

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Sobel, Chair
Senator Hays, Vice Chair

MEETING DATE: Tuesday, February 11, 2014
TIME: 10:00 a.m.—12:00 noon
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Sobel, Chair; Senator Hays, Vice Chair; Senators Altman, Braynon, Clemens, Dean, Detert, Diaz de la Portilla, Grimsley, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 582 Clemens (Identical H 479)	Substance Abuse Services; Prohibiting a sober house transitional living home from operating in this state without a valid certificate of registration from the Department of Children and Families; requiring a sober house operator to annually apply for a certificate of registration with the department; requiring certain sober house transitional living homes to apply for a certificate of registration by a specified date; requiring the department to adopt rules pertaining to the application process for obtaining a certificate of registration, etc. CF 02/11/2014 Fav/CS CA RC	Fav/CS Yeas 8 Nays 0
2	SB 634 Brandes (Identical H 635)	Guardianship; Requiring a nonprofessional guardian to submit to a credit history investigation and background screening; authorizing the court to order an accounting of property or a trust of which the ward is a beneficiary but which is not under the administration or control of the guardian; authorizing the clerk to obtain and review records impacting guardianship assets and to issue subpoenas upon application to the court, etc. CF 02/11/2014 Fav/CS JU AP	Fav/CS Yeas 10 Nays 0
3	SB 402 Braynon (Similar H 595)	Council on the Social Status of Black Men and Boys; Providing criteria for removal of a member of the council; authorizing the council to identify initiatives and programs that support the council's mission and strategic vision, study other topics suggested by the Legislature or as directed by the chair of the council, and subject to legislative appropriations, use funds appropriated to the Department of Legal Affairs to perform certain tasks; revising what constitutes a quorum of the council, etc. CF 02/11/2014 Favorable GO ACJ AP	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Tuesday, February 11, 2014, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 182 Stargel	Sexual Offenders; Prohibiting certain probationers or community controllees from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating material, regardless of such material's relevance to the offender's deviant behavior pattern, etc. CJ 12/09/2013 Favorable CF 02/11/2014 Fav/CS JU	Fav/CS Yeas 7 Nays 0
5	Workshop - Discussion and testimony only on the following (no vote to be taken): - Child Welfare Legislation		Discussed
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 582

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

SUBJECT: Substance Abuse Services

DATE: February 11, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 582 provides a legislative intent, requires annual registration with the Department of Children & Families (department) by sober house transitional living homes (sober homes or sober houses) to operate in the state and provides a criminal penalty for operating without a valid certificate of registration. It provides definitions of “recovery residences,” “registrable components” and “residential dwelling units.” The registration fee is capped at \$200. The proposed legislation authorizes the department to conduct inspections, issue, deny, suspend or revoke a certificate of registration for a sober house. Certain personnel of the sober house transition home will be required to comply with level 2 background screening as provided in s. 435.04, F.S. Requirements for advertising a sober house transitional living home are provided in the proposed legislation.

The fiscal impact of this bill is unknown. This bill has an effective date of July 1, 2014.

II. Present Situation:

Sober Houses

Sober houses function under the belief that housing addicts in an environment that fosters recovery, such as low crime, drug free, single family neighborhoods, is essential to the success of

any addict's treatment.¹ Proponents of sober houses believe that "such environments foster sobriety and encourage trust and camaraderie between home residents."² Living in a sober house allows a recovering addict the opportunity to develop practical life skills and build self-confidence.³ Sober Homes or Sober Housing are new terms for what used to be known as Halfway Houses which were used by those leaving a residential center with nowhere else to go. Sober Homes offer vital services to those in early stages of recovery.⁴

The facilities, operators and organizational design of sober houses vary greatly. It is argued that the location of the home is critical to recovery and placing the home in a single-family neighborhood helps to avoid temptations that other environments can create.⁵ Organizationally, these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.⁶

Fair Housing Act

The Federal Fair Housing Act of 1988 (FHA)⁷ prohibits discrimination on the basis of a handicap in all types of housing transactions. The FHA defines a "handicap" to mean those mental or physical impairments that substantially limit one or more major life activities. The term "mental or physical impairment" may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking or working. The FHA also protects persons who have a record of such impairment, or are regarded as having such impairment. Current users of illegal controlled substances, person convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FHA.⁸

The Florida Fair Housing Act in s. 760.23(7)(b), F.S., provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available. The statute defines "discrimination" to include a refusal to make reasonable accommodations in rules, policies, practices or services when such

¹ M.M. Gorman *et al.*, *Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, THE URBAN LAWYER v. 42, No. 3 (Summer 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).

² *Id.*

³ 12 Step Treatment Centers, *Sober Living Home Transitional Housing*, available at http://www.12step treatment centres.com/SOBER_LIVING_HOME_TRANSITIONAL_HOUSING_95.asp (last visited Feb. 3, 2014).

⁴ *Id.*

⁵ M.M. Gorman *et al.*, *supra* note 2.

⁶ *Id.*

⁷ 42 U.S.C. 3601 *et seq.*

⁸ See U.S. Department of Justice, *The Fair Housing Act*, available at http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited Feb. 3, 2014).

accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Americans with Disabilities Act

In July 1999, the United States Supreme Court held that the unnecessary institutionalization of people with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).⁹ In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective community-based services. This decision interpreted Title II of the ADA and its implementing regulation, requiring states to administer their services, programs, and activities “in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities.” The ADA and the Olmstead decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.¹⁰ In addition, in the *United States of America v. City of Boca Raton*, the court held that the city’s ordinance excluding substance abuse treatment facilities from residential areas violates the FHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.¹¹

III. Effect of Proposed Changes:

Section 1 provides legislative findings, intent and purpose.

Section 2 amends s. 397.311, F.S., adds the following definitions:

- “Recovery residence” means a democratically run, peer-managed, and peer-supported dwelling for a resident who is established in his or her recovery and who is a party to a single lease agreement to occupy the dwelling which has a single beginning date and a single termination date.
- “Registrable component” to mean a sober house transitional living home that is a residential dwelling unit that provides a peer-supported, managed, alcohol-free, and drug-free living environment.
- “Residential dwelling unit” to mean a single unit used primarily for living and sleeping which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- “Sober house operator” means a person who operates a sober house transitional living home.

Section 3 creates s. 397.487, F.S., which will require sober houses to comply with the department’s annual application process for a certificate of registration to operate. A sober house licensed by the department as a residential treatment facility that offers level 5 treatment programs (this level program provides only housing and meals to clients who are mandated to receive services at alternate locations in facilities owned and operated by the same provider) or serves as a community housing component of a day or night treatment facility is not required to obtain additional licensure or registration.

⁹ *Olmstead v. L.C.*, 527 U.S. 581, (1999).

¹⁰ U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?* available at http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited Feb. 6, 2014).

¹¹ *United States of America vs. City of Boca Raton* 1008 WL 686689 (S.D.Fla.2008).

The application process will require the sober house to provide the name of the sober house operator, the number of individuals served at the sober house, proof of screening and background checks for certain individuals, written eviction procedures, proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinances. A registration fee not to exceed \$200 will be assessed. Sober houses in existence on July 1, 2014, shall apply for a certificate of registration by September 1, 2014. Sober houses in existence on July 1, 2014, that have a license as the community housing component of a day or night treatment facility or is licensed as a residential treatment facility offering level 5 treatment programs do not have to apply for additional licensure or certification by September 1, 2014. Operating a sober house without a valid certificate of registration is a first degree misdemeanor.

This section also provides the required criteria regarding the individuals subject to the level 2 background screening, disqualifying criteria and the authority of the department to grant exemptions from disqualification under certain circumstances. All advertising by a person who owns or operates a sober house must include the home's state registration number in the advertisement of the sober home.

The bill provides authority to the department's authorized agent to enter and inspect a sober home with a certificate of registration at any time to determine if it is in compliance with certification requirements. Additionally, with the permission of the person in charge of the premises or pursuant to a warrant, the department's authorized agent may enter and inspect a residential dwelling unit that is reasonably suspected to be operating as a sober house in violation of Florida Statutes. The department's designated and authorized agent may access the records of the individuals served by a sober house solely for certification, monitoring and investigation. Prior to granting or denying a certificate of registration, the department's authorized agent may enter and inspect the premises of an applicant sober house at any time. The department shall maintain certificates of registration and inspection reports of sober houses as public records available to any person upon request and payment of a reasonable fee.

The department has the authority to determine if an applicant of a sober house is not in compliance with the certification requirements to deny, suspend, revoke, or impose reasonable restrictions or penalties on the certificate of registration. The department may impose an administrative penalty of up to \$500 per day to a sober house operating in violation of statutory or regulatory requirements; suspend or revoke a sober house certificate of registration that, after notice, has failed to correct a substantial or chronic violation of a statutory or regulatory requirement that impacts the safety of the individuals served in the house. If a sober house certificate of registration is revoked, the house is barred for one year after the revocation from submitting an application for a certificate of registration. Proceedings for the denial, suspension or revocation of a sober house certificate of registration must be conducted pursuant to ch. 120, F.S. The department has the authority to action in court to enjoin the operation of an uncertified sober house.

To ensure the due process rights of a sober house tenant are not violated, a sober house not subject to Florida's Landlord and Tenant Act, ch. 83, F.S., must provide 48 hours' advance, written notice of eviction to a tenant or immediate shelter to a tenant for at least 48 hours after eviction at an alternative temporary dwelling unit.

The department is provided authority to adopt rules to administer this section.

Section 4 amends s. 212.055(5)(3), F.S., to refer to s. 397.311, F.S. instead of 397.311(35), F.S., when referring to the definition of stabilization.

Section 5 amends s. 440.102(1)(d) and (g), F.S., to refer to s. 397.311, F.S. instead of 397.311(33), F.S., when referring to the definition of drug rehabilitation program and 397.311, F.S., when referring to service providers set forth in the definition of employee assistance programs.

Section 6 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fair Housing Act prohibits a large range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability or handicap. Discriminatory practices involving recovering addicts are forbidden because the term disability has been interpreted to include individuals recovering from drug or alcohol addiction.¹² Restrictions placed on sober houses by the bill may violate the FHA. An owner or operator of a home may bring suit to seek relief under the FHA.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes DCF to regulate sober houses pursuant to ch. 397, F.S. It also authorizes the department to assess fees.

B. Private Sector Impact:

The bill could limit the number of sober houses due to increased qualifications for those homes not currently subject to licensure by the department. The sober houses would be

¹² M.M. Gorman *et al*, *supra* note 2.

assessed a certificate of registration fee. The fiscal impact of such fees is unknown as the department would need to adopt the amount by rule.

C. Government Sector Impact:

The bill would have a significant fiscal impact on DCF. The number of sober houses statewide that would apply for certificates of registration and require initial and ongoing inspections and administrative oversight is unknown.

Similar to proposed legislation introduced in 2013 (SB 738), the department cannot determine the exact fiscal impact of this bill. The number of sober homes that would require inspection and the number of background screenings that would require review is unknown. Additionally, the department would need funding to modify its existing licensure database and pay for additional data storage capacity at the shared resource center. The department would need staff to perform inspections, process applications, review background screenings, provide legal representation in chapter 120 proceedings in the event of a denial, revocation or suspension of a registration and update its licensing and technology systems.

In 2013, the department estimated it would need 65 new positions to perform all the identified tasks at a cost of \$6.8 million and \$200,000 to modify its licensing and technology systems for a total impact of \$7 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.311, 212.055, and 440.102.

This bill creates section 397.487 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on February 11, 2014:

- Provides legislative intent.
- Adds a definition of a “recovery residence.”
- Provides an exemption from certification for sober house transitional living homes licensed by the department as a residential treatment facility offering level 5 treatment program or one that serves and is licensed as a community housing component of a

day or night treatment facility. These licensed facilities are also exempt from the September 1, 2014, application for certification deadline.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2014	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 33 - 172

and insert:

Section 1. Subsections (10) and (11) are added to section 397.305, Florida Statutes, to read:

397.305 Legislative findings, intent, and purpose.—

(10) It is recognized by the Legislature that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a



828502

11 stronger foundation by living in a supportive, sober environment
12 after completing treatment.

13 (11) It is the intent of the Legislature to protect persons
14 who live in a sober house transitional living home while they
15 undergo treatment as provided in s. 397.311(18) at a licensed
16 facility. These persons represent a vulnerable consumer
17 population in need of adequate housing, whom this state and its
18 subdivisions have a legitimate state interest in protecting.

19 Section 2. Subsections (30) through (39) of section
20 397.311, Florida Statutes, are amended to read:

21 397.311 Definitions.—As used in this chapter, except part
22 VIII, the term:

23 (30) "Recovery residence" means a democratically run, peer-
24 managed, and peer-supported dwelling for a resident who is
25 established in his or her recovery and who is a party to a
26 single lease agreement to occupy the dwelling which has a single
27 beginning date and a single termination date.

28 (31) "Registrable component" includes a sober house
29 transitional living home that is a residential dwelling unit
30 that provides, offers, or advertises housing in an alcohol-free
31 and drug-free living environment to persons who need room and
32 board while receiving treatment services as provided in s.
33 397.311(18) at a licensed facility. This term includes the
34 community housing component of a day or night treatment facility
35 or a residential treatment facility that offers level 5
36 treatment programs, but the term does not include a recovery
37 residence.

38 (32) "Residential dwelling unit" means a single unit used
39 primarily for living and sleeping which provides complete



828502

40 independent living facilities for one or more persons, including
41 permanent provisions for living, sleeping, eating, cooking, and
42 sanitation.

43 (33)~~(30)~~ "Screening" means the gathering of initial
44 information to be used in determining a person's need for
45 assessment, services, or referral.

46 (34)~~(31)~~ "Secure facility," except where the context
47 indicates a correctional system facility, means a provider that
48 has the authority to deter the premature departure of
49 involuntary individuals whose leaving constitutes a violation of
50 a court order or community-based supervision as provided by law.
51 The term "secure facility" includes addictions receiving
52 facilities and facilities authorized by local ordinance for the
53 treatment of habitual abusers.

54 (35)~~(32)~~ "Service component" or "component" means a
55 discrete operational entity within a service provider which is
56 subject to licensing as defined by rule. Service components
57 include prevention, intervention, and clinical treatment as
58 defined ~~described~~ in subsection (18).

59 (36)~~(33)~~ "Service provider" or "provider" means a public
60 agency, a private for-profit or not-for-profit agency, a person
61 who is a private practitioner, or a hospital licensed under this
62 chapter or exempt from licensure under this chapter.

63 (37)~~(34)~~ "Service provider personnel" or "personnel"
64 includes all owners, directors, chief financial officers, staff,
65 and volunteers, including foster parents, of a service provider.

66 (38) "Sober house operator" means a person who operates a
67 sober house transitional living home.

68 (39)~~(35)~~ "Stabilization" connotes short-term emergency



828502

69 treatment and means:

70 (a) Alleviation of a crisis condition; or

71 (b) Prevention of further deterioration;

72

73 ~~and connotes short-term emergency treatment.~~

74 (40)~~(36)~~ "Substance abuse" means the misuse or abuse of, or
75 dependence on alcohol, illicit drugs, or prescription
76 medications. As an individual progresses along this continuum of
77 misuse, abuse, and dependence, there is an increased need for
78 substance abuse intervention and treatment to help abate the
79 problem.

80 (41)~~(37)~~ "Substate entity" means a departmental office
81 designated to serve a geographical area specified by the
82 department.

83 (42)~~(38)~~ "System of care" means a coordinated continuum of
84 community-based services and supports that are organized to meet
85 the challenges and needs of individuals who are at risk of
86 developing substance abuse problems or individuals who have
87 substance abuse problems.

88 (43)~~(39)~~ "Treatment plan" means an immediate and a long-
89 range plan based upon an individual's assessed needs and used to
90 address and monitor an individual's recovery from substance
91 abuse.

92 Section 3. Section 397.487, Florida Statutes, is created to
93 read:

94 397.487 Sober house transitional living homes.—

95 (1) APPLICATION.—

96 (a) A sober house transitional living home may not operate
97 in this state without a valid certificate of registration from



828502

98 the department. However, a sober house transitional living home
99 that is licensed by the department as a residential treatment
100 facility that offers level 5 treatment programs or a sober house
101 transitional living home that is intended to serve as and has a
102 license for the community housing component of a day or night
103 treatment facility is not required to obtain additional
104 licensure or registration for the housing component of the
105 license.

106 (b) A sober house operator shall annually apply to the
107 department for a certificate of registration to operate a sober
108 house transitional living home by submitting the following:

109 1. The name and physical address of the sober house
110 transitional living home.

111 2. The name of the sober house operator.

112 3. The number of individuals served at the sober house
113 transitional living home.

114 4. Proof of screening and background checks as required
115 under chapter 435.

116 5. Written eviction procedures in accordance with
117 subsection (7).

118 6. Proof of satisfactory fire, safety, and health
119 inspections and compliance with local zoning ordinances.

120 7. A registration fee, not to exceed \$200.

121 (c) A sober house transitional living home in existence on
122 July 1, 2014, shall apply for a certificate of registration by
123 September 1, 2014. This paragraph does not apply to a sober
124 house transitional living home in existence on July 1, 2014,
125 which has a license for the community housing component of a day
126 or night treatment facility or is licensed as a residential



828502

127 treatment facility that offers level 5 treatment programs.

128 (d) The department shall adopt rules pertaining to the
129 application process for obtaining a certificate of registration.

130 (2) BACKGROUND SCREENING.—

131 (a) The owner, director, manager, operator, and chief
132 financial officer of a sober house transitional living home are
133 subject to level 2 background screening as provided in s.
134 435.04.

135 (b) The department may not grant a certificate of
136 registration to a sober house transitional living home that
137 fails to provide proof that background screening information has
138 been submitted in accordance with chapter 435.

139 (c) If a background screening reveals that an individual
140 specified in paragraph (a) has been arrested for and is awaiting
141 final disposition of; has been found guilty of, regardless of
142 adjudication, or has entered a plea of nolo contendere or guilty
143 to; or has been adjudicated delinquent and the record has not
144 been sealed or expunged for, an offense prohibited under the
145 level 2 screening standards established in s. 435.04, the
146 department may not grant a certificate of registration to the
147 applicant's sober house transitional living home unless an
148 exemption from disqualification has been granted by the
149 department pursuant to chapter 435.

150 (d) The department shall immediately suspend the
151 certificate of registration of a sober house transitional living
152 home if an individual specified in paragraph (a), while acting
153 in his or her professional capacity, is arrested for and is
154 awaiting final disposition of; is found guilty of, regardless of
155 adjudication, or enters a plea of nolo contendere or guilty to;



828502

156 or is adjudicated delinquent and the record has not been sealed
157 or expunged for, an offense prohibited under the level 2
158 screening standards established in s. 435.04. The department
159 shall reinstate the certificate of registration after such
160 individual resigns or is removed from his or her position at the
161 sober house transitional living home and replaced by another
162 qualified individual who passes the level 2 background screening
163 as provided in s. 435.04.

164 (3) PENALTIES.—A person or agency that operates a
165 residential dwelling unit as a sober house transitional living
166 home without a valid certificate of registration in accordance
167 with this section commits a misdemeanor of the first degree,
168 punishable as provided in s. 775.082 or s. 775.083.

169 (4) ADVERTISING.—A person, as defined in s. 1.01, who owns
170 or operates a sober house transitional living home must include
171 the home's state registration number within an advertisement of
172 the sober house transitional living home. A person who violates
173 this subsection commits a misdemeanor of the first degree,
174 punishable as provided in s. 775.082 or s. 775.083.

175 (5) INSPECTIONS.—

176 (a) An authorized agent of the department may enter and
177 inspect at any time a sober house transitional living home that
178 has a certificate of registration from the department to
179 determine whether it is in compliance with s. 397.411 and rules
180 65D-30.004 and 65D-30.0081, Florida Administrative Code.

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

183 And the title is amended as follows:

184 Delete lines 2 - 11



828502

185 and insert:

186 An act relating to substance abuse services; amending
187 s. 397.305, F.S.; providing legislative intent with
188 regard to sober house transitional living homes;
189 amending s. 397.311, F.S.; defining terms; creating s.
190 397.487, F.S.; prohibiting a sober house transitional
191 living home from operating in this state without a
192 valid certificate of registration from the Department
193 of Children and Families; providing an exceptions;
194 requiring a sober house operator to annually apply for
195 a certificate of registration with the department;
196 requiring certain sober house transitional living
197 homes to apply for a certificate of registration by a
198 specified date; providing for nonapplicability;

By Senator Clemens

27-00459-14

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1 A bill to be entitled
 2 An act relating to substance abuse services; amending
 3 s. 397.311, F.S.; providing definitions; creating s.
 4 397.487, F.S.; prohibiting a sober house transitional
 5 living home from operating in this state without a
 6 valid certificate of registration from the Department
 7 of Children and Families; requiring a sober house
 8 operator to annually apply for a certificate of
 9 registration with the department; requiring certain
 10 sober house transitional living homes to apply for a
 11 certificate of registration by a specified date;
 12 requiring the department to adopt rules pertaining to
 13 the application process for obtaining a certificate of
 14 registration; requiring background screening of
 15 certain personnel; requiring the department to suspend
 16 and reinstate a certificate of registration of a sober
 17 house transitional living home under certain
 18 circumstances; providing a criminal penalty for
 19 operating a sober house transitional living home
 20 without a valid certificate of registration; providing
 21 certain requirements in advertising a sober house
 22 transitional living home; providing a criminal
 23 penalty; authorizing the department to conduct
 24 inspections; authorizing the department to deny,
 25 suspend, or revoke the certificate of registration of
 26 a sober house transitional home; providing eviction
 27 procedures; requiring the department to adopt rules;
 28 amending ss. 212.055 and 440.102, F.S.; conforming
 29 cross-references; providing an effective date.

Page 1 of 13

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

27-00459-14

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30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Subsections (30) through (39) of section
 34 397.311, Florida Statutes, are amended to read:
 35 397.311 Definitions.—As used in this chapter, except part
 36 VIII, the term:
 37 (30) "Registrable component" includes a sober house
 38 transitional living home that is a residential dwelling unit
 39 that provides a peer-supported, managed, alcohol-free, and drug-
 40 free living environment.
 41 (31) "Residential dwelling unit" means a single unit used
 42 primarily for living and sleeping which provides complete
 43 independent living facilities for one or more persons, including
 44 permanent provisions for living, sleeping, eating, cooking, and
 45 sanitation.
 46 (32)-(30) "Screening" means the gathering of initial
 47 information to be used in determining a person's need for
 48 assessment, services, or referral.
 49 (33)-(31) "Secure facility," except where the context
 50 indicates a correctional system facility, means a provider that
 51 has the authority to deter the premature departure of
 52 involuntary individuals whose leaving constitutes a violation of
 53 a court order or community-based supervision as provided by law.
 54 The term "secure facility" includes addictions receiving
 55 facilities and facilities authorized by local ordinance for the
 56 treatment of habitual abusers.
 57 (34)-(32) "Service component" or "component" means a
 58 discrete operational entity within a service provider which is

Page 2 of 13

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

27-00459-14

2014582__

59 subject to licensing as defined by rule. Service components
60 include prevention, intervention, and clinical treatment as
61 defined ~~described~~ in subsection (18).

62 ~~(35)-(33)~~ "Service provider" or "provider" means a public
63 agency, a private for-profit or not-for-profit agency, a person
64 who is a private practitioner, or a hospital licensed under this
65 chapter or exempt from licensure under this chapter.

66 ~~(36)-(34)~~ "Service provider personnel" or "personnel"
67 includes all owners, directors, chief financial officers, staff,
68 and volunteers, including foster parents, of a service provider.

69 ~~(37)~~ "Sober house operator" means a person who operates a
70 sober house transitional living home.

71 ~~(38)-(35)~~ "Stabilization" connotes short-term emergency
72 treatment and means:

73 (a) Alleviation of a crisis condition; or

74 (b) Prevention of further deterioration;

75 ~~and connotes short-term emergency treatment.~~

76 ~~(39)-(36)~~ "Substance abuse" means the misuse or abuse of, or
77 dependence on alcohol, illicit drugs, or prescription
78 medications. As an individual progresses along this continuum of
79 misuse, abuse, and dependence, there is an increased need for
80 substance abuse intervention and treatment to help abate the
81 problem.

82 ~~(40)-(37)~~ "Substate entity" means a departmental office
83 designated to serve a geographical area specified by the
84 department.

85 ~~(41)-(38)~~ "System of care" means a coordinated continuum of
86 community-based services and supports that are organized to meet
87

Page 3 of 13

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27-00459-14

2014582__

88 the challenges and needs of individuals who are at risk of
89 developing substance abuse problems or individuals who have
90 substance abuse problems.

91 ~~(42)-(39)~~ "Treatment plan" means an immediate and a long-
92 range plan based upon an individual's assessed needs and used to
93 address and monitor an individual's recovery from substance
94 abuse.

95 Section 2. Section 397.487, Florida Statutes, is created to
96 read:

97 397.487 Sober house transitional living homes.—

98 (1) APPLICATION.—

99 (a) A sober house transitional living home may not operate
100 in this state without a valid certificate of registration from
101 the department.

102 (b) A sober house operator shall annually apply to the
103 department for a certificate of registration to operate a sober
104 house transitional living home by submitting the following:

105 1. The name and physical address of the sober house
106 transitional living home.

107 2. The name of the sober house operator.

108 3. The number of individuals served at the sober house
109 transitional living home.

110 4. Proof of screening and background checks as required
111 under chapter 435.

112 5. Written eviction procedures in accordance with
113 subsection (7).

114 6. Proof of satisfactory fire, safety, and health
115 inspections and compliance with local zoning ordinances.

116 7. A registration fee, not to exceed \$200.

Page 4 of 13

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27-00459-14

2014582__

117 (c) A sober house transitional living home in existence on
 118 July 1, 2014, shall apply for a certificate of registration by
 119 September 1, 2014.

120 (d) The department shall adopt rules pertaining to the
 121 application process for obtaining a certificate of registration.

122 (2) BACKGROUND SCREENING.—

123 (a) The owner, director, manager, operator, and chief
 124 financial officer of a sober house transitional living home are
 125 subject to level 2 background screening as provided in s.
 126 435.04.

127 (b) The department may not grant a certificate of
 128 registration to a sober house transitional living home that
 129 fails to provide proof that background screening information has
 130 been submitted in accordance with chapter 435.

131 (c) If a background screening reveals that an individual
 132 specified in paragraph (a) has been arrested for and is awaiting
 133 final disposition of, has been found guilty of, regardless of
 134 adjudication, or has entered a plea of nolo contendere or guilty
 135 to, or has been adjudicated delinquent and the record has not
 136 been sealed or expunged, for an offense prohibited under the
 137 level 2 screening standards established in s. 435.04, the
 138 department may not grant a certificate of registration to the
 139 applicant sober house transitional living home unless an
 140 exemption from disqualification has been granted by the
 141 department pursuant to chapter 435.

142 (d) The department shall immediately suspend the
 143 certificate of registration of a sober house transitional living
 144 home if an individual specified in paragraph (a), while acting
 145 in his or her professional capacity, is arrested for and is

Page 5 of 13

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27-00459-14

2014582__

146 awaiting final disposition of, is found guilty of, regardless of
 147 adjudication, or enters a plea of nolo contendere or guilty to,
 148 or is adjudicated delinquent and the record is not sealed or
 149 expunged, for an offense prohibited under the level 2 screening
 150 standards established in s. 435.04. The department shall
 151 reinstate the certificate of registration after such individual
 152 resigns or is removed from his or her position at the sober
 153 house transitional living home and replaced by another qualified
 154 individual who passes the level 2 background screening as
 155 provided in s. 435.04.

156 (3) PENALTIES.—A person or agency that operates a
 157 residential dwelling unit as a sober house transitional living
 158 home without a valid certificate of registration in accordance
 159 with this section commits a misdemeanor of the first degree,
 160 punishable as provided in s. 775.082 or s. 775.083.

161 (4) ADVERTISING.—A person, as defined in s. 1.01, who owns
 162 or operates a sober house transitional living home must include
 163 the home's state registration number within an advertisement of
 164 the sober house transitional living home. A person who violates
 165 this subsection commits a misdemeanor of the first degree,
 166 punishable as provided in s. 775.082 or s. 775.083.

167 (5) INSPECTIONS.—

168 (a) An authorized agent of the department may enter and
 169 inspect at any time a sober house transitional living home that
 170 has a certificate of registration from the department to
 171 determine whether it is in compliance with statutory and
 172 regulatory requirements.

173 (b) An authorized agent of the department may, with the
 174 permission of the person in charge of the premises or pursuant

Page 6 of 13

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27-00459-14

2014582__

175 to a warrant, enter and inspect a residential dwelling unit that
 176 the agent reasonably suspects to be operating as a sober house
 177 transitional living home in violation of this section.

178 (c) Notwithstanding the confidentiality provisions of this
 179 chapter, a designated and authorized agent of the department may
 180 access the records of the individuals served by a sober house
 181 transitional living home solely for purposes of certification,
 182 monitoring, and investigation. The department may interview
 183 these individuals as specified by rule.

184 (d) Before the department grants or denies a certificate of
 185 registration, an authorized agent of the department may enter
 186 and inspect at any time the premises of an applicant sober house
 187 transitional living home.

188 (e) The department shall maintain certificates of
 189 registration and reports of inspections of sober house
 190 transitional living homes as public records that are available
 191 to any person upon request and upon payment of a reasonable
 192 charge for copying as provided in s. 119.07.

193 (6) DENIAL; SUSPENSION; AND REVOCATION.—

194 (a) If the department determines that an applicant or a
 195 sober house transitional living home is not in compliance with
 196 statutory and regulatory requirements, the department may deny,
 197 suspend, revoke, or impose reasonable restrictions or penalties
 198 on the certificate of registration or any portion of the
 199 certificate. In such case, the department may:

200 1. Impose an administrative penalty of up to \$500 per day
 201 against a sober house transitional living home that operates in
 202 violation of statutory or regulatory requirements.

203 2. Suspend or revoke a sober house transitional living

27-00459-14

2014582__

204 home's certificate of registration if, after notice, the
 205 department determines that the home has failed to correct a
 206 substantial or chronic violation of a statutory or regulatory
 207 requirement which impacts the safety of the individuals served
 208 at the home.

209 (b) If a sober house transitional living home's certificate
 210 of registration is revoked, the home is barred from submitting
 211 an application for a certificate of registration to the
 212 department for a period of 1 year after the revocation.

213 (c) Proceedings for the denial, suspension, or revocation
 214 of a sober house transitional living home's certificate of
 215 registration must be conducted in accordance with chapter 120.

216 (d) The department may maintain an action in court to
 217 enjoin the operation of an uncertified sober house transitional
 218 living home that violates this section.

219 (7) EVICTIONS.—In order to avoid increased homelessness and
 220 crime and to ensure that the due process rights of a tenant are
 221 not violated, a sober house transitional living home that is not
 222 subject to chapter 83 must provide 48 hours' advance, written
 223 notice of eviction to a tenant or immediate shelter to that
 224 tenant for at least 48 hours after eviction at an alternative
 225 temporary dwelling unit. As used in this subsection, the term
 226 "tenant" means an individual entitled to occupy or reside at a
 227 sober house transitional living home in accordance with a
 228 written agreement.

229 (8) The department shall adopt rules to administer this
 230 section.

231 Section 3. Paragraph (e) of subsection (5) of section
 232 1212.055, Florida Statutes, is amended to read:

27-00459-14

2014582__

233 212.055 Discretionary sales surtaxes; legislative intent;
 234 authorization and use of proceeds.—It is the legislative intent
 235 that any authorization for imposition of a discretionary sales
 236 surtax shall be published in the Florida Statutes as a
 237 subsection of this section, irrespective of the duration of the
 238 levy. Each enactment shall specify the types of counties
 239 authorized to levy; the rate or rates which may be imposed; the
 240 maximum length of time the surtax may be imposed, if any; the
 241 procedure which must be followed to secure voter approval, if
 242 required; the purpose for which the proceeds may be expended;
 243 and such other requirements as the Legislature may provide.
 244 Taxable transactions and administrative procedures shall be as
 245 provided in s. 212.054.

246 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
 247 s. 125.011(1) may levy the surtax authorized in this subsection
 248 pursuant to an ordinance either approved by extraordinary vote
 249 of the county commission or conditioned to take effect only upon
 250 approval by a majority vote of the electors of the county voting
 251 in a referendum. In a county as defined in s. 125.011(1), for
 252 the purposes of this subsection, “county public general
 253 hospital” means a general hospital as defined in s. 395.002
 254 which is owned, operated, maintained, or governed by the county
 255 or its agency, authority, or public health trust.

256 (e) A governing board, agency, or authority shall be
 257 chartered by the county commission upon this act becoming law.
 258 The governing board, agency, or authority shall adopt and
 259 implement a health care plan for indigent health care services.
 260 The governing board, agency, or authority shall consist of no
 261 more than seven and no fewer than five members appointed by the

27-00459-14

2014582__

262 county commission. The members of the governing board, agency,
 263 or authority shall be at least 18 years of age and residents of
 264 the county. No member may be employed by or affiliated with a
 265 health care provider or the public health trust, agency, or
 266 authority responsible for the county public general hospital.
 267 The following community organizations shall each appoint a
 268 representative to a nominating committee: the South Florida
 269 Hospital and Healthcare Association, the Miami-Dade County
 270 Public Health Trust, the Dade County Medical Association, the
 271 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
 272 County. This committee shall nominate between 10 and 14 county
 273 citizens for the governing board, agency, or authority. The
 274 slate shall be presented to the county commission and the county
 275 commission shall confirm the top five to seven nominees,
 276 depending on the size of the governing board. Until such time as
 277 the governing board, agency, or authority is created, the funds
 278 provided for in subparagraph (d)2. shall be placed in a
 279 restricted account set aside from other county funds and not
 280 disbursed by the county for any other purpose.

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

287 2. The plan and subsequent amendments to it shall fund a
 288 defined range of health care services for both indigent persons
 289 and the medically poor, including primary care, preventive care,
 290 hospital emergency room care, and hospital care necessary to

27-00459-14

2014582__

291 stabilize the patient. For the purposes of this section,
 292 "stabilization" means stabilization as defined in s. 397.311 ~~or~~
 293 ~~397.311(35)~~. Where consistent with these objectives, the plan
 294 may include services rendered by physicians, clinics, community
 295 hospitals, and alternative delivery sites, as well as at least
 296 one regional referral hospital per service area. The plan shall
 297 provide that agreements negotiated between the governing board,
 298 agency, or authority and providers shall recognize hospitals
 299 that render a disproportionate share of indigent care, provide
 300 other incentives to promote the delivery of charity care to draw
 301 down federal funds where appropriate, and require cost
 302 containment, including, but not limited to, case management.
 303 From the funds specified in subparagraphs (d)1. and 2. for
 304 indigent health care services, service providers shall receive
 305 reimbursement at a Medicaid rate to be determined by the
 306 governing board, agency, or authority created pursuant to this
 307 paragraph for the initial emergency room visit, and a per-member
 308 per-month fee or capitation for those members enrolled in their
 309 service area, as compensation for the services rendered
 310 following the initial emergency visit. Except for provisions of
 311 emergency services, upon determination of eligibility,
 312 enrollment shall be deemed to have occurred at the time services
 313 were rendered. The provisions for specific reimbursement of
 314 emergency services shall be repealed on July 1, 2001, unless
 315 otherwise reenacted by the Legislature. The capitation amount or
 316 rate shall be determined prior to program implementation by an
 317 independent actuarial consultant. In no event shall such
 318 reimbursement rates exceed the Medicaid rate. The plan must also
 319 provide that any hospitals owned and operated by government

Page 11 of 13

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27-00459-14

2014582__

320 entities on or after the effective date of this act must, as a
 321 condition of receiving funds under this subsection, afford
 322 public access equal to that provided under s. 286.011 as to any
 323 meeting of the governing board, agency, or authority the subject
 324 of which is budgeting resources for the retention of charity
 325 care, as that term is defined in the rules of the Agency for
 326 Health Care Administration. The plan shall also include
 327 innovative health care programs that provide cost-effective
 328 alternatives to traditional methods of service and delivery
 329 funding.

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

334 4. Eligible residents who participate in the health care
 335 plan shall receive coverage for a period of 12 months or the
 336 period extending from the time of enrollment to the end of the
 337 current fiscal year, per enrollment period, whichever is less.

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

346 Section 4. Paragraphs (d) and (g) of subsection (1) of
 347 section 440.102, Florida Statutes, are amended to read:

348 440.102 Drug-free workplace program requirements.—The

Page 12 of 13

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27-00459-14

2014582__

349 following provisions apply to a drug-free workplace program
350 implemented pursuant to law or to rules adopted by the Agency
351 for Health Care Administration:

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

354 (d) “Drug rehabilitation program” means a service provider,
355 as defined in s. 397.311, which established pursuant to s.
356 ~~397.311(33), that~~ provides confidential, timely, and expert
357 identification, assessment, and resolution of employee drug
358 abuse.

359 (g) “Employee assistance program” means an established
360 program capable of providing expert assessment of employee
361 personal concerns; confidential and timely identification
362 services with regard to employee drug abuse; referrals of
363 employees for appropriate diagnosis, treatment, and assistance;
364 and followup services for employees who participate in the
365 program or require monitoring after returning to work. If, in
366 addition to the above activities, an employee assistance program
367 provides diagnostic and treatment services, these services shall
368 in all cases be provided by service providers as defined in s.
369 397.311 pursuant to s. 397.311(33).

370 Section 5. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Transportation

SENATOR JEFF CLEMENS
27th District

January 16, 2014

Senator Eleanor Sobel, Chair
Committee on Children, Families, and Elder Affairs
520 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Sobel:

I respectfully request that SB 582 – Substance Abuse Services be added to the agenda for the next Committee on Children, Families, and Elder Affairs meeting.

Senate Bill 582 will allow the state to track sober house transitional living homes by providing rules for the registration and operation of these type of substance abuse service facilities. Currently, sober homes can be established anywhere by anyone and, while claiming to provide assistance for recovering addicts, oftentimes do not offer treatment programs or services. The proposed legislation will outline where and how sober homes can be operated and address public safety issues that result from poorly run facilities.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 27

RECEIVED

JAN 8 1 2014

**Senate Committee
Children and Families**

REPLY TO:

508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/14

Meeting Date

Topic SB 582
Name Casey Cook
Job Title Legislative Advocate

Bill Number SB 582
Amendment Barcode 828502
(if applicable)
(if applicable)

Address Po Box 1757
Street
Tallahassee FL 32302
City State Zip

Phone 850 701 3701
E-mail ccook@flcties.com

Speaking: For Against Information

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/14

Meeting Date

Topic substance abuse services
Name Susan Harbin
Job Title Legislative Advocate

Bill Number 582
Amendment Barcode 828502
(if applicable)
(if applicable)

Address 100 S. Monroe
Street
Tallahassee FL
City State Zip

Phone 770 546 8845
E-mail sharbin@fl-counties.com

Speaking: For Against Information

Representing FL Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/14
Meeting Date

Topic SUBSTANCE ABUSE SERVICES Bill Number 582
Name FAUSTO GOMEZ Amendment Barcode _____ (if applicable)
Job Title _____
Address 2350 CORAL WAY, #201 Phone (305) 860-0760
MIAMI FL 33145 E-mail _____
City State Zip

Speaking: For Against Information

Representing TOWN OF LAKE PARK

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-11-14
Meeting Date

Topic Substance Abuse Services Bill Number SB 582
Name Jordan Connors Amendment Barcode _____ (if applicable)
Job Title _____
Address 2145 SW Cape Cod Dr Phone 772 418 6068
Port St Lucie FL 34953 E-mail jordan@jordannconnors.com
City State Zip

Speaking: For Against Information

Representing City of Port St. Lucie

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

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

2/11/14

Meeting Date

Topic SUBSTANCE ABUSE SERVICES Bill Number 582
Name TODD BONLARRON Amendment Barcode _____
Job Title LEGISLATIVE AFFAIRS DIRECTOR (if applicable)
Address 301 N. OLIVE AVE STE. 1101 Phone (561) 355-3451
Street _____
City WEST PALM BEACH State FL Zip 33401 E-mail tbonlarr@phcgov.org

Speaking: For Against Information

Representing PALM BEACH COUNTY

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/14

Meeting Date

Topic SUBSTANCE ABUSE SERVICES Bill Number 582
Name SUSAN HARBIN Amendment Barcode _____
Job Title LEGISLATIVE ADVOCATE (if applicable)
Address 166 S. MONIE Phone 770 546 8845
Street _____
City TALLAHASSEE State FL Zip _____ E-mail _____

Speaking: For Against Information

Representing FL ASSOCIATION OF COUNTIES

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-11-11
Meeting Date

Topic _____ Bill Number SB 582
(if applicable)
Name MARK P. FONTAINE Amendment Barcode _____
(if applicable)
Job Title EXECUTIVE DIRECTOR
Address 2868 MAHARO DRIVE Phone 878-2196
Street
Tallahassee FL 32308 E-mail Mfontaine@fadaa.org
City State Zip

Speaking: For Against Information

Representing FLORIDA ALCOHOL + DRUG ABUSE ASSOC.

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-11-14
Meeting Date

Topic Sober Homes Bill Number 582
(if applicable)
Name John Lehman Amendment Barcode _____
(if applicable)
Job Title President
Address _____ Phone 904-288-1721
Street
Boca Raton FL E-mail jlehman@feronline.org
City State Zip

Speaking: For Against Information

Representing Florida Association of Recovery Residences

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-11-14

Meeting Date

Topic Sober Homes Bill Number SB 582
Name Kay Hayes Amendment Barcode _____
Job Title Executive Director Phone 386-237-5101
Address 204 South St E-mail Kayhayes@avenues12.org
Street Daytona Beach FL 32114
City *State* *Zip*
Speaking: For Against Information
Representing Avenues 12
Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-11-14

Meeting Date

Topic Sober Homes Bill Number SB 582
Name Rick Riccardi Amendment Barcode _____
Job Title CEO Phone 954-249-5589
Address 451 BANKS Rd E-mail RRICCARDI@FellowshipLiving.com
Street MARGATE FL 33063
City *State* *Zip*
Speaking: For Against Information
Representing The 12 Step Fellowship + Margate Chamber of Commerce
Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

Felons, drug dealers run halfway houses for addicts



Susan Taylor Martin, Times Staff Writer

Sunday, November 18, 2012 6:00am

Troy Anthony Charles bounced in and out of jail for two decades before he rented a Spanish-style bungalow in St. Petersburg last year and went into the halfway house business.

He called it "Back to Life Outreach Recovery Services" and for \$125 a week, he offered addicts and alcoholics a safe, sober place to stay while he helped them find jobs and get counseling. At least that's what he said.

Residents like John Lees quickly grew skeptical.

"Lees advised the program is a scam (and Charles) is using the money he gets from funding to purchase drugs," according to a St. Petersburg police report in February.

Not long after Lees complained to police, Charles confronted another resident, shot him in the head and landed back in jail charged with murder.

How did Troy Charles, a felon with a history of violence, theft and drug dealing, get into the business of housing recovering addicts?

Easy. Almost anyone can open a halfway house in Florida because there's almost no regulation or accountability.

Every day, hundreds of people emerge from jails, detox centers and mental hospitals desperate for a place to stay while they try to remake their lives. Most can't afford a square meal, let alone first and last month's rent and a damage deposit.

Many wind up in transitional houses — often called halfway houses or sober living houses — that give them a bed and promise to help them find jobs and get to 12-step meetings.

The *Tampa Bay Times* examined dozens of halfway house programs in the Tampa Bay area. Among them are large, professionally managed facilities that generally deliver what they promise. But many others are little more than flophouses that cram residents two or three to a room in dingy quarters with no job assistance, no trained staff and no support.

The *Times* found:

- Several houses are run by felons with serious criminal records, including robbery, sexual assault and drug trafficking. One operator was permanently barred from a federal housing program because of improper billing, yet started a new halfway house that is getting thousands of dollars from the same program.

- Residents of some halfway houses say drug abuse is rampant, and records show at least three people have overdosed and died at unregulated homes. Though such deaths are not unusual among recovering addicts, they underscore the need for oversight, experts say.
- One halfway house that touted "sober living" bused recovering alcoholics to sell beer at Raymond James Stadium. Another required residents to get their prescriptions filled at a pharmacy in a store plastered with neon beer signs.
- Residents have few protections under the law. Halfway houses can take their paychecks to cover rent and can kick them out at a moment's notice.

Donna Masucci said she and her two kids were thrown out of a Pinellas County halfway house in the middle of the night. The owner, a pastor, had demanded Masucci attend a church service in Tampa even though she was on probation and couldn't leave the county.

The family was left on the street with no money in an area notorious for drugs and prostitution.

"It was," Masucci said, "a horror show."

It is impossible to determine how many others have had similar experiences, or even how many people have died of overdoses at halfway houses. Because there is no licensing, no one even knows how many halfway houses exist in Florida.

State officials say the number may be huge.

"We've been told there are several thousands of those around the state at any one time," said Darran Duchene, who helped oversee federally funded halfway houses when he worked for the Florida Department of Children and Families. "They should be regulated from a business standpoint and then from a social service standpoint."

Troubled past? No problem

You can find halfway houses almost everywhere in Florida. Many are ordinary-looking homes on quiet suburban streets.

There are halfway house programs in apartment complexes, old motels and buildings once used as assisted living facilities for the elderly. Few have signs out front, making it even more difficult to tell how many there are.

But "they keep popping up," said Ramona Schaefer, a Pinellas County sheriff's supervisor who helps find housing for ex-inmates. "My concern is, what are their intentions? There are a lot of people who truly want to help. Then there are others whose intentions are not so pure."

A driving force behind Florida's explosion in halfway houses is the increase in addiction fueled by the prescription drug crisis.

The housing bust played a part, too. Some investors converted regular homes into halfway houses so they could maximize the rent.

On paper at least, transitional housing can be lucrative. With two people per room, each paying \$500, a run-down three bedroom house can bring in \$3,000 a month.

And in recent years, there has been another reason to convert houses and apartments — government support.

In 2003, at a time when 24 million Americans had a serious problem with drugs or alcohol, President George W. Bush announced a \$150 million treatment initiative called Access to Recovery, or ATR.

Since then, \$30 million in federal funds has gone to Hillsborough, Pinellas, Pasco and several other Florida counties, much of it for transitional housing. Almost 300 halfway houses initially qualified for the money. Some were run by felons who took advantage of the very people they were supposed to help.

William Garrison, a one-time crack user, opened New Birth Abundant Life Ministry in St. Petersburg and collected more than \$300,000 in federal funds before being kicked out of the program.

Residents complained that Garrison made them pay \$50 a week for food even though he was getting federal money for meals. Clients also said Garrison cursed profusely and touched them against their will with "strong sexual overtones," according to a state report.

Garrison, 56, told the *Times* he did nothing wrong. He said he still helps men find housing and other services but wouldn't say where.

Another halfway house that qualified for federal money was House of Hope in St. Petersburg. It was run by Patrick Jay Banks, who spent eight years in a Texas prison for robbery and forgery before moving to Pinellas and introducing himself as "Pastor" Banks.

In what investigators called the "most egregious case of fraud, waste and abuse" by any ATR provider in Florida, Banks submitted bills for residents long before they set foot inside the pair of tiny houses he ran down the street from a Catholic church.

He also billed for job coaching for up to 50 residents at a time even though the meeting room held less than 10.

Banks collected more than \$110,000 before he was permanently barred from the federal program in 2007.

Yet in an interview with the *Times* last week, Banks acknowledged he started a new halfway house, Agape House in St. Petersburg, that has received \$55,000 in federal funds in the past year. Banks' name did not appear on Agape's ATR application, but he told police he was the owner when they questioned him about an unrelated matter in October.

"I never kept it a secret I was starting it," said Banks, 48, who insisted he has done nothing wrong.

DCF, which oversees the federal program in Florida, said it was unaware of Banks' involvement and will investigate.

To qualify for the federal money, owners and employees of halfway houses must pass criminal background checks. The houses must meet health and safety codes, and are subject to periodic inspections.

But the vast majority of halfway houses in Florida get no government money and are subject to no regulation.

Residents are on their own.

Deadly homes

Emily Rifkin had been living in a Tampa halfway house for just three weeks when another resident found her blue in the face and foaming at the mouth.

By the time paramedics got there, Rifkin was cold to the touch, dead at 25 of an accidental overdose of oxycodone.

Rifkin is one of at least three people who have overdosed and died in Tampa Bay halfway houses owned by people who started them as a way to make money in a slow real estate market. They converted regular houses into halfway houses with no licensing and no oversight.

In November 2010, Rifkin, a former college student, was still struggling with the addiction that had sent her to prison for eight months on drug-related charges. Rifkin's family asked the courts for help, and a judge approved her going to a halfway house while she waited for a bed in a residential treatment program.

After Rifkin violated rules at the first house, she was moved to the three-bedroom, one bath house on Okaloosa Street where she was supposed to get more supervision. But the police report shows that obvious signs of trouble were ignored the day she died.

At 2 p.m., one roommate thought Rifkin seemed "kind out of it" but did nothing.

Six hours later, the house manager, herself an addict, saw Rifkin sitting listlessly on the bathroom floor and left her there.

It wasn't until 35 minutes later, after Rifkin had stopped breathing, that a roommate called 911.

The home's owner, Shelton Jones, said he converted the home into a halfway house with assistance from Linda Walker, who runs the nonprofit Hillsborough House of Hope transitional program for women.

Walker also has a for-profit business that helps people start halfway houses. She and Jones said they were not responsible for Rifkin's death.

"I feel bad she died," Walker said, "but a lot of people die in recovery. You have to want recovery."

As with most other halfway houses, there was no trained staff at Okaloosa Street and no routine testing for drug and alcohol use, Walker and Jones acknowledged. They said it was impossible to keep residents from sneaking in drugs.

A year before Rifkin's death, two men fatally overdosed on methadone in an unregulated house in Seminole. Like Jones, the owner had gone into the halfway house business to increase her rental property income.

Jones kept his place open almost a year after Rifkin died. Resident Collette Turner said the house was dirty and there were blue pills — "Oxies or something" — in a drawer.

"One girl in my room was selling drugs," said Turner, 26. "She told me how much weed and coke she could get."

Turner paid \$500 a month to share the house with up to three other women at a time. But after paying utilities, cable, insurance and the mortgage, Jones decided "it just wasn't a good investment" and closed the doors late last year.

Risky referrals

Referrals are the lifeblood of halfway houses. Few could stay in business without courts, hospitals and detox centers steering people their way.

Yet the *Times* found that referrals often are made on the basis of glowing descriptions from the houses themselves.

After a suicide attempt in July and 11 days in Windmoor, a private Clearwater mental hospital, Leisha Simpson needed a place to go.

Simpson said Windmoor gave her the names of three halfway houses, and she chose Still Standing of St. Petersburg. Its website touted a "safe haven" with 24-hour staffing, counseling and on-site 12-step meetings.

There was none of that. For \$500 a month, Simpson said, all she got was a bed in a roach-ridden house with as many as four other women, one of whom smoked crack and invited men into their shared bedroom for sex at all hours.

In the two months she was there, Simpson twice filed complaints with police. She said her TV, credit cards and safe with medications were stolen. Another resident threw her against a dresser and tried to drown her while she was in the bathtub.

"It was," Simpson recalled, "a horrible experience."

Still Standing's founder, the Rev. Edward Leftwich, 67, said he couldn't maintain a full sober living program as he got older and \$240,000 in federal funding ran out. He acknowledged it was a mistake to leave up his website.

Police are investigating Simpson's theft complaint and have turned the assault case over to prosecutors. Simpson, 31, is now living with her mother and grandmother in North Carolina.

"At least I know they won't rob me in the middle of the night," she said.

Windmoor officials did not return several calls seeking comment on why they recommended a halfway house that no longer provided any services.

The demand for transitional housing is so great that even new programs easily get referrals.

Last spring, Pamela Dixon made the rounds of detox centers and public agencies in Pinellas promoting her 31-bed halfway house, A New Direction for Women and Men. Public Defender Bob Dillinger began sending chronic drunks there, unaware that A New Direction required residents to get prescriptions filled in a store that also sells beer and wine.

Both the pharmacy building and the converted ALF that houses A New Direction are owned by the same Tampa group. "I do find it questionable," Dillinger said when a reporter told him of the connection.

Dillinger checked out the halfway house and said Dixon agreed to stop dealing with the pharmacy. The public defender's office continues to send people to A New Direction.

'Preferred providers'

Is it possible to regulate the thousands of halfway houses now operating without oversight?

"We regulate thousands of child care facilities across the state with no problem," said Erin Gillespie, a DCF spokeswoman. "We are certainly up to the task if the law were changed."

So far there has been no legislative action to ensure that halfway houses deliver what they promise. But in Pinellas County, a coalition of groups that help substance abusers and the homeless is trying to come up with a list of "preferred providers." To get on it, halfway houses would have to permit inspections and meet certain standards, among them not exploiting residents.

In the meantime, it is easy for felons like 49-year-old Troy Charles to get into the business.

Charles, born in Phoenix, spent three years in an Arizona prison for aggravated assault before moving to St. Petersburg. He was arrested 16 times — charges ranged from auto theft to burglary

to sale of cocaine — before he started his Back to Life ministry, rented a house, set up bunk beds in the living room and began charging clients \$450 a month.

One was John Lees, who had done jail time for obtaining oxycodone by fraud.

"At first it was presented to me, like, if you need a place to stay and recover from addiction, you can stay there," Lees told the *Times*. "Then he tried to get me to sell drugs to him."

Lees, 32, said he saw Charles use cocaine and heard him discuss hooking girls on drugs so he could turn them into prostitutes.

Afraid of getting into trouble, Lees moved out in February. When he returned to get a book bag, he said, Charles accused him and a resident, Samuel Harper, of burglary. Prosecutors declined to charge the men, and Charles, upset by the decision, angrily confronted Harper and fatally shot him in the head, police say.

Charles pleaded not guilty and is awaiting trial. He landed back in the Pinellas County Jail about the same time as another halfway house operator, Matthew Hauschild.

Until a few years ago, Hauschild, 46, managed halfway houses for others. Then the real estate bust presented an opportunity to strike out on his own.

"I had a lot of owners and developers who had empty properties and I worked out contracts with them," Hauschild said earlier this year, boasting "I'm in multiple counties." He wouldn't say where.

At Hauschild's House of Hope, a two-story white frame house in Clearwater, clients paid \$450 a month for a "recovery" program that included transportation to 12-step meetings. One problem: Hauschild, who has been convicted of forgery, theft and cocaine possession, had long ago lost his driving privileges.

Last spring, Hauschild was caught a fifth time driving without a license and is now serving a 13-month sentence in state prison. When he gets out, he told the *Times*, he plans to get back in the halfway house business.

Susan Taylor Martin can be contacted at susan@tampbay.com.

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 634

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

SUBJECT: Guardianship

DATE: February 11, 2014 **REVISED:** _____

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

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 634 revises various provisions relating to Florida guardianship law. The bill:

- Redefines the term “audit” requiring various practices that meet professional standards.
- Requires a nonprofessional guardian to submit to a credit history investigation and background screening.
- Allows courts to order an accounting of property or a trust of which the ward is a beneficiary but which is not under the administration or control of the guardian.
- Authorizes clerks of court to obtain and review records impacting guardianship assets and, upon application to the court, issue subpoenas.
- Allows the court to remove a guardian for failure to submit records during an audit.
- Requires a person seeking a guardianship appointment to acknowledge arrests covered by a sealed record.
- The bill is not expected to have a fiscal impact and has an effective date of July 1, 2014.

II. Present Situation:

Guardianships serve as a mechanism to protect vulnerable individuals in our society who do not have a family or loved or who is willing and able to manage their property or other personal matters. A guardian may be court-appointed, surrogate decision-maker who makes personal or financial decisions for a minor or for an adult with mental or physical disabilities. A guardian may be described as a person “who has the legal authority and duty to care for another’s person

or property, esp[ecially] because of the other’s infancy, incapacity, or disability.”¹ Guardianships are governed completely and exclusively under statutes in Florida.² Any adult may petition a court to initiate guardianship proceedings to determine the incapacity of any person.³ An “incapacitated person” is a “person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.”⁴

A guardian is a surrogate decision-maker appointed by the court to make personal or financial decisions for a minor or an adult having mental or physical disabilities.⁵ Under Florida law, a ward is defined as a person for whom a guardian has been appointed.⁶

The procedure to determine an alleged person’s incapacity is prescribed by statute.⁷ Any person may file, under oath, a petition in circuit court for determination of incapacity alleging that a person is incapacitated.⁸ After a petition for determination of incapacity has been filed, a court must appoint an examining committee comprised of three health care professionals to examine and report the condition of the alleged incapacitated person.⁹ If the examining committee determines that the alleged incapacitated person is not incapacitated, the court must dismiss the petition for determination of incapacity.¹⁰ If the examining committee determines that the alleged incapacitated person is incapacitated, the court must hold a hearing on the petition. If after a hearing, the court determines that a person is incapacitated, the court must also find that alternatives to guardianship were considered and that no alternatives to guardianship will sufficiently address the problems of the incapacitated person and appoint a guardian.¹¹

Guardians

Upon a finding by the court that a guardianship sufficiently addresses the problem of the incapacitated person, a guardian will be appointed. There are many different types of guardians available for court appointment such as “limited guardian,” “nonprofit guardian,” “preneed guardian,” and “professional guardian.” A “professional guardian,” is any guardian who has at any time rendered services to three or more wards as their guardian.¹² A professional guardian must comply with statutory application, bond and educational requirements. Each professional guardian must allow, at the guardian’s expense, an investigation of the guardian’s credit history, and the credit history of employees of the guardian, in a manner prescribed by the Department of

¹ BLACK’S LAW DICTIONARY (9th ed. 2009).

² *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So.2d 176, 182 (Fla 2d DCA 1966).

³ Section 744.3201, F.S.

⁴ Section 744.102(12), F.S.

⁵ *See e.g.*, s. 744.102(9), F.S.

⁶ Section 744.102(22), F.S.

⁷ Section 744.331, F.S.

⁸ *Id.* In Florida, circuit courts have exclusive jurisdiction of proceedings relating to the determination of incompetency.

Section 26.12(2)(b), F.S.

⁹ Section 744.331(3), F.S.

¹⁰ Section 744.331(4), F.S.

¹¹ *See s.* 744.331(6)(b), F.S.

¹² Section 744.012(17), F.S.

Elder Affairs.¹³ Each professional guardian shall allow a level 2 background screening of the guardian and employees of the guardian in accordance with the provisions of s. 435.04, F.S.¹⁴ Any resident of this state who is sui juris (someone with full legal rights or capacity and not under any legal disability or power of another such as guardianship) and is 18 years of age or older is qualified to act as a guardian of the ward.¹⁵ A nonresident of the state may serve as a guardian of a resident if he or she is:

- Related by lineal consanguinity to the ward;
- A legally adopted child or adoptive parent of the ward;
- A spouse, brother, sister, uncle, aunt, niece, or nephew of the ward, or someone related by lineal consanguinity to any such person, or
- The spouse of a person otherwise qualified under this section.¹⁶

Every prospective guardian must complete an application for appointment as a guardian. The application must list the person's qualifications to serve as a guardian.¹⁷ If the guardian appointed by the court does not meet the definition of "professional guardian," the guardian may be considered a nonprofessional guardian. The court may require a nonprofessional guardian and shall require a professional or public guardian, and all employees of a professional guardian who have a fiduciary responsibility to the ward, to submit, at their own expense, to an investigation of the guardian's credit history and to undergo level 2 background screening as required under s. 435.04, F.S.¹⁸ For nonprofessional guardians, the court shall accept the satisfactory completion of a criminal history record check. The nonprofessional guardian can satisfy this requirement by undergoing a state and national criminal history record check using fingerprints. The nonprofessional guardian shall have his or her fingerprints taken and provide them to the Department of Law Enforcement with the appropriate fee for processing. The results shall be forwarded to the clerk of the court, maintained in the nonprofessional guardian's file and made available to the court.¹⁹ A guardian may be removed for reasons set forth in the law and the removal shall be in addition to any other penalties prescribed by law.²⁰

Annual Accounting

Each guardian of the property of the ward must file an annual accounting with the court.²¹ The annual accounting must include a full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control and a statement of the ward's property on hand at the end of the accounting period; however, this does not apply to any property or trust of which the ward is a beneficiary but which is not under the control or administration of the guardian.²²

¹³ Section 744.1085(4), F.S.

¹⁴ Section 744.1085(5), F.S.

¹⁵ Section 744.309(1), F.S.

¹⁶ Section 744.309(2), F.S.

¹⁷ Section 714.312(1), F.S.

¹⁸ Section 744.3135(1), F.S.

¹⁹ Section 744.3135(3), F.S.

²⁰ Section 744.474, F.S.

²¹ Section 744.3678(1), F.S.

²² Section 744.3678(2)(a), F.S.

Responsibilities of the Clerk of the Court

In addition to the duty to serve as the custodian of the guardianship files, the clerk shall review each initial and annual guardianship report to ensure it contains information about the ward that addresses mental and physical health care, physical and mental health examinations, personal and social services, residential setting, the application of insurance, private benefits and government benefits and the initial verified inventory or the annual accounting.²³ The clerk has certain timeframes within which to review reports, audit verified inventory and accountings and report to the court when a report is not timely filed.²⁴

Court-ordered Sealing of Criminal Records

Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history records of a minor or an adult under certain circumstances. The person seeking to seal a criminal history must apply for and receive a certificate of eligibility for sealing.²⁵ When a court orders a criminal history record of a minor or an adult to be sealed, they may lawfully deny or fail to acknowledge the arrests covered by the sealed records except under certain circumstances.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 744.102(2), F.S., the definition of “audit,” by expanding the term beyond the systematic review of financial and other documents to ensure compliance with court rules and generally accepted accounting principles to include, but not be limited to, various practices that meet professional standards such as reviews of substantiating papers and accounts, interviews and hearings, inspections and investigations.

Section 2 amends s. 744.3135(1), F.S. to require all guardians (other than corporate guardians) submit, at their own expense, to an investigation of the guardian’s credit history and undergo a level 2 background screening pursuant to s. 435.03, F.S. The cost of the credit history and level 2 background screening may be insignificant on nonprofessional guardians as they already pay any fees to undergo state and national criminal history checks and fingerprinting. If appointed, a nonprofessional guardian may petition the court for reimbursement of reasonable expenses incurred for credit history investigation and background screening.

Section 3 amends s. 744.3678(2)(a), F.S. to provide authority to the court to order an annual accounting for any property or any trust of which the ward is a beneficiary but is not under the control or administration of the guardian.

Section 4 creates a new ss. 744.368(2), F.S. which expands the purview of the clerk of the court at the direction of the court to obtain and review records and documents that reasonably impact guardianship assets, including beginning inventory balances and fees charged to the guardianship. This section also allows the clerk to apply to the court to exercise the power to

²³ Section 744.368(1), F.S.

²⁴ Section 744.368, F.S.

²⁵ Section 943.059, F.S.

²⁶ Section 943.059(4)(a), F.S.

issue and serve subpoenas to parties and nonparties, provide proper notice to the guardian or ward and compel production of documents and other evidence. It also includes a process whereby a guardian or ward may object to the production of documents.

Section 5 amends s. 744.474, F.S. to provide that the failure to submit guardianship records during the audit as required allows for the removal of a guardian.

Section 6 amends s. 943.059, F.S. to require a person seeking appointment as a guardian to disclose arrests covered by a sealed record.

Section 7 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issue:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Nonprofessional guardians currently pay the costs for fingerprinting and background checks. The cost to require nonprofessional guardians to be subject to a credit history investigation and level 2 background screening is indeterminate. However, if appointed, a nonprofessional guardian may petition the court for reimbursement of reasonable expenses incurred for the investigation of the credit history and level 2 background screening.

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: 744.102, 744.3135, 744.3678, 744.368, 744.474, and 943.059.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on February 11, 2014:

- Provides additional responsibilities for the clerk of the court if there is reason to believe further review of records and documents that impact the guardianship assets are appropriate. Provides a process for the clerk to request a court order based on an affidavit that identifies records and documents requested and a show of good cause as to why there are needed to complete the audit. Provides a process for the clerk to issue a subpoena to nonparties for production of documents supported by an affidavit and notice requirements. Provides the guardian or ward a timeframe within which to object to the production of documents.

- B. **Amendments:**

None.



612984

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2014	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) of section 744.102, Florida
Statutes, is amended to read:

744.102 Definitions.—As used in this chapter, the term:

(2) "Audit" means a systematic review of financial and all
other documents to ensure compliance with s. 744.368, rules of
court, and local procedures using generally accepted accounting



612984

11 principles. The term includes various practices that meet
12 professional standards, such as verifications, reviews of
13 substantiating papers and accounts, interviews, inspections, and
14 investigations.

15 Section 2. Subsection (1) of section 744.3135, Florida
16 Statutes, is amended to read:

17 744.3135 Credit and criminal investigation.-

18 (1) The court shall require all guardians who are seeking
19 appointment by the court, other than a corporate guardian as
20 described in s. 744.309(4) may require a nonprofessional
21 guardian and shall require a professional or public guardian,
22 and all employees of a professional guardian, other than a
23 corporate guardian as described in s. 744.309(4), who have a
24 fiduciary responsibility to a ward, to submit, at their own
25 expense, to a an investigation of the guardian's credit history
26 investigation and to undergo level 2 background screening as
27 required under s. 435.04. If appointed, a nonprofessional
28 guardian may petition the court for reimbursement of the
29 reasonable expenses of the credit history investigation and
30 background screening. If a credit or criminal history record
31 check is required, The court must consider the results of any
32 investigation before appointing a guardian. At any time, the
33 court may require a guardian or the guardian's employees to
34 submit to an investigation of the person's credit history and
35 complete a level 1 background screening pursuant to as set forth
36 in s. 435.03. The court shall consider the results of any
37 investigation in determining whether to reappoint when
38 reappointing a guardian. The clerk of the court shall maintain a
39 file on each guardian appointed by the court and retain in the



612984

40 file documentation of the result of any investigation conducted
41 under this section. A professional guardian shall ~~must~~ pay the
42 clerk of the court a fee of up to \$7.50 for handling and
43 processing professional guardian files.

44 Section 3. Subsections (5) through (7) are added to section
45 744.368, Florida Statutes, to read:

46 744.368 Responsibilities of the clerk of the circuit
47 court.—

48 (5) If the clerk has reason to believe further review is
49 appropriate, the clerk may request and review records and
50 documents that reasonably impact guardianship assets, including,
51 but not limited to, the beginning inventory balance and any fees
52 charged to the guardianship.

53 (6) If a guardian fails to produce records and documents to
54 the clerk upon request, the clerk may request the court to enter
55 an order pursuant to s. 744.3685(2) by filing an affidavit that
56 identifies the records and documents requested and shows good
57 cause as to why the documents and records requested are needed
58 to complete the audit.

59 (7) Upon application to the court supported by an affidavit
60 pursuant to subsection (6), the clerk may issue subpoenas to
61 nonparties to compel production of books, papers, and other
62 documentary evidence. Before issuance of a subpoena by
63 affidavit, the clerk must serve notice on the guardian and the
64 ward, unless the ward is a minor or totally incapacitated, of
65 the intent to serve subpoenas to nonparties.

66 (a) The clerk must attach the affidavit and the proposed
67 subpoena to the notice to the guardian and, if appropriate, to
68 the ward, and must:



612984

69 1. State the time, place, and method for production of the
70 documents or items, and the name and address of the person who
71 is to produce the documents or items, if known, or if not known,
72 a general description sufficient to identify the person or the
73 particular class or group to which the person belongs;

74 2. Include a designation of the items to be produced; and

75 3. State that the person who will be asked to produce the
76 documents or items has the right to object to the production
77 under this section and that the person is not required to
78 surrender the documents or items.

79 (b) A copy of the notice and proposed subpoena may not be
80 furnished to the person upon whom the subpoena is to be served.

81 (c) If the guardian or ward serves an objection to
82 production under this subsection within 10 days after service of
83 the notice, the documents or items may not be required to be
84 produced until resolution of the objection. If an objection is
85 not made within 10 days after service of the notice, the clerk
86 may issue the subpoena to the nonparty. The court may shorten
87 the period within which a guardian or ward is required to file
88 an objection upon a showing by the clerk by affidavit that the
89 ward's property is in imminent danger of being wasted,
90 misappropriated, or lost unless immediate action is taken.

91 Section 4. Section 744.3685, Florida Statutes, is amended
92 to read:

93 744.3685 Order requiring guardianship report; contempt.—

94 (1) If ~~When~~ a guardian fails to file the guardianship
95 report, the court shall order the guardian to file the report
96 within 15 days after the service of the order upon her or him or
97 show cause why she or he may ~~should~~ not be compelled to do so.



612984

98 (2) If a guardian fails to comply with the submission of
99 records and documents requested by the clerk during the audit,
100 upon a showing of good cause by affidavit of the clerk which
101 shows the reasons the records must be produced, the court may
102 order the guardian to produce the records and documents within a
103 period specified by the court unless the guardian shows good
104 cause as to why the guardian may not be compelled to do so
105 before the deadline specified by the court. The affidavit of the
106 clerk shall be served with the order.

107 (3) A copy of an ~~the~~ order entered pursuant to subsection
108 (1) or subsection (2) shall be served on the guardian or on the
109 guardian's resident agent. If the guardian fails to comply with
110 the order ~~file her or his report~~ within the time specified by
111 the order without good cause, the court may cite the guardian
112 for contempt of court and may fine her or him. The fine may not
113 be paid out of the ward's property.

114 Section 5. Subsection (21) is added to section 744.474,
115 Florida Statutes, to read:

116 744.474 Reasons for removal of guardian.—A guardian may be
117 removed for any of the following reasons, and the removal shall
118 be in addition to any other penalties prescribed by law:

119 (21) A bad faith failure to submit guardianship records
120 during the audit pursuant to s. 744.368.

121 Section 6. Paragraph (a) of subsection (4) of section
122 943.0585, Florida Statutes, is amended, and paragraph (c) of
123 that subsection is reenacted, to read:

124 943.0585 Court-ordered expunction of criminal history
125 records.—The courts of this state have jurisdiction over their
126 own procedures, including the maintenance, expunction, and



612984

127 correction of judicial records containing criminal history
128 information to the extent such procedures are not inconsistent
129 with the conditions, responsibilities, and duties established by
130 this section. Any court of competent jurisdiction may order a
131 criminal justice agency to expunge the criminal history record
132 of a minor or an adult who complies with the requirements of
133 this section. The court shall not order a criminal justice
134 agency to expunge a criminal history record until the person
135 seeking to expunge a criminal history record has applied for and
136 received a certificate of eligibility for expunction pursuant to
137 subsection (2). A criminal history record that relates to a
138 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
139 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
140 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
141 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
142 any violation specified as a predicate offense for registration
143 as a sexual predator pursuant to s. 775.21, without regard to
144 whether that offense alone is sufficient to require such
145 registration, or for registration as a sexual offender pursuant
146 to s. 943.0435, may not be expunged, without regard to whether
147 adjudication was withheld, if the defendant was found guilty of
148 or pled guilty or nolo contendere to the offense, or if the
149 defendant, as a minor, was found to have committed, or pled
150 guilty or nolo contendere to committing, the offense as a
151 delinquent act. The court may only order expunction of a
152 criminal history record pertaining to one arrest or one incident
153 of alleged criminal activity, except as provided in this
154 section. The court may, at its sole discretion, order the
155 expunction of a criminal history record pertaining to more than



612984

156 one arrest if the additional arrests directly relate to the
157 original arrest. If the court intends to order the expunction of
158 records pertaining to such additional arrests, such intent must
159 be specified in the order. A criminal justice agency may not
160 expunge any record pertaining to such additional arrests if the
161 order to expunge does not articulate the intention of the court
162 to expunge a record pertaining to more than one arrest. This
163 section does not prevent the court from ordering the expunction
164 of only a portion of a criminal history record pertaining to one
165 arrest or one incident of alleged criminal activity.

166 Notwithstanding any law to the contrary, a criminal justice
167 agency may comply with laws, court orders, and official requests
168 of other jurisdictions relating to expunction, correction, or
169 confidential handling of criminal history records or information
170 derived therefrom. This section does not confer any right to the
171 expunction of any criminal history record, and any request for
172 expunction of a criminal history record may be denied at the
173 sole discretion of the court.

174 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
175 criminal history record of a minor or an adult which is ordered
176 expunged by a court of competent jurisdiction pursuant to this
177 section must be physically destroyed or obliterated by any
178 criminal justice agency having custody of such record; except
179 that any criminal history record in the custody of the
180 department must be retained in all cases. A criminal history
181 record ordered expunged that is retained by the department is
182 confidential and exempt from the provisions of s. 119.07(1) and
183 s. 24(a), Art. I of the State Constitution and not available to
184 any person or entity except upon order of a court of competent



612984

185 jurisdiction. A criminal justice agency may retain a notation
186 indicating compliance with an order to expunge.

187 (a) The person who is the subject of a criminal history
188 record that is expunged under this section or under other
189 provisions of law, including former s. 893.14, former s. 901.33,
190 and former s. 943.058, may lawfully deny or fail to acknowledge
191 the arrests covered by the expunged record, except when the
192 subject of the record:

193 1. Is a candidate for employment with a criminal justice
194 agency;

195 2. Is a defendant in a criminal prosecution;

196 3. Concurrently or subsequently petitions for relief under
197 this section, s. 943.0583, or s. 943.059;

198 4. Is a candidate for admission to The Florida Bar;

199 5. Is seeking to be employed or licensed by or to contract
200 with the Department of Children and Families, the Division of
201 Vocational Rehabilitation within the Department of Education,
202 the Agency for Health Care Administration, the Agency for
203 Persons with Disabilities, the Department of Health, the
204 Department of Elderly Affairs, or the Department of Juvenile
205 Justice or to be employed or used by such contractor or licensee
206 in a sensitive position having direct contact with children, the
207 disabled, or the elderly; ~~or~~

208 6. Is seeking to be employed or licensed by the Department
209 of Education, any district school board, any university
210 laboratory school, any charter school, any private or parochial
211 school, or any local governmental entity that licenses child
212 care facilities; or

213 7. Is seeking to be appointed as a guardian pursuant to s.



612984

214 744.3125.

215 (c) Information relating to the existence of an expunged
216 criminal history record which is provided in accordance with
217 paragraph (a) is confidential and exempt from the provisions of
218 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
219 except that the department shall disclose the existence of a
220 criminal history record ordered expunged to the entities set
221 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
222 respective licensing, access authorization, and employment
223 purposes, and to criminal justice agencies for their respective
224 criminal justice purposes. It is unlawful for any employee of an
225 entity set forth in subparagraph (a)1., subparagraph (a)4.,
226 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
227 disclose information relating to the existence of an expunged
228 criminal history record of a person seeking employment, access
229 authorization, or licensure with such entity or contractor,
230 except to the person to whom the criminal history record relates
231 or to persons having direct responsibility for employment,
232 access authorization, or licensure decisions. Any person who
233 violates this paragraph commits a misdemeanor of the first
234 degree, punishable as provided in s. 775.082 or s. 775.083.

235 Section 7. Paragraph (a) of subsection (4) of section
236 943.059, Florida Statutes, is amended, and paragraph (c) of that
237 subsection is reenacted, to read:

238 943.059 Court-ordered sealing of criminal history records.—
239 The courts of this state shall continue to have jurisdiction
240 over their own procedures, including the maintenance, sealing,
241 and correction of judicial records containing criminal history
242 information to the extent such procedures are not inconsistent



612984

243 with the conditions, responsibilities, and duties established by
244 this section. Any court of competent jurisdiction may order a
245 criminal justice agency to seal the criminal history record of a
246 minor or an adult who complies with the requirements of this
247 section. The court shall not order a criminal justice agency to
248 seal a criminal history record until the person seeking to seal
249 a criminal history record has applied for and received a
250 certificate of eligibility for sealing pursuant to subsection
251 (2). A criminal history record that relates to a violation of s.
252 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
253 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
254 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
255 916.1075, a violation enumerated in s. 907.041, or any violation
256 specified as a predicate offense for registration as a sexual
257 predator pursuant to s. 775.21, without regard to whether that
258 offense alone is sufficient to require such registration, or for
259 registration as a sexual offender pursuant to s. 943.0435, may
260 not be sealed, without regard to whether adjudication was
261 withheld, if the defendant was found guilty of or pled guilty or
262 nolo contendere to the offense, or if the defendant, as a minor,
263 was found to have committed or pled guilty or nolo contendere to
264 committing the offense as a delinquent act. The court may only
265 order sealing of a criminal history record pertaining to one
266 arrest or one incident of alleged criminal activity, except as
267 provided in this section. The court may, at its sole discretion,
268 order the sealing of a criminal history record pertaining to
269 more than one arrest if the additional arrests directly relate
270 to the original arrest. If the court intends to order the
271 sealing of records pertaining to such additional arrests, such



612984

272 intent must be specified in the order. A criminal justice agency
273 may not seal any record pertaining to such additional arrests if
274 the order to seal does not articulate the intention of the court
275 to seal records pertaining to more than one arrest. This section
276 does not prevent the court from ordering the sealing of only a
277 portion of a criminal history record pertaining to one arrest or
278 one incident of alleged criminal activity. Notwithstanding any
279 law to the contrary, a criminal justice agency may comply with
280 laws, court orders, and official requests of other jurisdictions
281 relating to sealing, correction, or confidential handling of
282 criminal history records or information derived therefrom. This
283 section does not confer any right to the sealing of any criminal
284 history record, and any request for sealing a criminal history
285 record may be denied at the sole discretion of the court.

286 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
287 history record of a minor or an adult which is ordered sealed by
288 a court of competent jurisdiction pursuant to this section is
289 confidential and exempt from the provisions of s. 119.07(1) and
290 s. 24(a), Art. I of the State Constitution and is available only
291 to the person who is the subject of the record, to the subject's
292 attorney, to criminal justice agencies for their respective
293 criminal justice purposes, which include conducting a criminal
294 history background check for approval of firearms purchases or
295 transfers as authorized by state or federal law, to judges in
296 the state courts system for the purpose of assisting them in
297 their case-related decisionmaking responsibilities, as set forth
298 in s. 943.053(5), or to those entities set forth in
299 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
300 licensing, access authorization, and employment purposes.



612984

301 (a) The subject of a criminal history record sealed under
302 this section or under other provisions of law, including former
303 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
304 deny or fail to acknowledge the arrests covered by the sealed
305 record, except when the subject of the record:

306 1. Is a candidate for employment with a criminal justice
307 agency;

308 2. Is a defendant in a criminal prosecution;

309 3. Concurrently or subsequently petitions for relief under
310 this section, s. 943.0583, or s. 943.0585;

311 4. Is a candidate for admission to The Florida Bar;

312 5. Is seeking to be employed or licensed by or to contract
313 with the Department of Children and Families, the Division of
314 Vocational Rehabilitation within the Department of Education,
315 the Agency for Health Care Administration, the Agency for
316 Persons with Disabilities, the Department of Health, the
317 Department of Elderly Affairs, or the Department of Juvenile
318 Justice or to be employed or used by such contractor or licensee
319 in a sensitive position having direct contact with children, the
320 disabled, or the elderly;

321 6. Is seeking to be employed or licensed by the Department
322 of Education, any district school board, any university
323 laboratory school, any charter school, any private or parochial
324 school, or any local governmental entity that licenses child
325 care facilities; ~~or~~

326 7. Is attempting to purchase a firearm from a licensed
327 importer, licensed manufacturer, or licensed dealer and is
328 subject to a criminal history check under state or federal law;
329 or-



612984

330 8. Is seeking to be appointed as a guardian pursuant to s.
331 744.3125.

332 (c) Information relating to the existence of a sealed
333 criminal record provided in accordance with the provisions of
334 paragraph (a) is confidential and exempt from the provisions of
335 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
336 except that the department shall disclose the sealed criminal
337 history record to the entities set forth in subparagraphs (a)1.,
338 4., 5., 6., and 8. for their respective licensing, access
339 authorization, and employment purposes. It is unlawful for any
340 employee of an entity set forth in subparagraph (a)1.,
341 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
342 subparagraph (a)8. to disclose information relating to the
343 existence of a sealed criminal history record of a person
344 seeking employment, access authorization, or licensure with such
345 entity or contractor, except to the person to whom the criminal
346 history record relates or to persons having direct
347 responsibility for employment, access authorization, or
348 licensure decisions. Any person who violates the provisions of
349 this paragraph commits a misdemeanor of the first degree,
350 punishable as provided in s. 775.082 or s. 775.083.

351 Section 8. This act shall take effect July 1, 2014.

352
353 ===== T I T L E A M E N D M E N T =====

354 And the title is amended as follows:

355 Delete everything before the enacting clause
356 and insert:

357 A bill to be entitled

358 An act relating to guardianship; amending s. 744.102,



612984

359 F.S.; redefining the term "audit"; amending s.
360 744.3135, F.S.; revising the requirements and
361 authorizations of the court to require specified
362 guardians to submit to a credit history investigation
363 and background screening; authorizing a
364 nonprofessional guardian to petition the court for
365 reimbursement for the credit history investigation and
366 background screening; amending s. 744.368, F.S.;
367 authorizing a clerk of the court to obtain and review
368 records impacting guardianship assets and to issue
369 subpoenas to nonparties upon application to the court;
370 providing requirements for affidavits, notice, and
371 subpoenas; providing for objection to a subpoena;
372 amending s. 744.3685, F.S.; authorizing the court to
373 require the production of records and documents by a
374 guardian who fails to submit them during an audit;
375 amending s. 744.474, F.S.; providing for the removal
376 of a guardian for a bad faith failure to submit
377 records during an audit; amending ss. 943.0585 and
378 943.059, F.S.; providing that a person seeking an
379 appointment as guardian may not lawfully deny or fail
380 to acknowledge the arrests covered by an expunged or
381 sealed record; reenacting s. 943.0585(4)(c), F.S.,
382 relating to court-ordered expunction of criminal
383 history records, to incorporate the amendments made to
384 s. 943.0585, F.S., in a reference thereto; reenacting
385 s. 943.059(4)(c), relating to court-ordered sealing of
386 criminal history records, to incorporate the
387 amendments made to s. 943.059, F.S., in a reference



612984

388

thereto; providing an effective date.

By Senator Brandes

22-00911-14

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1 A bill to be entitled
 2 An act relating to guardianship; amending s. 744.102,
 3 F.S.; redefining the term "audit"; amending s.
 4 744.3135, F.S.; requiring a nonprofessional guardian
 5 to submit to a credit history investigation and
 6 background screening; amending s. 744.3678, F.S.;
 7 authorizing the court to order an accounting of
 8 property or a trust of which the ward is a beneficiary
 9 but which is not under the administration or control
 10 of the guardian; amending s. 744.368, F.S.;
 11 authorizing the clerk to obtain and review records
 12 impacting guardianship assets and to issue subpoenas
 13 upon application to the court; amending s. 744.474,
 14 F.S.; providing for the removal of a guardian for
 15 failure to submit records during an audit; amending s.
 16 943.059, F.S.; providing that a person seeking an
 17 appointment as a guardian may not lawfully deny or
 18 fail to acknowledge the arrests covered by a sealed
 19 record; providing an effective date.
 20
 21 Be It Enacted by the Legislature of the State of Florida:
 22
 23 Section 1. Subsection (2) of section 744.102, Florida
 24 Statutes, is amended to read:
 25 744.102 Definitions.—As used in this chapter, the term:
 26 (2) "Audit" means a systematic review of financial and ~~all~~
 27 other documents to ensure compliance with s. 744.368, rules of
 28 court, and local procedures using generally accepted accounting
 29 principles. The term includes, but is not limited to, various

Page 1 of 7

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

22-00911-14

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30 practices that meet professional standards such as
 31 verifications, reviews of substantiating papers and accounts,
 32 interviews and hearings, inspections, and investigations.
 33 Section 2. Subsection (1) of section 744.3135, Florida
 34 Statutes, is amended to read:
 35 744.3135 Credit and criminal investigation.—
 36 (1) The court shall ~~may~~ require a nonprofessional guardian,
 37 ~~and shall require~~ a professional guardian, or a public guardian,
 38 and all employees of a professional guardian who have a
 39 fiduciary responsibility to a ward, to submit, at their own
 40 expense, to an investigation of the guardian's credit history
 41 and to undergo level 2 background screening as required under s.
 42 435.04. ~~If a credit or criminal history record check is~~
 43 ~~required,~~ The court must consider the results of any
 44 investigation before appointing a guardian. At any time, the
 45 court may require a guardian or the guardian's employees to
 46 submit to an investigation of the person's credit history and
 47 complete a level 1 background screening pursuant to as set forth
 48 ~~in~~ s. 435.03. The court shall consider the results of any
 49 investigation in determining whether to reappoint ~~when~~
 50 ~~reappointing~~ a guardian. The clerk of the court shall maintain a
 51 file on each guardian appointed by the court and retain in the
 52 file documentation of the result of any investigation conducted
 53 under this section. A professional guardian shall ~~must~~ pay the
 54 clerk of the court a fee of up to \$7.50 for handling and
 55 processing professional guardian files.
 56 Section 3. Paragraph (a) of subsection (2) of section
 57 744.3678, Florida Statutes, is amended to read:
 58 744.3678 Annual accounting.—

Page 2 of 7

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22-00911-14

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59 (2) The annual accounting must include:

60 (a) A full and correct account of the receipts and
61 disbursements of all of the ward's property over which the
62 guardian has control and a statement of the ward's property on
63 hand at the end of the accounting period. This paragraph does
64 not apply to any property or any trust of which the ward is a
65 beneficiary but which is not under the control or administration
66 of the guardian unless an accounting is ordered by the court.

67 Section 4. Present subsections (2) through (4) of section
68 744.368, Florida Statutes, are redesignated as subsections (3)
69 through (5), respectively, and a new subsection (2) is added to
70 that section, to read:

71 744.368 Responsibilities of the clerk of the circuit
72 court.-

73 (2) The clerk may:

74 (a) At the direction of the court, obtain and review
75 records and documents that reasonably impact guardianship
76 assets, including, but not limited to, the beginning inventory
77 balance and any fees charged to the guardianship.

78 (b) Upon application to the court, exercise the power to
79 issue and serve subpoenas supported by affidavit to parties and
80 nonparties and compel the production of books, papers,
81 documents, and other evidence.

82 Section 5. Subsection (21) is added to section 744.474,
83 Florida Statutes, to read:

84 744.474 Reasons for removal of guardian.-A guardian may be
85 removed for any of the following reasons, and the removal shall
86 be in addition to any other penalties prescribed by law:

87 (21) Failure to submit guardianship records during the

Page 3 of 7

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22-00911-14

2014634__

88 audit pursuant to s. 744.368.

89 Section 6. Paragraph (a) of subsection (4) of section
90 943.059, Florida Statutes, is amended to read:

91 943.059 Court-ordered sealing of criminal history records.-
92 The courts of this state shall continue to have jurisdiction
93 over their own procedures, including the maintenance, sealing,
94 and correction of judicial records containing criminal history
95 information to the extent such procedures are not inconsistent
96 with the conditions, responsibilities, and duties established by
97 this section. Any court of competent jurisdiction may order a
98 criminal justice agency to seal the criminal history record of a
99 minor or an adult who complies with the requirements of this
100 section. The court shall not order a criminal justice agency to
101 seal a criminal history record until the person seeking to seal
102 a criminal history record has applied for and received a
103 certificate of eligibility for sealing pursuant to subsection
104 (2). A criminal history record that relates to a violation of s.
105 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
106 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
107 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
108 916.1075, a violation enumerated in s. 907.041, or any violation
109 specified as a predicate offense for registration as a sexual
110 predator pursuant to s. 775.21, without regard to whether that
111 offense alone is sufficient to require such registration, or for
112 registration as a sexual offender pursuant to s. 943.0435, may
113 not be sealed, without regard to whether adjudication was
114 withheld, if the defendant was found guilty of or pled guilty or
115 nolo contendere to the offense, or if the defendant, as a minor,
116 was found to have committed or pled guilty or nolo contendere to

Page 4 of 7

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22-00911-14

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117 committing the offense as a delinquent act. The court may only
 118 order sealing of a criminal history record pertaining to one
 119 arrest or one incident of alleged criminal activity, except as
 120 provided in this section. The court may, at its sole discretion,
 121 order the sealing of a criminal history record pertaining to
 122 more than one arrest if the additional arrests directly relate
 123 to the original arrest. If the court intends to order the
 124 sealing of records pertaining to such additional arrests, such
 125 intent must be specified in the order. A criminal justice agency
 126 may not seal any record pertaining to such additional arrests if
 127 the order to seal does not articulate the intention of the court
 128 to seal records pertaining to more than one arrest. This section
 129 does not prevent the court from ordering the sealing of only a
 130 portion of a criminal history record pertaining to one arrest or
 131 one incident of alleged criminal activity. Notwithstanding any
 132 law to the contrary, a criminal justice agency may comply with
 133 laws, court orders, and official requests of other jurisdictions
 134 relating to sealing, correction, or confidential handling of
 135 criminal history records or information derived therefrom. This
 136 section does not confer any right to the sealing of any criminal
 137 history record, and any request for sealing a criminal history
 138 record may be denied at the sole discretion of the court.

139 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 140 history record of a minor or an adult which is ordered sealed by
 141 a court of competent jurisdiction pursuant to this section is
 142 confidential and exempt from the provisions of s. 119.07(1) and
 143 s. 24(a), Art. I of the State Constitution and is available only
 144 to the person who is the subject of the record, to the subject's
 145 attorney, to criminal justice agencies for their respective

22-00911-14

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146 criminal justice purposes, which include conducting a criminal
 147 history background check for approval of firearms purchases or
 148 transfers as authorized by state or federal law, to judges in
 149 the state courts system for the purpose of assisting them in
 150 their case-related decisionmaking responsibilities, as set forth
 151 in s. 943.053(5), or to those entities set forth in
 152 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 153 licensing, access authorization, and employment purposes.

154 (a) The subject of a criminal history record sealed under
 155 this section or under other provisions of law, including former
 156 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 157 deny or fail to acknowledge the arrests covered by the sealed
 158 record, except when the subject of the record:

- 159 1. Is a candidate for employment with a criminal justice
 160 agency;
- 161 2. Is a defendant in a criminal prosecution;
- 162 3. Concurrently or subsequently petitions for relief under
 163 this section, s. 943.0583, or s. 943.0585;
- 164 4. Is a candidate for admission to The Florida Bar;
- 165 5. Is seeking to be employed or licensed by or to contract
 166 with the Department of Children and Families, the Division of
 167 Vocational Rehabilitation within the Department of Education,
 168 the Agency for Health Care Administration, the Agency for
 169 Persons with Disabilities, the Department of Health, the
 170 Department of Elderly Affairs, or the Department of Juvenile
 171 Justice or to be employed or used by such contractor or licensee
 172 in a sensitive position having direct contact with children, the
 173 disabled, or the elderly;
- 174 6. Is seeking to be employed or licensed by the Department

22-00911-14

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175 of Education, any district school board, any university
176 laboratory school, any charter school, any private or parochial
177 school, or any local governmental entity that licenses child
178 care facilities; ~~or~~

179 7. Is attempting to purchase a firearm from a licensed
180 importer, licensed manufacturer, or licensed dealer and is
181 subject to a criminal history check under state or federal law;
182 or

183 8. Is seeking to be appointed as a guardian pursuant to s.
184 744.3125.

185 Section 7. This act shall take effect July 1, 2014.



The Florida Senate

Committee Agenda Request

To: Senator Eleanor Sobel, Chair
Committee on Children, Families, and Elder Affairs

Subject: Committee Agenda Request

Date: January 23, 2014

I respectfully request that **Senate Bill #634**, relating to Guardianship, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

RECEIVED

JAN 23 2014

Senate Committee
Children and Families

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 11, 2014

Meeting Date

Topic Guardianship Bill Number SB634
(if applicable)

Name Alan Saylor Amendment Barcode _____
(if applicable)

Job Title _____

Address 1909 Tanglewood Dr NE Phone 727-421-9795
Street

St. Petersburg FL 33702
City State Zip

E-mail Alan@Saylorwater.com

Speaking: For Against Information

Representing myself

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-11-14

Meeting Date

Topic SB 634 Guardianship Bill Number SB 634
(if applicable)

Name Douglas Lewis Franks Amendment Barcode _____
(if applicable)

Job Title Macintosh consultant

Address 1034 Justice Ln NW Phone 678 570 3010
Street

Acworth GA 30102
City State Zip

E-mail info@mactechworks.com

Speaking: For Against Information

AAAPG.net

Representing Americans Against Abusive Probate Guardianship

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-11-14
Meeting Date

Topic Probate Guardianship
Name Lynn R Saylor
Job Title _____

Bill Number SB 634 (if applicable)
Amendment Barcode _____ (if applicable)

Address 1909 Tanglewood Dr NE
Street
St. Pete, FL 33702
City State Zip

Phone 727-403-8816
E-mail lsaylor@tampabay.rr.com

Speaking: For Against Information

Representing ~~AAAPA, NASBA~~ Myself

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/14
Meeting Date

Topic Guardianship
Name Sylvia Smith
Job Title Director of Legislative

Bill Number SB 634 (if applicable)
Amendment Barcode _____ (if applicable)

Address 2728 Centerview Dr.
Street
Tallahassee, FL 32301
City State Zip

Phone 322-2258
E-mail sylviasmith@comcast.net

Speaking: For Against Information

Representing Disability Rights Florida

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic Guardianships Bill Number SB 634
Name KAREN RUSHING Amendment Barcode _____
Job Title CLERK & COMPTROLLER SARASOTA (if applicable)
Address Main St Phone _____
Street Sarasota E-mail KRushing@scgov.net
City State Zip

Speaking: For Against Information

Representing FL Court Clerks & Comptrollers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-11-14

Meeting Date

Topic GUARDIANSHIPS Bill Number SB 634
Name ANTHONY PALMIERI Amendment Barcode _____
Job Title DEPUTY CLERK & SENIOR INTERNAL AUDITOR (if applicable)
Address 301 N. OLIVE AVE Phone 561-355-6782
Street WEST PALM BEACH FL 33401 E-mail apalmieri@mypalmbeach
City State Zip clerk.com

Speaking: For Against Information

Representing CLERK & COMPTROLLER FOR PALM BEACH COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

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 402

INTRODUCER: Senator Braynon

SUBJECT: Council on the Social Status of Black Men and Boys

DATE: February 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Hendon	CF	Favorable
2.			GO	
3.			ACJ	
4.			AP	

I. Summary:

SB 402 amends s. 16.615, F.S., relating to the Council on the Social Status of Black Men and Boys to:

- Provide criteria for the removal of a member of the council;
- Revise the duties of the council;
- Authorize the council to identify initiatives and programs that support the council’s mission and strategic vision, study other topics suggested by the Legislature or as directed by the chair of the council, and subject to legislative appropriations, use funds appropriated to the Department of Legal Affairs to perform certain tasks;
- Revise the number of members attending required to establish a quorum;
- Authorize the council to present its findings and strategic issues at an annual statewide conference; and
- Provide for reimbursement for *per diem* and travel expenses for individuals and entities that make presentations to the council regarding the mission or strategic vision of the council.

The bill is not expected to have a fiscal impact. The effective date of the bill is July 1, 2014.

II. Present Situation:

In 2006, in response to concerns about issues such as the disproportionate representation of black males in Florida’s correctional facilities, the number of black students dropping out of high school, and the disparity between the income levels and life expectancies of black and white

males,¹ the Legislature created the Council on the Social Status of Black Men and Boys (the council)² within the Department of Legal Affairs in the Office of the Attorney General.

The council is comprised of 19 appointed members who serve four-year terms.³ These members include representatives of state agencies and the Legislature, as well as citizens who represent relevant areas of interest. The members include:

- Two members of the Senate who are not members of the same political party, appointed by the President of the Senate with the advice of the minority leader of the Senate;
- Two members of the House of Representatives who are not members of the same political party, appointed by the Speaker of the House of Representatives with the advice of the minority leader of the House of Representatives;
- The Secretary of Children and Family Services (DCF), or his or her designee;
- The director of the Mental Health Program Office within DCF, or his or her designee;
- The State Surgeon General, or his or her designee;
- The Commissioner of Education, or his or her designee;
- The Secretary of Corrections, or his or her designee;
- The Attorney General, or his or her designee;
- The Secretary of Management Services, or his or her designee;
- The executive director of the Department of Economic Opportunity, or his or her designee;
- A business person of black origin appointed by the Governor;
- Two persons appointed by the President of the Senate who are not members of the Legislature or employed by state government. One of these appointments must be a clinical physiologist;
- Two persons appointed by the Speaker of the House of Representatives who are not members of the Legislature or employed by state government. One of these appointments must be an Africana studies professional;
- The deputy secretary for Medicaid in the Agency for Health Care Administration, or his or her designee; and
- The Secretary of Juvenile Justice, or his or her designee.⁴

Members serve without compensation, but are allowed to receive *per diem* and travel expenses as provided in s. 112.061, F.S.⁵

The council is required to submit an annual report by December 15 of each year.⁶

¹ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 436 (April 24, 2006) (on file with the Committee on Children, Families, and Elder Affairs).

² Section 20.03(7), F.S., defines the term “council” or “advisory council” to mean “an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.”

³ Section 16.615(1) and (2), F.S.

⁴ Section 16.615 (1), F.S.

⁵ Section 16.615 (9), F.S.

⁶ Section 16.615(8)(a), F.S.

On January 15, 2008, the council published its first annual report.⁷ This inaugural report identified the council's top fifteen recommendations on issues related to black-owned businesses, school discipline and mentoring programs, kinship care, independent living and adoption promotion for foster children, and early screening for health care.⁸

Reports have been produced each year, with the most recent, the 2013 report⁹, published December 2013.

The current report addresses the council's strategic plan for 2012-2015. This plan identifies five strategic issues:

- Removing barriers to healthy lifestyles, prevention and family support services;
- Ensuring educational and lifelong learning success;
- Addressing disproportional employment and economic conditions;
- Promoting crime prevention and addressing disproportionate criminal justice issues; and
- Promoting community awareness, leadership and sustainable partnerships.¹⁰

The Council is authorized to:

- Access data held by any state departments or agencies, which data is otherwise a public record.
- Make requests directly to the Joint Legislative Auditing Committee for assistance with research and monitoring of outcomes by the Office of Program Policy Analysis and Government Accountability.
- Request, through council members who are also legislators, research assistance from the Office of Economic and Demographic Research within the Florida Legislature.
- Request information and assistance from the state or any political subdivision, municipal corporation, public officer, or governmental department thereof.
- Apply for and accept funds, grants, gifts, and services from the state, the Federal Government or any of its agencies, or any other public or private source for the purpose of defraying clerical and administrative costs as may be necessary for carrying out its duties under this section.
- Work directly with, or request information and assistance on issues pertaining to education from, Florida's historically black colleges and universities.¹¹

In addition, the council has duties prescribed by law:

- Making a systematic study of the conditions affecting black men and boys, including, but not limited to, homicide rates, arrest and incarceration rates, poverty, violence, drug abuse, death

⁷ See <http://myfloridalegal.com/newsrel.nsf/newsreleases/B20CCBCCC280D205852573D1005331A5> (last visited Jan. 29, 2014).

⁸ 2007 Florida Council on the Social Status of Black Men and Boys Annual Report at p. 8, *available at* [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-7AVKYG/\\$file/FinalReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-7AVKYG/$file/FinalReport.pdf) (last visited Jan. 29, 2014).

⁹ See [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9FNLS8/\\$file/2013Report.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9FNLS8/$file/2013Report.pdf) (last visited Jan. 29, 2014).

¹⁰ *Id.*, at 7.

¹¹ Section 16.615(5), F.S.

rates, disparate annual income levels, school performance in all grade levels including postsecondary levels, and health issues.

- Proposing measures to alleviate and correct the underlying causes of the conditions described in the preceding paragraph. These measures may consist of changes to the law or systematic changes that can be implemented without legislative action.
- Studying other topics suggested by the Legislature or as directed by the chair of the council.
- Receiving suggestions or comments pertinent to the applicable issues from members of the Legislature, governmental agencies, public and private organizations, and private citizens.
- Monitoring outcomes of the direct-support organization created pursuant to s. 16.616, F.S.
- Developing a strategic program and funding initiative to establish local Councils on the Social Status of Black Men and Boys.¹²

In 2008, the Legislature created a direct-support organization (DSO), for the council.¹³ This DSO is authorized, among its other duties, to hold a statewide Black Policy Summit in conjunction with a state university.¹⁴

The 2013 report for the first time identified for each strategic issue a series of key performance indicators, strategic objectives, action steps, and measurable goals.

There is no mechanism described in the statute for removing members who have unexcused absences from meetings.

Members are entitled to reimbursement for travel and *per diem* expenses. The Office of the Attorney General supplies staff and administrative support to the council.

III. Effect of Proposed Changes:

Section 1 of SB 402 provides for the removal of a council member who has more than three consecutive unexcused absences or is absent for at least 50 percent of the council meetings within a 12-month period. It also defines “unexcused absences” as a failure to notify the chair that the member will not be present at a meeting of the council. It establishes that any vacancy created by operation of this provision will be filled by the member’s appointing authority.

This section revises the duties of the council to add activities previously authorized but not required of the council. It also adds new authority to the council to:

- Identify initiatives and programs that support the council’s mission and strategic vision;
- Study other topics suggested by the Legislature or as directed by the chair of the council;
- Subject to legislative appropriations, use funds appropriated to the Department of Legal Affairs to:
 - Conduct additional research and studies that support the council’s mission and strategic vision;

¹² Section 16.615(4), F.S.

¹³ Section 16.616, F.S., Chapter 2008-130, Laws of Fla.

¹⁴ Section 16.616(5)(b), F.S.

- Provide information and assistance in the establishment of local Councils on the Social Status of Black Men and Boys; and
- Host an annual statewide conference.

The bill reduces the number of members required to be present for a quorum at a meeting from eleven to nine.

The bill places into statute the five strategic issues described in its reports.

The bill extends the entitlement to travel and *per diem* reimbursement to individuals and entities making presentations to the council regarding the council's mission or strategic vision.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the Attorney General reports no expected fiscal impact from this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 16.615 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Braynon

36-00484-14

2014402__

1 A bill to be entitled
 2 An act relating to the Council on the Social Status of
 3 Black Men and Boys; amending s. 16.615, F.S.;
 4 providing criteria for removal of a member of the
 5 council; revising the duties of the council;
 6 authorizing the council to identify initiatives and
 7 programs that support the council's mission and
 8 strategic vision, study other topics suggested by the
 9 Legislature or as directed by the chair of the
 10 council, and subject to legislative appropriations,
 11 use funds appropriated to the Department of Legal
 12 Affairs to perform certain tasks; revising what
 13 constitutes a quorum of the council; authorizing the
 14 council to present its findings and strategic issues
 15 at an annual statewide conference; providing for
 16 reimbursement for per diem and travel expenses for
 17 individuals and entities that make presentations to
 18 the council regarding the mission or strategic vision
 19 of the council; providing an effective date.

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

22
 23 Section 1. Section 16.615, Florida Statutes, is amended to
 24 read:

25 16.615 Council on the Social Status of Black Men and Boys.—

26 (1) The Council on the Social Status of Black Men and Boys
 27 is established within the Department of Legal Affairs and shall
 28 consist of 19 members appointed as follows:

29 (a) Two members of the Senate who are not members of the

Page 1 of 8

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

36-00484-14

2014402__

30 same political party, appointed by the President of the Senate
 31 with the advice of the Minority Leader of the Senate.
 32 (b) Two members of the House of Representatives who are not
 33 members of the same political party, appointed by the Speaker of
 34 the House of Representatives with the advice of the Minority
 35 Leader of the House of Representatives.
 36 (c) The Secretary of Children and Families ~~Family Services~~
 37 or his or her designee.
 38 (d) The director of the Mental Health Program Office within
 39 the Department of Children and Families ~~Family Services~~ or his
 40 or her designee.
 41 (e) The State Surgeon General or his or her designee.
 42 (f) The Commissioner of Education or his or her designee.
 43 (g) The Secretary of Corrections or his or her designee.
 44 (h) The Attorney General or his or her designee.
 45 (i) The Secretary of Management Services or his or her
 46 designee.
 47 (j) The executive director of the Department of Economic
 48 Opportunity or his or her designee.
 49 (k) A businessperson who is an African American, as defined
 50 in s. 760.80(2) (a), appointed by the Governor.
 51 (l) Two persons appointed by the President of the Senate
 52 who are not members of the Legislature or employed by state
 53 government. One of the appointees must be a clinical
 54 psychologist.
 55 (m) Two persons appointed by the Speaker of the House of
 56 Representatives who are not members of the Legislature or
 57 employed by state government. One of the appointees must be an
 58 Africana studies professional.

Page 2 of 8

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36-00484-14

2014402__

59 (n) The deputy secretary for Medicaid in the Agency for
60 Health Care Administration or his or her designee.

61 (o) The Secretary of Juvenile Justice or his or her
62 designee.

63 (2) Each member of the council shall be appointed to a 4-
64 year term; however, for the purpose of providing staggered
65 terms, of the initial appointments, 9 members shall be appointed
66 to 2-year terms and 10 members shall be appointed to 4-year
67 terms. A member of the council may be removed at any time by the
68 member's appointing authority, who shall fill the vacancy on the
69 council. A member of the council is deemed to have vacated his
70 or her position on the council and the member's appointing
71 authority shall fill the vacated position if:

72 (a) The member has three consecutive unexcused absences. As
73 used in this paragraph, the term "unexcused absence" means the
74 member's failure to notify the chair that the member will not be
75 present at a meeting of the council; or

76 (b) The member is absent for at least 50 percent of the
77 council meetings within a 12-month period.

78 (3) (a) At the first meeting of the council each year, the
79 members shall elect a chair and a vice chair.

80 (b) A vacancy in the office of chair or vice chair shall be
81 filled by vote of the remaining members.

82 (4) ~~(a)~~ The council shall:

83 (a) Make a systematic study of the conditions affecting
84 black men and boys, including, but not limited to, homicide
85 rates, arrest and incarceration rates, poverty, violence, drug
86 abuse, death rates, disparate annual income levels, school
87 performance in all grade levels, including postsecondary levels,

36-00484-14

2014402__

88 and health issues.

89 (b) ~~The council shall~~ Propose measures to alleviate and
90 correct the underlying causes of the conditions described in
91 paragraph (a). These measures may consist of changes to the law
92 or systematic changes that can be implemented without
93 legislative action.

94 ~~(c) The council may study other topics suggested by the~~
95 ~~Legislature or as directed by the chair of the council.~~

96 (c) ~~(d)~~ The council shall Receive suggestions or comments
97 pertinent to the applicable issues from members of the
98 Legislature, governmental agencies, public and private
99 organizations, and private citizens.

100 (d) ~~(e)~~ The council shall Monitor outcomes of the direct-
101 support organization created pursuant to s. 16.616.

102 (e) ~~(f)~~ The council shall Develop a strategic program and
103 funding initiative to establish local Councils on the Social
104 Status of Black Men and Boys.

105 (f) Access data held by any state department or agency,
106 which data is otherwise a public record.

107 (g) Make requests directly to the Joint Legislative
108 Auditing Committee for assistance with the research and
109 monitoring of the outcomes provided by the Office of Program
110 Policy Analysis and Government Accountability.

111 (h) Request, through council members who are also
112 legislators, research assistance from the Office of Economic and
113 Demographic Research within the Legislature.

114 (i) Request information and assistance from the state or
115 any political subdivision, municipal corporation, public
116 officer, or governmental department thereof.

36-00484-14

2014402__

117 (j) Apply for and accept funds, grants, gifts, and services
 118 from the state, the Federal Government or any of its agencies,
 119 or any other public or private source for the purpose of
 120 defraying clerical and administrative costs as may be necessary
 121 for carrying out its duties under this section.

122 (k) Work directly with, or request information and
 123 assistance on issues pertaining to education from, this state's
 124 historically black colleges and universities.

125 (5) The council may:

126 (a) Identify initiatives and programs that support the
 127 council's mission and strategic vision;

128 (b) Study other topics suggested by the Legislature or as
 129 directed by the chair of the council; and

130 (c) Subject to legislative appropriations, use funds
 131 appropriated to the Department of Legal Affairs for the council
 132 to:

133 1. Conduct additional research and studies that support the
 134 council's mission and strategic vision;

135 2. Provide information and assistance in the establishment
 136 of local Councils on the Social Status of Black Men and Boys;
 137 and

138 3. Host an annual statewide conference as provided in
 139 paragraph (9) (a).

140 ~~(a) Access data held by any state departments or agencies,~~
 141 ~~which data is otherwise a public record.~~

142 ~~(b) Make requests directly to the Joint Legislative~~
 143 ~~Auditing Committee for assistance with research and monitoring~~
 144 ~~of outcomes by the Office of Program Policy Analysis and~~
 145 ~~Government Accountability.~~

Page 5 of 8

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36-00484-14

2014402__

146 ~~(e) Request, through council members who are also~~
 147 ~~legislators, research assistance from the Office of Economic and~~
 148 ~~Demographic Research within the Florida Legislature.~~

149 ~~(d) Request information and assistance from the state or~~
 150 ~~any political subdivision, municipal corporation, public~~
 151 ~~officer, or governmental department thereof.~~

152 ~~(e) Apply for and accept funds, grants, gifts, and services~~
 153 ~~from the state, the Federal Government or any of its agencies,~~
 154 ~~or any other public or private source for the purpose of~~
 155 ~~defraying clerical and administrative costs as may be necessary~~
 156 ~~for carrying out its duties under this section.~~

157 ~~(f) Work directly with, or request information and~~
 158 ~~assistance on issues pertaining to education from, Florida's~~
 159 ~~historically black colleges and universities.~~

160 (6) The Office of the Attorney General shall provide staff
 161 and administrative support to the council.

162 (7) The council shall meet quarterly and at other times at
 163 the call of the chair or as determined by a majority of council
 164 members and approved by the Attorney General.

165 (8) ~~Nine Eleven of the~~ members of the council constitute a
 166 quorum, and an affirmative vote of a majority of the members
 167 present is required for final action.

168 (9) (a) The council shall issue an ~~its first~~ annual report
 169 ~~by December 15, 2007,~~ and by December 15 of each following year,
 170 stating the findings, conclusions, and recommendations of the
 171 council. The council shall submit the report to the Governor,
 172 the President of the Senate, the Speaker of the House of
 173 Representatives, and the chairs ~~chairpersons~~ of the standing
 174 committees of jurisdiction in each house ~~chamber~~. The council

Page 6 of 8

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36-00484-14 2014402__

175 may also present its findings and its strategic issues regarding
 176 the status of black men and boys at an annual statewide
 177 conference hosted by the council. The strategic issues include
 178 all of the following:

- 179 1. Removing the barriers to healthy lifestyles, health
 180 care, and community-based support and prevention services.
- 181 2. Ensuring a commitment to education and lifelong
 182 learning.
- 183 3. Addressing the disproportionately high rate of
 184 unemployment and unstable economic conditions.
- 185 4. Addressing crime prevention and criminal justice issues
 186 that adversely and disproportionately affect black men and boys.
- 187 5. Promoting community awareness, leadership, and
 188 sustainable community and agency partnerships.

189 (b) The initial report must include the findings of an
 190 investigation into factors causing black-on-black crime from the
 191 perspective of public health related to mental health, other
 192 health issues, cultural disconnection, and cultural identity
 193 trauma.

194 (10) Members of the council shall serve without
 195 compensation. Members are entitled to reimbursement for per diem
 196 and travel expenses as provided in s. 112.061. State officers
 197 and employees shall be reimbursed from the budget of the agency
 198 through which they serve. Other members may be reimbursed by the
 199 Department of Legal Affairs. The council may also reimburse per
 200 diem and travel expenses at the same rate provided for public
 201 employees under s. 112.061 for individuals and entities that
 202 make presentations to the council regarding the council's
 203 mission or strategic vision. These individuals and entities

36-00484-14 2014402__

204 shall be paid from funds appropriated to the council for that
 205 purpose.

206 (11) The council and any subcommittees it forms are subject
 207 to ~~the provisions of~~ chapter 119, related to public records, and
 208 ~~the provisions of~~ chapter 286, related to public meetings.

209 (12) Each member of the council who is not otherwise
 210 required to file a financial disclosure statement pursuant to s.
 211 8, Art. II of the State Constitution or s. 112.3144, must file a
 212 disclosure of financial interests pursuant to s. 112.3145.
 213 Section 2. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, Vice Chair
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Health Policy

SENATOR OSCAR BRAYNON II

Democratic Whip
36th District

January 14, 2014

Senator Eleanor Sobel, Chair
Children, Families and Elder Affairs
410 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RECEIVED

JAN 17 2014

Senate Committee
Children and Families

Dear Chair Sobel:

This letter is to request that Senate Bill # 402, relating to Council on the Social Status of Black Men and Boys be placed on the agenda of the next scheduled meeting of the committee.

SB 402 Providing criteria for removal of a member of the council; authorizing the council to identify initiatives and programs that support the council's mission and strategic vision, study other topics suggested by the Legislature or as directed by the chair of the council, and subject to legislative appropriations, use funds appropriated to the Department of Legal Affairs to perform certain tasks; revising what constitutes a quorum of the council, etc.

Thank you for consideration of this request.

Sincerely,

[Handwritten signature of Oscar Braynon]

Senator Braynon
District 36

cc. Claude Hendon, Staff Director,
Lynn Wells, Committee Administrative Assistant, Room 520K

REPLY TO:
606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 182

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

SUBJECT: Sexual Offenders

DATE: February 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clotfelter</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Fav/CS
3.	_____	_____	<u>JU</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 182 amends statutes relating to child pornography and prohibits sex offenders from possessing any type of pornography. Specifically, the bill clarifies the definition to child pornography to include a visual depiction that has been modified to appear that a minor is engaging in sexual conduct. This new definition is added to other relevant statutes such as the criminal code. Sexual offenders after October 1, 2014 on community supervision are prohibited from possessing any type of pornography. The bill is likely to result in an increase in the number of alleged violations of community supervision for possessing prohibited materials. The potential fiscal impact of the bill is indeterminate. The bill has an effective date of July 1, 2014.

II. Present Situation:

Probation¹ and community control² are forms of community supervision that may be imposed as a sentence for a person who is found guilty or who enters a plea of guilty or nolo contendere to a criminal offense. Community supervision may be ordered either as an alternative to prison or following a period of incarceration as part of a split sentence.

¹ "Probation" is defined as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S. Section 948.001(5), F.S.

² "Community control" is defined as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced. Section 948.001(3), F.S.

The Department of Corrections supervises persons on conditional release under s. 947.1405, F.S. The Parole Commission sets the conditions of release for persons who have served 85 percent of their sentence. The remaining 15 percent of the sentence can be served under conditional release. Any violations of the conditions can return the inmate to prison to serve the remainder of his or her term.

The Department of Corrections supervises all persons who are sentenced to community supervision by the circuit court. Section 948.03, F.S., provides a list of standard conditions of probation and s. 948.101, F.S., provides a list of standard conditions of community control. The court also has the discretion to order special conditions in particular cases.

Sections 947.1405 and 948.30, F.S., sets forth additional standard conditions of probation and community control that must be ordered for any offender who is sentenced to community supervision for designated sexual offenses.³ Section 948.30(1)(g), F.S., prohibits the offender from “viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender’s deviant behavior pattern.”⁴

In *Kasischke v. State*, 991 So.2d 803 (Fla. 2008), the Florida Supreme Court held that viewing, owning, or possessing any type of obscene, pornographic, or sexually stimulating visual or auditory material is not a violation of probation unless the state establishes that the material is “relevant to the offender’s deviant behavior pattern.” This resolved a conflict among lower appellate courts as to whether the relevance requirement applies to all materials or only certain types of materials. In reaching its decision, the Supreme Court found that the wording of the statute is ambiguous and that the Legislature’s intent could not be determined by examining the statute’s history. Therefore, the Court applied the rule of lenity to interpret the statute in favor of offenders who are subject to the prohibition.

The *Kasischke* decision creates uniformity in the courts’ interpretation of the requirement to prove relevance when a violation of s. 948.30(1)(g), F.S., is alleged. However, the Court’s application of the rule of lenity due to the statute’s ambiguity may not reflect the Legislature’s intent. This intent could be clarified by an amendment to the statute.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 775.0847(1), F.S., relating to child pornography to amend the definition of “child pornography” to include a visual depiction that has been modified to appear that a minor is engaging in sexual conduct. The bill adds a definition of “minor” as a person less than 18 years old at the time the image was created whether the minor’s image was photographed

³ The designated offenses are: chapter 794, F.S. (sexual battery); s. 800.04, F.S., (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 827.071, F.S., (using a child in a sexual performance or promoting sexual performance by a child); s. 847.0135(5), F.S., (computer pornography, computer offenses against children, and traveling to meet a minor for sexual purposes); and s. 847.0145, F.S., (selling or buying of minors for sexual purposes).

⁴ The statute includes an exception for the prohibited materials if “otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program.” There are no reported opinions of cases in which this exception was raised as a defense.

or modified. This will now include altered images where a child image is modified to give the impression that the child is engaged in sexual conduct as child pornography.

Section 2 of the bill amends s. 827.071, F.S., to use the new definition of “child pornography” and “minor” in the penalties section for sexual performance by a child.

Section 3 of the bill amends s. 921.0022(3), F.S., relating to the criminal code for felonies to clarify that viewing child pornography or other material including sexual conduct by a child is a 2nd and 3rd degree felony.

Section 4 of the bill amends s. 947.1405, F.S., to add that for persons whose sexual crime was committed on or after October 1, 2014, the Parole Commission must prohibit persons on conditional release convicted of certain sexual offenses from possessing any pornography.

Section 5 of the bill amends s. 948.30, F.S., to add that for persons whose sexual crime was committed on or after October 1, 2014, the court must prohibit persons on community supervision convicted of certain sexual offenses from possessing any pornography.

Section 6 of the bill reenacts subsection (2) of section 794.0115, F.S. This is necessary to incorporate changes made to section 827.071, F.S. by the bill.

Section 7 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The prohibition against viewing, accessing, owning, or possessing pornography is susceptible to constitutional challenge. Federal courts and courts in other states are split on whether the term “pornography” is too vague to give notice of what is prohibited.⁵ Even though the reference to pornography was in the statute even before the relevance clause was added in 1997, Florida courts have not been properly presented with the question of whether it is impermissibly vague.

⁵ See discussion in *Hostetter v. State*, 82 So.3d 1217 (Fla. 1st Dist. 2012), footnote 2.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Depending upon the compliance of offenders with the expanded prohibition, the bill could result in more prosecutions for violations of this condition of community supervision. However, removing the requirement for the state to prove that the material is “relevant to the offender’s deviant behavior pattern” would also relieve the need to present expert testimony on that element. The Criminal Justice Impact Conference reviewed the impact of the bill on the prison population on January 30, 2014. The conference found that the bill would have an indeterminate, but positive fiscal impact, meaning the bill would increase the costs to the prison system, but by an unknown amount.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.0847, 827.071, 921.0022, 947.1405, and 948.30 of the Florida Statutes.

This bill reenacts subsection (2) of section 794.0115, F.S.

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

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

CS by Children, Families, and Elder Affairs on February 11, 2014:

- Amends s. 775.0847(1), F.S., relating to child pornography to amend the definition of “child pornography” to include a visual depiction that has been modified to appear that a minor is engaging in sexual conduct. The CS also creates a definition of “minor” to be a person less than 18 years old at the time the pornography was created whether the minor’s image was photographed or modified.
- Amends s. 827.071, F.S., to use the new definition of “child pornography” and “minor” in the penalties section for sexual performance by a child.

- Amends s. 921.0022(3), F.S., relating to the criminal code for felonies to clarify that viewing child pornography or other material including sexual conduct by a child is a 2nd and 3rd degree felony.
- Amends s. 947.1405, F.S., to add that on or after October 1, 2014, the Parole Commission must prohibit persons on conditional release convicted of certain sexual offenses from possessing any pornography.

B. Amendments:

None.

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



287160

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (13) is added to section 947.1405,
Florida Statutes, to read:

947.1405 Conditional release program.-

(13) Effective for a releasee whose crime was committed on
or after October 1, 2014, in violation of chapter 794, s.
800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition



287160

11 to any other provision of this section, the commission must
12 impose a condition prohibiting the releasee from viewing,
13 accessing, owning, or possessing any obscene, pornographic, or
14 sexually stimulating visual or auditory material unless
15 otherwise indicated in the treatment plan provided by a
16 qualified practitioner in the sexual offender treatment program.
17 Visual or auditory material includes, but is not limited to,
18 telephones, electronic media, computer programs, and computer
19 services.

20 Section 2. Subsection (5) is added to section 948.30,
21 Florida Statutes, to read:

22 948.30 Additional terms and conditions of probation or
23 community control for certain sex offenses.—Conditions imposed
24 pursuant to this section do not require oral pronouncement at
25 the time of sentencing and shall be considered standard
26 conditions of probation or community control for offenders
27 specified in this section.

28 (5) Effective for a probationer or community controllee
29 whose crime was committed on or after October 1, 2014, and who
30 is placed on probation or community control for a violation of
31 chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s.
32 847.0145, in addition to all other conditions imposed, the court
33 must impose a condition prohibiting the probationer or community
34 controllee from viewing, accessing, owning, or possessing any
35 obscene, pornographic, or sexually stimulating visual or
36 auditory material unless otherwise indicated in the treatment
37 plan provided by a qualified practitioner in the sexual offender
38 treatment program. Visual or auditory material includes, but is
39 not limited to, telephones, electronic media, computer programs,



287160

40 and computer services.

41 Section 3. This act shall take effect October 1, 2014.

42

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

44 And the title is amended as follows:

45 Delete everything before the enacting clause
46 and insert:

47 A bill to be entitled
48 An act relating to sexual offenders; amending ss.
49 947.1405 and 948.30, F.S.; prohibiting certain
50 conditional releasees, probationers, or community
51 controllees from viewing, accessing, owning, or
52 possessing any obscene, pornographic, or sexually
53 stimulating material; providing an exception;
54 providing an effective date.



770164

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/11/2014	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (287160) (with title amendment)

Delete lines 5 - 40
and insert:

Section 1. Paragraph (b) of subsection (1) of section 775.0847, Florida Statutes, is amended, present paragraphs (c) through (f) of that subsection are redesignated as paragraphs (d) through (g), respectively, and a new paragraph (c) is added to that subsection, to read:



770164

11 775.0847 Possession or promotion of certain images of child
12 pornography; reclassification.—

13 (1) For purposes of this section:

14 (b) “Child pornography” means any image depicting a minor
15 engaged in sexual conduct or such visual depiction that has been
16 created, adapted, or modified to appear that a minor is engaging
17 in sexual conduct. Proof of the identity of the minor is not
18 required in order to find a violation of this section.

19 (c) “Minor” means a person who had not attained the age of
20 18 years at the time the visual depiction was created, adapted,
21 or modified, or whose image while he or she was a minor was used
22 in creating, adapting, or modifying the visual depiction, and
23 who is recognizable as an actual person by his or her facial
24 features, likeness, or other distinguishing characteristics.

25 Section 2. Present paragraphs (a), (b), and (c) through (j)
26 of subsection (1) of section 827.071, Florida Statutes, are
27 redesignated as paragraphs (b), (c), and (e) through (l),
28 respectively, present paragraph (j) of that subsection is
29 amended, new paragraphs (a) and (d) are added to that
30 subsection, and subsection (4) and paragraph (a) of subsection
31 (5) of that section are amended, to read:

32 827.071 Sexual performance by a child; penalties.—

33 (1) As used in this section, the following definitions
34 shall apply:

35 (a) “Child pornography” means a visual depiction,
36 including, but not limited to, a photograph, film, video,
37 picture, computer or computer-generated image or picture, or
38 digitally created image or picture, whether made or produced by
39 electronic, mechanical, or other means, of sexual conduct, if



770164

40 the production of such visual depiction involves the use of a
41 minor engaging in sexual conduct, or if such visual depiction
42 has been created, adapted, or modified to appear that a minor is
43 engaging in sexual conduct. Proof of the identity of the minor
44 is not required in order to find a violation of this section.

45 (d) "Minor" has the same meaning as provided in s.
46 775.0847.

47 (1) ~~(j)~~ "Simulated" means the explicit depiction of conduct
48 set forth in paragraph (j) ~~(h)~~ which creates the appearance of
49 such conduct and which exhibits any uncovered portion of the
50 breasts, genitals, or buttocks.

51 (4) It is unlawful for any person to possess with the
52 intent to promote any child pornography or any other photograph,
53 motion picture, exhibition, show, representation, or other
54 presentation which, in whole or in part, includes any sexual
55 conduct by a child. The possession of three or more copies of
56 such photograph, motion picture, representation, or presentation
57 is prima facie evidence of an intent to promote. Whoever
58 violates this subsection commits ~~is guilty of~~ a felony of the
59 second degree, punishable as provided in s. 775.082, s. 775.083,
60 or s. 775.084.

61 (5) (a) It is unlawful for any person to knowingly possess,
62 control, or intentionally view child pornography or any other a
63 photograph, motion picture, exhibition, show, representation,
64 image, data, computer depiction, or other presentation which, in
65 whole or in part, he or she knows to include any sexual conduct
66 by a child. The possession, control, or intentional viewing of
67 each such photograph, motion picture, exhibition, show, image,
68 data, computer depiction, representation, or presentation is a



770164

69 separate offense. If such photograph, motion picture,
70 exhibition, show, representation, image, data, computer
71 depiction, or other presentation includes sexual conduct by more
72 than one child, then each such child in each such photograph,
73 motion picture, exhibition, show, representation, image, data,
74 computer depiction, or other presentation that is knowingly
75 possessed, controlled, or intentionally viewed is a separate
76 offense. A person who violates this paragraph ~~subsection~~ commits
77 a felony of the third degree, punishable as provided in s.
78 775.082, s. 775.083, or s. 775.084.

79 Section 3. Paragraph (e) of subsection (3) of section
80 921.0022, Florida Statutes, is amended to read:

81 921.0022 Criminal Punishment Code; offense severity ranking
82 chart.—

83 (3) OFFENSE SEVERITY RANKING CHART

84 (e) LEVEL 5

85

Florida Statute	Felony Degree	Description
316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious

86

87

88



770164

89			bodily injury.
	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
90			
	379.367 (4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
91			
	379.3671 (2) (c) 3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
92			
	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
93			
	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
94			
	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
95			
	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers'



770164

105	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
106	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
107	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
108	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
109	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
110	812.131 (2) (b)	3rd	Robbery by sudden snatching.
111	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
112	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than



770164

photographic material, motion picture, etc., which includes sexual conduct by a child.

118

827.071 (5)

3rd

Possess, control, or intentionally view any child pornography or other photographic material, motion picture, etc., which includes sexual conduct by a child.

119

839.13 (2) (b)

2nd

Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

120

843.01

3rd

Resist officer with violence to person; resist arrest with violence.

121

847.0135 (5) (b)

2nd

Lewd or lascivious exhibition using computer; offender 18 years or older.

122

847.0137
(2) & (3)

3rd

Transmission of pornography by electronic device or equipment.

123

847.0138

3rd

Transmission of material



770164

124	(2) & (3)		harmful to minors to a minor by electronic device or equipment.
	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
125			
	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 to join a criminal gang.
126			
	893.13 (1) (a) 1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).
127			
	893.13 (1) (c) 2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or



770164

154 the time of sentencing and shall be considered standard
155 conditions of probation or community control for offenders
156 specified in this section.

157 (5) Effective for a probationer or community controllee
158 whose crime was committed on or after October 1, 2014, and who
159 is placed on probation or community control for a violation of
160 chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s.
161 847.0145, in addition to all other conditions imposed, the court
162 must impose a condition prohibiting the probationer or community
163 controllee from viewing, accessing, owning, or possessing any
164 obscene, pornographic, or sexually stimulating visual or
165 auditory material unless otherwise indicated in the treatment
166 plan provided by a qualified practitioner in the sexual offender
167 treatment program. Visual or auditory material includes, but is
168 not limited to, telephones, electronic media, computer programs,
169 and computer services.

170 Section 6. For the purpose of incorporating the amendment
171 made by this act to section 827.071, Florida Statutes, in
172 references thereto, subsection (2) of section 794.0115, Florida
173 Statutes, is reenacted to read:

174 794.0115 Dangerous sexual felony offender; mandatory
175 sentencing.—

176 (2) Any person who is convicted of a violation of s.
177 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
178 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
179 (4); or s. 847.0145; or of any similar offense under a former
180 designation, which offense the person committed when he or she
181 was 18 years of age or older, and the person:

182 (a) Caused serious personal injury to the victim as a



770164

183 result of the commission of the offense;

184 (b) Used or threatened to use a deadly weapon during the
185 commission of the offense;

186 (c) Victimized more than one person during the course of
187 the criminal episode applicable to the offense;

188 (d) Committed the offense while under the jurisdiction of a
189 court for a felony offense under the laws of this state, for an
190 offense that is a felony in another jurisdiction, or for an
191 offense that would be a felony if that offense were committed in
192 this state; or

193 (e) Has previously been convicted of a violation of s.
194 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s.
195 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or
196 (4); s. 847.0145; of any offense under a former statutory
197 designation which is similar in elements to an offense described
198 in this paragraph; or of any offense that is a felony in another
199 jurisdiction, or would be a felony if that offense were
200 committed in this state, and which is similar in elements to an
201 offense described in this paragraph,

202
203 is a dangerous sexual felony offender, who must be sentenced to
204 a mandatory minimum term of 25 years imprisonment up to, and
205 including, life imprisonment.

206
207 ===== T I T L E A M E N D M E N T =====

208 And the title is amended as follows:

209 Delete lines 48 - 53

210 and insert:

211 An act relating to child pornography; amending s.



770164

212 775.0847, F.S.; redefining the term "child
213 pornography" and defining the term "minor"; amending
214 s. 827.071, F.S.; defining the terms "child
215 pornography" and "minor"; conforming cross-references;
216 including possession of child pornography within
217 specified criminal offenses; providing criminal
218 penalties; amending s. 921.0022, F.S.; revising
219 provisions of the offense severity ranking chart of
220 the Criminal Punishment Code to conform to changes
221 made by the act; amending ss. 947.1405 and 948.30,
222 F.S.; prohibiting certain conditional releasees,
223 probationers, or community controllees from viewing,
224 accessing, owning, or possessing any obscene,
225 pornographic, or sexually stimulating material;
226 providing an exception; reenacting s. 794.0115(2),
227 F.S., relating to dangerous sexual felony offenders
228 and mandatory sentencing thereof, to incorporate the
229 amendment to s. 827.071, F.S., in references thereto;

By Senator Stargel

15-00311-14

2014182__

1 A bill to be entitled
 2 An act relating to sexual offenders; amending s.
 3 948.30, F.S.; prohibiting certain probationers or
 4 community controllees from viewing, accessing, owning,
 5 or possessing any obscene, pornographic, or sexually
 6 stimulating material, regardless of such material's
 7 relevance to the offender's deviant behavior pattern;
 8 providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Paragraph (g) of subsection (1) of section
 13 948.30, Florida Statutes, is amended to read:
 14 948.30 Additional terms and conditions of probation or
 15 community control for certain sex offenses.—Conditions imposed
 16 pursuant to this section do not require oral pronouncement at
 17 the time of sentencing and shall be considered standard
 18 conditions of probation or community control for offenders
 19 specified in this section.
 20 (1) Effective for probationers or community controllees
 21 whose crime was committed on or after October 1, 1995, and who
 22 are placed under supervision for violation of chapter 794, s.
 23 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, the court
 24 must impose the following conditions in addition to all other
 25 standard and special conditions imposed:
 26 (g) Unless otherwise indicated in the treatment plan
 27 provided by a qualified practitioner in the sexual offender
 28 treatment program, a prohibition on viewing, accessing, owning,
 29 or possessing any obscene, pornographic, or sexually stimulating

Page 1 of 2

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

15-00311-14

2014182__

30 visual or auditory material, including telephone, electronic
 31 media, computer programs, or computer services ~~that are relevant~~
 32 ~~to the offender's deviant behavior pattern.~~
 33 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
15th District

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

January 17, 2014

The Honorable Eleanor Sobel
Senate Children, Families, and Elder Affairs Committee, Chair
410 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairwoman Sobel:

I am respectfully requesting that SB 182, related to *Sexual Offenders*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
Senator, District 15

Cc: Claude Hendon/ Staff Director
Lynn Wells/ AA

RECEIVED

JAN 17 2014

Senate Committee
Children and Families

REPLY TO:

- 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.11.14

Meeting Date

Topic Sex Offenders

Bill Number 182

Name Sarran Carroll

Amendment Barcode 770102
(if applicable)

Job Title Asst Executive Director

Address 2617 Mahan Dr

Phone 877-2145

Tallahassee
City State Zip

E-mail S Carroll@flsheriffs.org

Speaking: For Against Information

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

Goal 4: Effective Response to Critical Incidents

Background

- Approximately 2,000 children die in Florida each year from all causes, illness, and accidents.
- Nearly 500 of these child deaths involve cases reported to the Child Abuse Hotline for possible abuse or neglect.
- Abuse or neglect is verified by DCF in approximately 125 deaths each year.
- Child Abuse Death Review Panels are federally required to review child abuse deaths.
- Florida Statutes establish the Child Abuse Death Review Committee (CADR) in the Department of Health and direct the CADR to review deaths with “verified” reports of child abuse or neglect; this restriction limits the cases reviewed by the committee and delays the review process.
- CADR’s most recent annual report offered five key recommendations: two related to the committee’s scope of work and access to information; one proposed a public information campaign on drowning prevention; another suggested increased funding to Healthy Families; and one recommendation for enhancing relationships between CBCs and domestic violence centers.
- DCF uses a variety of methods to respond to high profile deaths, such as the appointment of special review panels (Gabriel Myers Work Group and the Blue Ribbon Panel on Child Protection set up to look into the Nubia Barahona case) and contracts with consultants (Casey Foundation).
- CBCs and provider organizations also conduct local investigations into critical incidents; lessons learned from these investigations are not systematically disseminated to other areas.

While Florida’s continued priority is the prevention of child deaths due to maltreatment, the potential to learn from tragedies in order to continuously improve the child welfare system should be maximized through use of a systematic, timely, and consistent process of root cause analysis and statewide dissemination of recommended improvements.

Draft Recommendations:

- 1) Expand the scope of the CADR to all deaths involving cases reported to the hotline; modify committee processes to increase participation, access to information, and timeliness (*see section 7 of draft bill language*).
- 2) Direct DCF to provide real time, online reporting of child abuse and neglect deaths and near fatalities similar to the Arkansas reporting system (*see sections 4 and 5 of draft bill language*).
- 3) Direct DCF to establish a critical incident response team that can be mobilized immediately to conduct a root cause analysis and determine any system failures that contributed to the incident (*see section 3 of draft bill language*).
- 4) Require the critical incident response team to be comprised of experts in child protection and child welfare from around the state, including experts from universities participating in the institute for child welfare (*see section 3 of draft bill language*).
- 5) Require the team to report preliminary findings within 30 days of the incident (*see section 3 of draft bill language*).

- 6) Direct DCF to establish a statewide advisory group to periodically review the reports from the critical incident response team and make recommendations for system improvements (*see section 3 of draft bill language*).

Goal 5: Adequate and Appropriate Support for Medically Complex Children

Background:

- The U.S. Department of Justice is suing the Agency for Health Care Administration for violations of the American with Disabilities Act as a result of poor management of community programs and too many children placed in institutions for the elderly.
- Another lawsuit is seeking certification as a class action suit on behalf of children placed in nursing homes and their families.
- Five children died in Florida nursing homes in 2010 and 130 have died since January 2006 according to state records; lower death rates occur among medically fragile children in home and community based settings.
- According to AHCA, 220 children with complex medical problems currently reside in nursing homes.
- Two fatalities received considerable media attention as they occurred after children were removed from their families in spite of those families' requests for services.
 - Marie Freyre, a severely disabled 14-year old, died in April 2011 after child welfare administrators sent her 250 miles from her Tampa home to Golden Glades against her mother's emphatic wishes. The child died within 12 hours.
 - Bryan Louzada died in the same facility in July 2010, a year after his mother was forced to place him there when state health administrators repeatedly refused to pay enough for in-home nursing care.
- Under current law, parents can be found to be neglectful of medically fragile children despite problems being attributable to insufficient services or a natural change in medical conditions.
- The Child Protection Teams, operated by the Department of Health, provide medical expertise to DCF but may lack experience or knowledge about specific rare conditions.

Families' efforts to care for medically complex and fragile children in their homes should be supported through state policy and provision of home and community based services.

Draft Recommendations

- 1) Specify a state policy in statute for placing medically complex children in the least restrictive environment (*see section 1 of draft bill language*).
- 2) Clarify the definition of medical neglect in chapter 39 (*see section 2 of draft bill language*).
- 3) Direct DCF to immediately refer medically complex and medically fragile children to AHCA for in-home services.
- 4) Establish a state standard of care for medically fragile children that requires a comparable level of home and community based services and other support as is provided to medical foster homes.

- 5) Provide funding to Child Protection Teams to increase their access to qualified medical experts
(see section 6 of draft bill language).

1 A bill to be entitled -
2 An act relating to child protection and child welfare;
3 amending s. 39.001, F.S.; adding the care of medically
4 complex children to the purposes of the child welfare
5 system; stating that medically complex children in the
6 child welfare system should be placed in the least
7 restrictive environment; amending s. 39.01, F.S.;
8 providing a definition for medical neglect of
9 children; creating s. 39.2015, F.S.; creating the
10 Critical Incident Rapid Response Team within the
11 Department of Children and Families; specifying the
12 members of the team; providing duties to the team to
13 investigate certain child deaths; amending s. 39.202,
14 F.S.; allowing for the release of certain information
15 relating the child deaths reported to the Department
16 of Children and Families; creating s. 39.2022, F.S.;
17 requiring public disclosure of certain information on
18 child deaths reported to the Department of Children
19 and Families; amending s. 39.303, F.S.; requiring
20 child protection teams to consult with medical
21 specialists in certain circumstances; amending s.
22 383.402, F.S.; requiring child abuse death review
23 committees to review all child deaths reported to the
24 Department of Children and Families; changing the
25 report date of the child abuse death review committees
26 to March 31; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
29

30 Section 1. Subsections (1) and (3) of section 39.001,
31 Florida Statutes, is amended to read

32 39.001 Purposes and intent; personnel standards and
33 screening.—

34 (1) PURPOSES OF CHAPTER.—The purposes of this chapter are:

35 (n) To create and maintain an integrated prevention
36 framework that enables local communities, state agencies, and
37 organizations to collaborate to implement efficient and properly
38 applied evidence-based child abuse prevention practices.

39 (o) To preserve and strengthen families caring for
40 medically complex children.

41 (3) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of
42 the Legislature that the children of this state be provided with
43 the following protections:

44 (a) Protection from abuse, abandonment, neglect, and
45 exploitation.

46 (b) A permanent and stable home.

47 (c) A safe and nurturing environment which will preserve a
48 sense of personal dignity and integrity.

49 (d) Adequate nutrition, shelter, and clothing.

50 (e) Effective treatment to address physical, social, and
51 emotional needs, regardless of geographical location.

52 (f) Access to sufficient home and community based support
53 for medically complex children to allow them to remain in the
54 least restrictive and most nurturing environment, and that
55 children receiving child protective or child welfare services be
56 offered the same level of health care services based on the
57 child's eligibility for services in the home that they would
58 receive in out of home care placement before such children are

59 removed from the home.

60 (g)~~(f)~~ Equal opportunity and access to quality and
61 effective education, which will meet the individual needs of
62 each child, and to recreation and other community resources to
63 develop individual abilities.

64 (h)~~(g)~~ Access to preventive services.

65 (i)~~(h)~~ An independent, trained advocate, when intervention
66 is necessary and a skilled guardian or caregiver in a safe
67 environment when alternative placement is necessary.

68 Section 2. Subsections (42) and (43) of section 39.01,
69 Florida Statutes, are amended to read

70 39.01 Definitions.—When used in this chapter, unless the
71 context otherwise requires:

72 (42) “Mental injury” means an injury to the intellectual or
73 psychological capacity of a child as evidenced by a discernible
74 and substantial impairment in the ability to function within the
75 normal range of performance and behavior.

76 (43) “Medical neglect” means the failure to provide or to
77 allow needed care as recommended by a health care practitioner
78 for a physical injury, illness, medical condition, or
79 impairment, or the failure to seek timely and appropriate
80 medical care for a serious health problem that a reasonable
81 person would have recognized as needing professional medical
82 attention. Medical neglect does not occur when:

83 (a) The parent or legal custodian of the child has made
84 reasonable attempts to obtain necessary health care services; or

85 (b) The immediate health condition giving rise to the
86 allegation of neglect is a known and expected complication of
87 the child’s diagnosis or treatment; and

88 (c) The recommended care offers limited net benefit to the
89 child and the morbidity or other side effects of the treatment
90 may be considered to be greater than the anticipated benefit.

91 (44)~~(43)~~ "Necessary medical treatment" means care which is
92 necessary within a reasonable degree of medical certainty to
93 prevent the deterioration of a child's condition or to alleviate
94 immediate pain of a child.

95 Section 3. Section 39.2015, Florida Statutes is created to
96 read:

97 39.2015 CRITICAL INCIDENT RAPID RESPONSE TEAM.-

98 (1) The Department of Children and Families shall conduct
99 an immediate investigation of certain fatalities or other
100 serious incidents. The purpose of the investigation is to
101 identify root causes and rapidly determine the need to change
102 policies and practices related to child protection and child
103 welfare.

104 (2) Immediate onsite investigations are required for all
105 child fatalities reported to the department where the child or
106 another child in his or her family was the subject of a verified
107 report of suspected abuse or neglect in the past 12 months. The
108 Secretary of the Department of Children and Families may also
109 direct immediate investigations for other cases of serious
110 injury of children.

111 (3) Each investigation shall be conducted by a team of at
112 least five qualified and experienced professionals selected from
113 employees of the department, community based care lead agencies,
114 other provider organizations, faculty from the institute created
115 pursuant to s. 1004.615, or any other persons with expertise in
116 child protection. The secretary shall appoint a team leader for

117 each group assigned to an investigation.

118 (4) Investigations must be initiated as soon as possible
119 but not later than two business days after the case is reported
120 to the department. A preliminary report on each case must be
121 provided to the secretary no later than 30 days after the
122 investigation begins.

123 (5) Each member of the team is authorized to access all
124 information in the case file.

125 (6) All employees of the department or other state agency
126 and all personnel from contracted provider organizations are
127 required to cooperate with the investigation by participating in
128 interviews and responding timely to any requests for
129 information.

130 (7) The secretary shall develop cooperative agreements with
131 other entities and organizations as may be necessary to
132 facilitate the work of the team.

133 (8) The members of the team may be reimbursed by the
134 department for per diem, mileage, and other reasonable expenses.

135 (9) Upon completion of the investigation, a final report
136 shall be made available to organizations involved in the child
137 welfare system and the public through the department's website.

138 (10) The secretary, in conjunction with the institute
139 established pursuant to s. 1004.615, shall develop guidelines
140 for the investigations. Such guidelines must direct the teams in
141 the conduct of a root cause analysis that identifies,
142 classifies, and attributes responsibility for both direct and
143 latent causes for the death or other incident, including
144 organizational factors, preconditions, and specific acts or
145 omissions resulting from either error or a violation of

146 procedures.

147 (11) The secretary shall appoint an advisory committee to
148 review investigative reports from the critical incident rapid
149 response teams and make recommendations to improve policies and
150 practices related to child protection services and child welfare
151 services.

152 Section 4. Paragraph (o) of subsection (2) of section
153 39.202, Florida Statutes, is amended to read:

154 39.202 Confidentiality of reports and records in cases of
155 child abuse or neglect.-

156 (2) Except as provided in subsection (4), access to such
157 records, excluding the name of the reporter which shall be
158 released only as provided in subsection (5), shall be granted
159 only to the following persons, officials, and agencies:

160 (o) Any person in the event of the death of a child
161 reported to the child abuse hotline ~~determined to be a result of~~
162 ~~abuse, abandonment, or neglect.~~ Information identifying the
163 person reporting abuse, abandonment, or neglect shall not be
164 released. Any information otherwise made confidential or exempt
165 by law shall not be released pursuant to this paragraph. The
166 information released pursuant to this paragraph shall be as
167 described in s. 39.2022.

168 Section 5. Section 39.2022, Florida Statutes, is created to
169 read:

170 39.2022 Public Disclosure of Child Deaths Reported to the
171 Child Abuse Hotline.- (1) It is the intent of the Legislature to
172 provide prompt disclosure of the basic facts of all deaths of
173 children from birth through age 18 which occur in this state and
174 which are reported to the child abuse hotline. Disclosure shall

175 be published on the department's public website. Nothing in this
176 section shall be interpreted to limit the public access to
177 records under any other provision of law. (2) The department
178 shall release the following information to the general public
179 when a child death is reported to the child abuse hotline: (a)
180 Name of the child; (b) Date of birth, race, and gender of the
181 child; (c) Date of the child's death; (d) Allegations or
182 preliminary cause of death; (e) County and placement of the
183 child at the time of the incident leading to the child's death;
184 (f) Name of any community based care lead agency, case
185 management agency, or out of home licensing agency responsible
186 for the child, family, or licensed caregiver, if applicable; (g)
187 The relationship of any alleged offender to the child; (h) The
188 agency conducting the investigation into the death of the child;
189 (i) Whether the child has been the subject of any prior verified
190 reports to the child abuse hotline. (4) The department shall not
191 release the following information concerning a death of a child:
192 (a) Information on the siblings of the child; (b) Attorney-
193 client communications; (c) Any information if the release of
194 such information would jeopardize a criminal investigation; or
195 (d) Any other information otherwise made confidential or exempt
196 by state or federal law. (5) If the death of a child is
197 determined to be the result of abuse, neglect, or abandonment,
198 the department may release information in the child's record to
199 any person. Information identifying the person reporting abuse,
200 abandonment, or neglect shall not be released. Any information
201 otherwise made confidential or exempt by law shall not be
202 released pursuant to this subsection.
203

204 Section 6. Subsection (4) of section 39.303, Florida
205 Statutes, is amended to read:

206 39.303 Child protection teams; services; eligible cases.—
207 The Children's Medical Services Program in the Department of
208 Health shall develop, maintain, and coordinate the services of
209 one or more multidisciplinary child protection teams in each of
210 the service districts of the Department of Children and Family
211 Services. Such teams may be composed of appropriate
212 representatives of school districts and appropriate health,
213 mental health, social service, legal service, and law
214 enforcement agencies. The Legislature finds that optimal
215 coordination of child protection teams and sexual abuse
216 treatment programs requires collaboration between the Department
217 of Health and the Department of Children and Family Services.
218 The two departments shall maintain an interagency agreement that
219 establishes protocols for oversight and operations of child
220 protection teams and sexual abuse treatment programs. The State
221 Surgeon General and the Deputy Secretary for Children's Medical
222 Services, in consultation with the Secretary of Children and
223 Family Services, shall maintain the responsibility for the
224 screening, employment, and, if necessary, the termination of
225 child protection team medical directors, at headquarters and in
226 the 15 districts. Child protection team medical directors shall
227 be responsible for oversight of the teams in the districts.

228 (1) The Department of Health shall utilize and convene the
229 teams to supplement the assessment and protective supervision
230 activities of the family safety and preservation program of the
231 Department of Children and Family Services. Nothing in this
232 section shall be construed to remove or reduce the duty and

233 responsibility of any person to report pursuant to this chapter
234 all suspected or actual cases of child abuse, abandonment, or
235 neglect or sexual abuse of a child. The role of the teams shall
236 be to support activities of the program and to provide services
237 deemed by the teams to be necessary and appropriate to abused,
238 abandoned, and neglected children upon referral. The specialized
239 diagnostic assessment, evaluation, coordination, consultation,
240 and other supportive services that a child protection team shall
241 be capable of providing include, but are not limited to, the
242 following:

243 (j) Child protection team assessments that include, as
244 appropriate, medical evaluations, medical consultations, family
245 psychosocial interviews, specialized clinical interviews, or
246 forensic interviews.

247
248 All medical personnel participating on a child protection team
249 must successfully complete the required child protection team
250 training curriculum as set forth in protocols determined by the
251 Deputy Secretary for Children's Medical Services and the
252 Statewide Medical Director for Child Protection. A child
253 protection team evaluating a medically complex child must
254 consult with a physician specialist with experience in treating
255 children with the same condition.

256 (4) A face-to-face medical evaluation by a child protection
257 team is not necessary when:

258 (a) The child was examined for the alleged abuse or neglect
259 by a physician who is not a member of the child protection team,
260 and a consultation between the child protection team board-
261 certified pediatrician, advanced registered nurse practitioner,

262 physician assistant working under the supervision of a child
263 protection team board-certified pediatrician, or registered
264 nurse working under the direct supervision of a child protection
265 team board-certified pediatrician, and the examining physician
266 concludes that a further medical evaluation is unnecessary;

267 (b) The child protective investigator, with supervisory
268 approval, has determined, after conducting a child safety
269 assessment, that there are no indications of injuries as
270 described in paragraphs (2) (a)-(h) as reported; or

271 (c) The child protection team board-certified pediatrician,
272 as authorized in subsection (3), determines that a medical
273 evaluation is not required.

274 Section 7. Subsections (1) and (3) of section 383.402,
275 Florida Statutes, are amended to read:

276 383.402 Child abuse death review; State Child Abuse Death
277 Review Committee; local child abuse death review committees.—

278 (1) It is the intent of the Legislature to establish a
279 statewide multidisciplinary, multiagency child abuse death
280 assessment and prevention system that consists of state and
281 local review committees. The state and local review committees
282 shall review the facts and circumstances of all deaths of
283 children from birth through age 18 which occur in this state and
284 are reported to the child abuse hotline of the Department of
285 Children and Families ~~as the result of verified child abuse or~~
286 ~~neglect~~. The purpose of the review shall be to:

287 (a) Achieve a greater understanding of the causes and
288 contributing factors of deaths resulting from child abuse.

289 (b) Whenever possible, develop a communitywide approach to
290 address such cases and contributing factors.

291 (c) Identify any gaps, deficiencies, or problems in the
292 delivery of services to children and their families by public
293 and private agencies which may be related to deaths that are the
294 result of child abuse.

295 (d) Make and implement recommendations for changes in law,
296 rules, and policies, as well as develop practice standards that
297 support the safe and healthy development of children and reduce
298 preventable child abuse deaths.

299 (3) The State Child Abuse Death Review Committee shall:

300 (a) Develop a system for collecting data on deaths that are
301 the result of child abuse. The system must include a protocol
302 for the uniform collection of data statewide, which uses
303 existing data-collection systems to the greatest extent
304 possible.

305 (b) Provide training to cooperating agencies, individuals,
306 and local child abuse death review committees on the use of the
307 child abuse death data system.

308 (c) Prepare an annual statistical report on the incidence
309 and causes of death resulting from reported child abuse in the
310 state during the prior calendar year. The state committee shall
311 submit a copy of the report by March 31 ~~December 31~~ of each year
312 to the Governor, the President of the Senate, and the Speaker of
313 the House of Representatives. The report must include
314 recommendations for state and local action, including specific
315 policy, procedural, regulatory, or statutory changes, and any
316 other recommended preventive action.

317 (d) Encourage and assist in developing the local child
318 abuse death review committees.

319 (e) Develop guidelines, standards, and protocols, including

320 a protocol for data collection, for local child abuse death
321 review committees, and provide training and technical assistance
322 to local committees.

323 (f) Develop guidelines for reviewing deaths that are the
324 result of child abuse, including guidelines to be used by law
325 enforcement agencies, prosecutors, medical examiners, health
326 care practitioners, health care facilities, and social service
327 agencies.

328 (g) Study the adequacy of laws, rules, training, and
329 services to determine what changes are needed to decrease the
330 incidence of child abuse deaths and develop strategies and
331 recruit partners to implement these changes.

332 (h) Provide consultation on individual cases to local
333 committees upon request.

334 (i) Educate the public regarding the provisions of chapter
335 99-168, Laws of Florida, the incidence and causes of child abuse
336 death, and ways by which such deaths may be prevented.

337 (j) Promote continuing education for professionals who
338 investigate, treat, and prevent child abuse or neglect.

339 (k) Recommend, when appropriate, the review of the death
340 certificate of a child who died as a result of abuse or neglect.

341 Section 8. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-11-14

Meeting Date

Topic Child Welfare Incidents / medically complex
Name Peter Digne
Job Title Deputy Secretary
Address 1317 Wine wood, Bldg 11
Tallahassee, FL 32301

Bill Number
Amendment Barcode
Phone 950-413-7303
E-mail p.digne@def.state.fl.us

Speaking: [X] For [] Against [] Information
Representing DCF

Appearing at request of Chair: [X] Yes [] No
Lobbyist registered with Legislature: [X] Yes [] No

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/11/2014

Meeting Date

Topic Child welfare reform
Name Michael Franklin
Job Title Dean, College of Public & Health Affairs
Address University of Central Florida
Orlando, FL

Bill Number
Amendment Barcode
Phone
E-mail mfrankin@ucf.edu

Speaking: [] For [] Against [X] Information
Representing

Appearing at request of Chair: [X] Yes [] No
Lobbyist registered with Legislature: [] Yes [X] No

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/14
Meeting Date

Topic WORKSHOP - CHILD WELFARE LEG. Bill Number _____ (if applicable)
Name MIKE WATKINS Amendment Barcode _____ (if applicable)
Job Title CEO / BIG BEND CBC
Address 525 N. MILK JR. Phone 850.40.1020
Street
TALLAHASSEE FL 32301 E-mail MWATKINS@bigbendcbc.org
City State Zip

Speaking: For Against Information

Representing FLORIDA COALITION FOR CHILDREN

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

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

CourtSmart Tag Report

Room: LL 37
Caption: Senate Children, Families, and Elder Affairs Committee

Case:

Type:
Judge:

Started: 2/11/2014 10:04:34 AM

Ends: 2/11/2014 11:45:08 AM **Length:** 01:40:35

10:04:38 AM Meeting called to order
10:04:43 AM Roll Call
10:05:08 AM Tab 2 - SB 634 Guardianship
10:05:27 AM Barcode 612984 strike all amendment by Sen. Clemens
10:06:34 AM Sen. Diaz de la Portilla asks question
10:07:11 AM Sen. Brandes responds
10:07:57 AM Sen. Diaz de la Portilla asks follow-up question
10:08:09 AM Sen. Brandes responds
10:08:19 AM Sen. Dean asks question about professional qualifications
10:08:36 AM Sen. Brandes responds
10:08:59 AM Chair Sobel asks for other questions and makes coment
10:09:24 AM Sen. Brandes responds
10:09:44 AM Chair Sobel asks for testimony
10:10:05 AM Bill is amended
10:10:18 AM Testimony by Alan Saylor
10:13:26 AM Testimony by Douglas Lewis Franks, Americans Against Abusive Probate Guardians
10:18:34 AM Sen. Dean asks question
10:18:41 AM Mr. Franks responds
10:18:47 AM Sen. Dean asks follow-up question
10:18:51 AM Mr. Franks responds
10:19:24 AM Sen. Dean asks question
10:19:33 AM Mr. Franks responds with regard to third party guardian
10:20:26 AM Chair thanks speaker
10:20:39 AM Testimony by Lynn Sayler
10:23:08 AM Testimony by Sylvia Smith, Disability Rights Florida, waives in support
10:23:18 AM Testimony by Anthony Palmieri, Deputy Clerk and Senior Internal Auditor (Palm Beach County), waives in support
10:23:36 AM Karen Rushing, FL Court Clerks and Comptrollers (Sarasota), waives in support
10:23:46 AM Sen. Sobel asks for debate
10:23:53 AM Sen. Dean asks question to Ms. Rushing
10:24:41 AM Ms. Rushing responds
10:25:27 AM Sen. Dean asks follow-up question
10:25:36 AM Ms. Rushing responds
10:25:42 AM Chair asks for other question
10:25:47 AM Sen. Diaz de la Portilla asks question
10:26:52 AM Ms. Rushing responds
10:28:10 AM Sen. Diaz de la Portilla asks follow-up question
10:28:19 AM Ms. Rushing responds
10:28:50 AM Sen. Diaz de la Portilla asks question
10:28:58 AM Chair Sobel asks follow-up question
10:29:45 AM Chair Sobel asks for debate
10:29:49 AM Sen. Braynon makes comment
10:30:48 AM Sen. Brandes waives close
10:30:54 AM Sen. Detert moves bill as committee substitute
10:31:02 AM Roll Call on SB 634
10:31:15 AM SB 634 passes
10:31:26 AM Tab 3 - SB 402 Council on the Social Status of Black Men and Boys
10:32:03 AM Sen. Braynon explains bill
10:33:14 AM Chair Sobel asks for questions
10:33:25 AM Sen. Braynon waives close
10:33:31 AM Roll Call on SB 402
10:33:50 AM SB 402 passes

10:34:16 AM Tab 1 - SB 582 Substance Abuse Services
10:34:36 AM Sen. Clemens explains bill
10:35:47 AM Chair Sobel makes comment
10:36:13 AM Barcode 828502 late filed amendment
10:37:16 AM Chair Sobel asks for questions about the amendment
10:37:53 AM Casey Cook, League of Cities, waives in support AM 828502
10:38:03 AM Susan Harbin, Florida Association of Counties, waives in support of AM 828502
10:38:54 AM Testimony by Jordan Connors, City of Port St. Lucie, waives in support
10:39:03 AM Fausto Gomez, Town of Lake Park, waives in support
10:39:30 AM Testimony by Rick Riccardi, 12 Step Fellowship and Margate Chamber of Commerce
10:44:35 AM Chair Sobel asks for questions
10:44:42 AM Sen. Dean has a question
10:44:52 AM Mr. Riccardi responds
10:45:26 AM Sen. Dean asks follow-up question
10:45:33 AM Mr. Riccardi responds with regard to neighborhood response
10:46:05 AM Sen. Dean asks for name of community
10:46:12 AM Mr. Riccardi responds
10:46:16 AM Sen. Clemens makes comment
10:46:31 AM Testimony by Kay Hayes, Executive Director, Avenues 12
10:51:17 AM Chair Sobel asks question
10:51:31 AM Ms. Hayes responds
10:51:46 AM Chair Sobel makes comment about exemptions
10:52:18 AM Testimony by Todd Bon Larron, Palm Beach County, Legislative Affairs Director
10:56:25 AM Chair Sobel asks for questions
10:56:34 AM Sen. Hays' casts favorably vote for SB's 634 and 402
10:56:46 AM Testimony by Mark Fontaine, Florida Alcohol and Drug Abuse Assoc., Executive Director
11:03:34 AM Chair Sobel asks for questions
11:03:50 AM Testimony by John Lehman, Florida Association of Recovery Residences, President
11:12:12 AM Chair Sobel asks for questions
11:12:25 AM Sen. Clemens closes
11:15:16 AM Sen. Detert moves bill as committee substitute
11:15:22 AM Roll Call on Bill 582
11:15:38 AM SB 582 passes
11:16:09 AM Tab 5 - Continued Workshop on Child Welfare Legislation
11:17:15 AM Sen. Sobel explains workshop
11:19:12 AM Sen. Detert asks question about rapid response
11:20:15 AM Claude responds
11:20:35 AM Sen. Detert makes follow-up comment
11:21:37 AM Testimony by Pete Digre, Deputy Secretary for DCF
11:23:05 AM Chair Sobel asks for clarification
11:23:23 AM Mr. Digre responds with regard to state wide approach
11:23:58 AM Chair Sobel asks question about website
11:24:16 AM Mr. Digre responds
11:24:30 AM Chair Sobel responds
11:25:22 AM Testimony by Michael Frumkin, Dean of Public and Health Affairs, University of Central Florida
11:31:28 AM Chair Sobel asks for questions
11:31:32 AM Sen. Clemens asks question about limitations
11:33:38 AM Chair Sobel makes comment
11:34:24 AM Mr. Frumkin responds
11:35:07 AM Sen. Thompson casts favorably vote for SB's 634, 402, and 582
11:35:42 AM Testimony by Mike Watkins, CEO/Big Bend CBC, Florida Coalition for Children
11:39:25 AM Chair Sobel asks for questions
11:39:37 AM Tab 4 - SB 182 Sexual Offenses
11:39:47 AM Sen. Stargel explains bill
11:40:24 AM Barcode 770164 amendment to amendment, explained by Sen. Stargel
11:41:26 AM Chair Sobel asks for questions
11:41:35 AM Testimony by Sarrah Carrol, Assistant Executive Director, Florida Sheriffs Association waives in support
11:41:59 AM Barcode 287160 strike all amendment
11:42:26 AM Sen. Clemens makes comment
11:42:55 AM Sen. Stargel closes on bill
11:42:59 AM Sen. Thompson moves bill as committee substitute
11:43:08 AM Roll Call

11:43:21 AM SB 182 passes

11:43:30 AM Chair Sobel makes comments on Child Welfare Legislation (Tab 5)

11:44:58 AM Move to Rise