency court process is summarized in the table below.

The Dependency Court Process

| Dependency Proceeding | Description of Process | Controlling Statute |
|--|---|----------------------------|
| Removal | A child protective investigation determines a child is unsafe in his or her home 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. |
| 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. |

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² Section 39.101(2), F.S.

¹³ 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 |
|---|--|---|
| 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. |
| Post-disposition hearing | The court may change temporary placement at a post disposition 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. |

In-Home and Out-of-Home Care

The DCF is required to administer a system of care that endeavors to keep children with their families and provides interventions to allow children to remain safely in their own homes.¹⁴ Protective investigators and CBC case managers can refer families for in-home services to allow children who would otherwise be unsafe to remain in their own homes.

When a child protective investigator determines that in-home services are not enough to allow a child to safely remain in his or her home, the investigator removes and places the child with a safe and appropriate temporary placement.¹⁵ These temporary placements, referred to as out-of-home care, provide housing and services to children until they can return home to their families or achieve permanency with other families through adoption or guardianship.¹⁶

The CBCs must place all children in out-of-home care in the most appropriate available setting after conducting an assessment using child-specific factors.¹⁷ Legislative intent is to place

¹⁴ See s. 39.001, F.S.

¹⁵ Sections 39.401 through 39.4022, F.S.

¹⁶ The Office of Program Policy and Government Accountability, *Program Summary*, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5053> (last visited February 28, 2023).

¹⁷ Rule 65C-28.004, F.A.C., provides that the child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement.

children in a family-like environment when they are removed from their homes.¹⁸ When possible, child protective investigators and lead agency case managers place children with relatives or responsible adults whom they know and with whom they have a relationship. These out-of-home placements are referred to as relative and non-relative caregivers or “fictive kin”. When a relative or non-relative caregiver placement is not possible, case managers try to place children in family foster homes licensed by the DCF.

Some children have extraordinary needs, such as multiple placement disruptions, behavioral health problems, juvenile justice involvement, or disabilities, which may require case managers to place them in residential group care. The primary purpose of residential group care is to provide a setting that addresses the unique needs of children and youth who require more intensive services than a family setting can provide.¹⁹

Case Plan Development

The DCF must develop and draft a case plan for each child receiving services within the dependency system.²⁰ The purpose of a case plan is to develop a document that details the permanency goal and services designed to achieve that goal by addressing the identified problems within the family unit.²¹

The services detailed in a case plan must be designed to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child’s safe return to the home, ensure proper care of the child, or facilitate the child’s permanent placement.²² The services offered must be the least intrusive possible into the life of the parent and child and must provide the most efficient path to quick reunification or permanent placement.²³ A case plan must be developed face to face with the parents; guardian ad litem; and, in some cases, the child and temporary custodian of the child.²⁴

A case plan must include:

- A description of the identified problem being addressed;
- The permanency goal;
- If concurrent planning is being used, a goal of reunification and an additional permanency plan;
- The date the case plan expires; and
- Written notice to the parents’ responsibility to comply with the case plan.²⁵

A case plan can be changed at any time to implement the use of concurrent planning.²⁶

¹⁸ Section 39.001(1), F.S.

¹⁹ See generally The Children’s Bureau, Child Welfare Information Gateway, *Group and Residential Care*, available at <https://www.childwelfare.gov/topics/outofhome/group-residential-care/> (last visited March 3, 2023).

²⁰ Section 39.6011(1), F.S.

²¹ See s. 39.6012(1)(b), F.S.

²² S. 39.6012(1)(a), F.S.

²³ *Id.*

²⁴ S. 39.6011(1)(a), F.S.

²⁵ S. 39.6011(2), F.S.

²⁶ Section 39.6013, F.S.

Permanency

An overarching goal of the child welfare system is to ensure that permanent placement with the biological or an adoptive family is achieved as soon as possible for every child and that no child remains in out-of-home care longer than one year²⁷ because time is of the essence for establishing permanency for a child in the child welfare system.²⁸ Because time is of the essence, a permanency hearing must be held no later than 12 months after the date the child was removed from his or her home, or 30 days if a court determines that efforts for reunification are not required.²⁹ During a permanency hearing the court must determine:

- If the current permanency plan is appropriate;
- A timeline of when the child will achieve his or her permanency goal;
- If DCF has made reasonable efforts to finalize the current case plan; and
- The best interest of the child.³⁰

The court is required to review the status of a child at least every six months or more frequently if the court deems necessary or desirable until the child reaches permanency.³¹

Concurrent Planning

In the event reunification does not appear likely or another permanency option is in the best interest of the child, a concurrent plan may be established.³² Concurrent planning is a type of permanency planning in which reunification services are provided to the family of the child at the same time that an alternative permanency plan is made for the child, in case those reunification efforts fail.³³ These secondary goals could be any of the following:

- Adoption;
- Permanent Guardianship;³⁴
- Permanent placement with a fit and willing relative;³⁵ or
- Placement in another planned permanent living arrangement.^{36, 37}

To be effective, concurrent planning requires not only the identification of an alternative plan but also the implementation of active efforts toward both plans simultaneously with the full knowledge of all participants. Compared with more traditional sequential planning for permanency, in which one permanency goal is ruled out before an alternative goal is identified, concurrent planning may provide earlier permanency for the child.³⁸ Current law requires an

²⁷ Section 39.001, F.S.

²⁸ Sections 39.0136 and 39.621, F.S.

²⁹ Section 39.621(1), F.S.

³⁰ Section 39.621(5), F.S.

³¹ Section 39.701(1)(a), F.S.

³² Section 39.6011(2)(c), F.S.

³³ The Children's Bureau, *Concurrent Planning for Timely Permanency for Children*, p. 1, August 2021, available at <https://www.childwelfare.gov/pubPDFs/concurrent.pdf> (last visited February 27, 2023) (hereinafter cited to as "Concurrent Planning").

³⁴ Under s. 39.6221, F.S.

³⁵ Under s. 39.6231, F.S.

³⁶ Under s. 39.6241, F.S.

³⁷ Section 39.01(18), F.S.

³⁸ Concurrent Planning at p. 1

assessment of the family when the child has been in care for 6 months, and a concurrent plan must be developed if at that time reunification seems unlikely.³⁹

Unified Home Study

The unified home study (UHS) is an assessment of a common set of requirements that must be met before the DCF can place a child into someone's home, whether a relative/nonrelative placement, foster home, or adoptive home.⁴⁰ The UHS has many requirements, but the two main components are the child-specific information and the assessment of caregiver(s).⁴¹ The child specific information section of the UHS is to assess the needs of the child, including sibling attachments, medical and emotional needs, and placement history and stability to better match that child with a caregiver that can care for and protect that child.

The assessment of caregiver(s) section of the UHS examines the needs of the child and the caregiver(s) capacity to meet those needs, including any health and mental conditions that could interfere with the ability to care for the child and the willingness to:

- Participate in and team to support the permanency of the child's well-being;
- Encourage the child in his or her strengths;
- Maintain awareness of the impact of trauma;
- Ensure safety;
- Make a loving commitment to the child's safety and well-being; and
- Respect the child's culture, religion, and ethnicity.⁴²

This comprehensive assessment creates an ongoing overview of the child's current and past situation and assists a lead agency in identifying the best caregiver for a child quickly.

Concurrent Planning and Unified Home Studies

The effective use of concurrent planning and the UHS can reduce the time to permanency for a child in out-of-home care. This is achieved by making active efforts toward the primary and alternate goals simultaneously rather than only identifying an alternate permanency goal. The time to permanency may shorten by completing all of the child-specific requirements of a UHS as an active effort toward an alternative goal of adoption. This will place case management one step closer to finalizing an adoptive home study after a petition for the termination of parental rights has been filed.⁴³

Child Welfare Information System

The DCF uses a centralized child welfare information system known as Florida Safe Families Network (FSFN) and is in the middle of a multi-year project to transition from old federal guidelines that required a Statewide Automated Child Welfare System (SACWIS) to new federal

³⁹ Section 39.701(5), F.S.

⁴⁰ The Department of Children and Families CFOP, 170-1 ch. 5, 5-1, available at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_170-01_chapter_05_completing_a_unified_home_study.pdf (last visited February 28, 2023) (hereinafter cited as "DCF CFOP").

⁴¹ DCF CFOP 170-1 ch. 5, 5-4g. and j.

⁴² DCF CFOP 170-1 ch. 5, 5-4j.

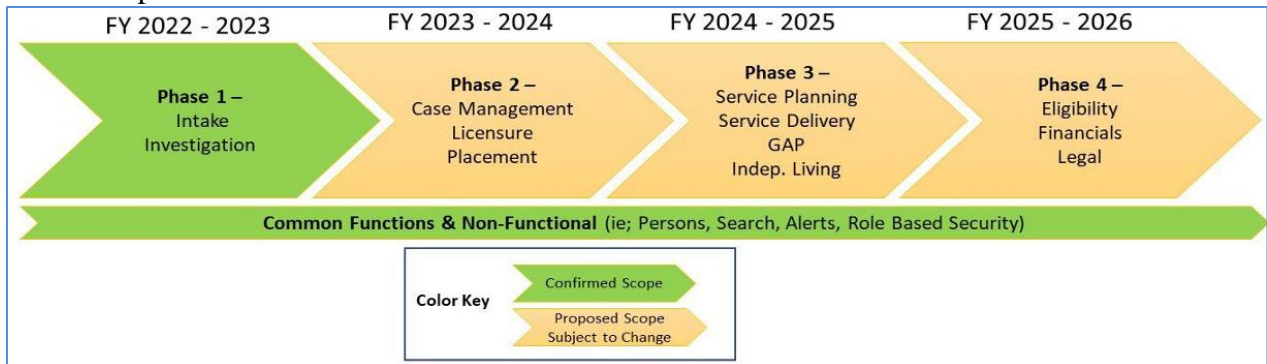
⁴³ Concurrent Planning

guidelines that require a Comprehensive Child Welfare Information System (CCWIS).⁴⁴ This transition will modernize and enhance the data capabilities of the DCF. Currently, interoperability between the state system and CBCs is difficult and expensive to maintain. The modernization will allow bidirectional interoperability between the DCF and the CBCs as well as the ability to generate richer and more helpful data reports and analytics.

The DCF has reported the following current activities and milestones on CCWIS modernization:⁴⁵

| Key Activity/Milestone | Date Due | Status |
|--|-------------------|-------------|
| PMO Director Onboarded | October 1, 2022 | Completed |
| IV&V Vendor Onboarded | October 11, 2022 | Completed |
| Systems Integrator Vendor Onboarded | December 31, 2022 | Completed |
| Staffing Plan Submitted by Advisory Service Team | December 31, 2022 | Completed |
| IV&V initial interviews conducted | January 10, 2023 | Completed |
| Formal Kick-Off Session with Project Team | January 23, 2023 | Completed |
| User Stories Completed | February 17, 2023 | In Progress |
| Functional Discovery Sessions Held | February 20, 2023 | In Progress |

Future scope of activities include:⁴⁶



III. Effect of Proposed Changes:

The bill expands the contract requirements of the Department of Children and Families under s. 409.996, F.S., requiring a lead agency to annually provide and publish plans detailing timelines and procedures to maximize the use of concurrent planning, minimize the time to complete

⁴⁴ The Children’s Bureau, *CCWIS Status*, available at <https://www.acf.hhs.gov/cb/training-technical-assistance/ccwis-status> (last visited February 27, 2023)

⁴⁵ The DCF, *CCWIS Modernization Project Update*, PowerPoint Presentation by Cole Sousa, Chief Information Officer, Meeting of the Senate Appropriations Committee on Health and Human Services on February 16, 2023, p. 29, available at https://www.flsenate.gov/Committees/Show/AHS/MeetingPacket/5666/10109_MeetingPacket_5666_2.pdf (last visited March 3, 2023).

⁴⁶ *Id.* at p. 30.

preliminary and final adoptive home studies, and streamline data entry into the statewide child welfare information system.

The bill also requires a lead agency to complete a preliminary and final adoptive home study no later than 90 days after the filing of a petition for termination of parental rights.

The bill is effective July 1, 2023

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will likely have an indeterminate fiscal impact on the private sector as the lead agency must change operations, increase support, or increase contract amounts for the requirement to complete preliminary and final adoptive home studies no later than 90 days of the filing of a petition for the termination of parental rights. It is likely that a lead agency can absorb this impact within current operating budgets.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.996

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

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

Senate Amendment

Delete lines 29 - 36

and insert:

published operating procedure that detail timelines and procedures to maximize the use of concurrent case planning, minimize the time to complete preliminary and final adoptive home studies, streamline data entry into the statewide child welfare information system, and reduce time to permanency.

(g) Require lead agencies to gather all information to



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11 complete the requirements for the child-specific section of the
12 unified home study, excluding information related to any
13 prospective caregiver, and enter that data into the child
14 welfare information system of record no later than 90 days after
15 the filing of a petition for termination of parental rights.