

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 259 Guardianship
SPONSOR(S): Children, Families & Seniors Subcommittee, Rodrigues
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	7 Y, 4 N, As CS	Tuszynski	Brazzell
2) Civil Justice Subcommittee			
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

CS/HB 259 creates s. 709.2209, F.S., entitled, "Power of attorney for temporary care of minor child," as a means of preventing the entry of a child at risk of abuse or neglect into the formal child welfare system.

The bill allows a parent or legal guardian of a child to delegate certain powers regarding the care and custody of a child to an agent volunteering through a qualified nonprofit organization, through a power of attorney for a period not to exceed one year. The delegation of powers regarding care and custody do not deprive the child's parent or legal guardian of parental rights, obligations, or authority regarding custody, visitation, or support.

The bill requires re-execution of a new power of attorney for each year beyond the first year, if the delegation persists. However, if a member of the armed forces on active duty service makes the delegation, the delegation may be longer than one year as long as it does not persist longer than 30 days beyond the term of active duty service.

The bill details the requirements of the power of attorney form to include the identity of the child and parents or legal guardians delegating authority, the identity of the attorney in fact (host family) to whom the powers are delegated, a statement of delegated and non-delegated powers, effective and expiration dates, time limits, signatures, and authorization of a notary public.

The bill requires a qualified nonprofit organization to complete a criminal history background check, pursuant to s. 943.0542, F.S., on all employees or volunteers who may have unsupervised contact with a child placed with an agent pursuant to this section, including the agent and all members of the agent's household who are 12 years of age and older.

The bill requires disclosure by a family seeking to use a power of attorney under this section of any Department of Children and Families (DCF) involvement or investigations. The bill requires a qualified nonprofit organization to notify the parents that failure to disclose this information may be grounds for termination of services or reporting to DCF. If a qualified nonprofit organization learns of DCF involvement, the bill requires the qualified nonprofit organization to inform DCF.

The bill amends s. 409.175, F.S., exempting agents who care for children under s. 709.2209, F.S., from licensure

The bill has no fiscal impact on state or local government.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children, if possible. If the problems cannot be ameliorated, the child welfare system finds other caregivers for children, such as relative and non-relative caregivers, foster families, or adoptive families.¹

Prevention

The Department of Children and Families' (DCF) Child Welfare Program works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children.

Child welfare services are directed toward the prevention of abandonment, abuse, and neglect of children.² DCF's practice model is based on the safety of the child within their home, utilizing in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in their home environment.

However, when it is determined that a child cannot safely remain in their own home, DCF works, through the involvement of the courts, toward guaranteeing the safety of the child out of home while providing services to reunify the child as soon as it is no longer unsafe to do so.

Ultimately, if a child's home remains unsafe and the court is unable to reunify him or her in the family home, the child welfare system works to find a permanent home for that child through the adoption process.

Types of placements and licensure

For children who cannot safely remain in their own homes, the child welfare system obtains alternative placements. The placements range from temporary placement with a family member to an adoptive placement with a family previously unknown to the child.

The following placements do not require licensure under the licensing statute:

- Relative caregivers,
- Non-relative caregivers,
- An adoptive home which has been approved by DCF or by a licensed child-placing agency for children placed for adoption, and
- Persons or neighbors who care for children in their homes for less than 90 days.³

However, certain other placements require licensure. Pursuant to s. 409.175, F.S., DCF licenses and regulates family foster homes, residential child-caring agencies, and child-placing agencies.

Section 409.175(20)(d), F.S., defines a "child-placing agency" as any person, corporation or agency, public or private that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home.

¹ See s. 39.001(1), F.S.

² S. 39.001(8), F.S.

³ S. 409.175, F.S.

Section 409.175(2)(e), F.S., defines a “family foster home” as a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A family foster home does not include a person who cares for a child of a friend for a period not to exceed 90 days, a relative who cares for a child and does not receive reimbursement for such care from the state or federal government, or an adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption.

Licensure involves meeting rules and regulations pertaining to:

- The operation, conduct, and maintenance of these homes,
- The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served,
- The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide for the physical comfort, care, and well-being of the children served,
- The ratio of staff to children required to provide adequate care and supervision of the children served and, in the case of foster homes,
- The maximum number of children in the home, and
- The good moral character based upon screening, education, training, and experience requirements for personnel.⁴

Powers of Attorney

A power of attorney is a document that grants authority to an agent to act in the place of a principal.⁵ The person who creates a power of attorney is the principal, and the person to whom the authority to act is delegated is an agent of the principal. The power of attorney benefits and binds the principal to an agent’s actions as if the principal had done them himself or herself. Powers of attorney are governed by Part II of ch. 709, F.S.

Currently, the powers of attorney statute is silent as to whether a power of attorney can be created and used for the care of a minor child.

Safe Families Model

Sometimes, parents are in crisis and are unable to adequately deal with both the crisis and parenting at the same time due to the lack of family or supportive relationships to help them through the crisis while caring for their child.⁶ This type of social isolation combined with the stress of a crisis can increase the likelihood of child abuse, often through child neglect.⁷ Furthermore, homelessness, unemployment, domestic violence, illness, mental health issues, and substance addiction can all lead to situations in which a parent must choose between addressing the immediate crisis and adequate care of his or her child.⁸

In 2002, the Safe Families for Children (SFFC) program created a model in which parents in crisis without family or support relationships had a place to go for help without entering the child welfare system.⁹ The model includes placing a child with an unpaid volunteer host family, allowing a parent the time and space to deal with whatever issues brought them to SFFC. By temporarily placing the child with a host family, SFFC hopes to reduce the risk of child abuse and neglect, as well as provide a safe place for a child.¹⁰

⁴ S. 409.175, F.S.

⁵ Chapter 709, F.S.

⁶ Murray, K, et al., Safe Families for Children’s Program Model and Logic Model Description Report, University of Maryland School of Social Work, 3.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

SFFC states that it has three main objectives: child welfare deflection, child abuse prevention, and family support and stabilization.¹¹ SFFC reports that the hallmarks of the program are that parents retain full legal custody of children, volunteer families are extensively screened and supported, the average length of stay is 6 weeks (ranging from 2 days to 1 year), there is a close working relationship between the Safe Families organization, local churches, and the referring organization, and that the model is committed to reuniting the family as soon as possible.¹²

Programs based on the SFFC model are active throughout the country (54 active programs in 25 states),¹³ with Oregon, Wisconsin, and Oklahoma codifying similar models in statute.¹⁴ Florida currently has 4 areas where SFFC models operate: SFFC Southwest Florida in Naples, Bethany Christian Services of the Gulf Coast in Pensacola, Bethany Christian Services of Orlando, and Bethany Christian Services of Tampa Bay.¹⁵ These 4 organizations currently perform background screening through the Volunteer and Employee Criminal History System (VECHS) program, offered by the Florida Department of Law Enforcement.¹⁶

Background Screening

DCF is required to determine the good moral character of personnel of the child welfare system,¹⁷ through level 2 background screenings, as provided for in ch. 435, F.S.¹⁸ "Personnel" includes all owners, operators, employees, and volunteers working in a child-placing agency, family foster home, or residential child-caring agency.¹⁹ Statute also requires family members and persons between the ages of 12 and 18 residing with the owner or operator of a family foster home or agency to have a delinquency record check, but does not require fingerprinting.²⁰

A level 2 background screening is typically required; this screening involves a state and national fingerprint-based criminal record check through the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI).²¹ Level 2 background screenings require that no person has been arrested for and awaits final disposition, has been found guilty of, or entered a plea of nolo contendere to crimes related to sexual misconduct, child or adult abuse, murder, manslaughter, battery, assault, kidnapping, weapons, arson, burglary, theft, robbery, and exploitation.²² The cost for a Level 2 background screening ranges from \$38 to \$75 depending upon the selected vendor.²³ DCF processes the background screenings through the Care Provider Background Screening Clearinghouse for individuals working in the child welfare system who are required by law to be background screened.

DCF may grant exemptions from disqualification of employment in certain circumstances,²⁴ such as felonies that are older than 3 years and offenses that were felonies when committed, but that are now classified as misdemeanors.²⁵

Care Provider Background Screening Clearinghouse

¹¹ Safe Families for Children, Who we help, *available at* http://www.safe-families.org/whatis_whohelp.aspx (last accessed 11/14/15).

¹² Id.

¹³ Id.

¹⁴ The Foundation for Government Accountability, Safe Families in the States – 2016, *available at* <http://thefga.org/solutions/foster-care-reform/safe-families/> (last accessed 11/13/15).

¹⁵ Safe Families for Children, Location/Contact Us, *available at* http://www.safe-families.org/whatis_locations.aspx (last accessed 11/14/15).

¹⁶ Email from Andrew Brown, Senior Fellow, Foundation for Government Accountability, RE: HB 259, (11/16/15).

¹⁷ S. 409.175(5)(a), F.S.

¹⁸ S. 409.175(2)(k), F.S.

¹⁹ S. 409.175(2)(i), F.S.

²⁰ Id.

²¹ S. 435.04, F.S.

²² S. 435.04(2), F.S.

²³ Department of Children and Families, *Livescan Vendor Locations*, *available at* <http://www.dcf.state.fl.us/programs/backgroundscreening/map.asp> (last viewed November 5, 2015).

²⁴ S. 409.175(5)(a)6., F.S.

²⁵ S. 435.07, F.S.

The Care Provider Background Screening Clearinghouse²⁶ (clearinghouse) is a statewide system that enables certain specified state agencies, such as DCF and the Agency for Persons with Disabilities, to submit requests for level 2 background screenings for certain statutorily-defined purposes, such as licensure or license-related employment. The level 2 screening results are provided to the requesting agency, not the individual or employer organization, and are also retained in the clearinghouse.

There are several benefits to utilizing the clearinghouse including significant cost savings due to use of existing screenings, access to a screened individual's Florida public criminal record, and immediate notification of an employee or licensee arrest in Florida due to the active monitoring of the record.

Volunteer and Employee Criminal History System

The Volunteer and Employee Criminal History System (VECHS) program was implemented in 1999 and is authorized by the National Child Protection Act (NCPA) and s. 943.0542, F.S. The VECHS program provides a means to background screen the employees and volunteers of organizations who work with vulnerable individuals but who are not required by law to be background screened. Examples of organizations that may use VECHS are churches and volunteer organizations that serve children, the elderly or persons with disabilities but are not licensed or contracted by the state.

Through the VECHS program, FDLE and the FBI provide state and national criminal history record information on applicants, employees, and volunteers to qualified organizations (not individuals or state agencies) in Florida. With this criminal history information, the organizations can more effectively screen out those current and prospective volunteers and employees who are not suitable for contact with children, the elderly, or persons with disabilities.²⁷

Unlike the clearinghouse, screenings through the VECHS program are not actively monitored. The screenings provide a snapshot in time of that particular employee or volunteer's criminal record at the time the screen is completed. Any arrest or judicial action after that screening is completed is unknown. Additionally, the organization receiving the screening results makes its own determination of whether to employ the individual or use the volunteer based on its own standards.

Effect of Proposed Changes

Powers of Attorney

CS/HB 259 creates s. 709.2209, F.S., entitled, "Power of attorney for temporary care of minor child," as a less intrusive alternative to guardianship and defines "agent," "department," "qualified nonprofit organization," and "serving parent."

The bill allows a parent or legal guardian of a child to delegate to an agent, for the temporary care of a child, any of the powers regarding the care and custody of a child, for a period not to exceed one year. The bill requires a qualified nonprofit agency to identify appropriate placements for children, and provide services and resources to support the child, parents, and agents authorized to provide temporary care for the child. These powers do not include the power to consent to marriage or adoption of the child, the performance or inducements of an abortion, or the termination of parental rights of the child. The bill further clarifies that it does not deprive the parent or legal guardian of parental rights, obligations, or authority regarding custody, visitation, or support.

The bill requires re-execution of a new power of attorney for each year beyond the first year, if the delegation persists. However, if a member of the armed forces on active duty service makes the delegation, the delegation may be longer than one year as long as it does not persist longer than 30 days beyond the term of active duty service. The bill does not have a maximum limit on the number of times a power of attorney may be re-executed with the same or a different agent.

²⁶ S. 435.12, F.S.

²⁷ Florida Department of Law Enforcement, Volunteer and Employee Background checks, *available at*: <http://www.fdle.state.fl.us/Content/Background-Checks/Menu/VECHS.aspx> (last visited November 2, 2015).

The bill details the requirements of the power of attorney form to include the identity of the child and parents or legal guardians delegating authority, the identity of the attorney in fact to whom the powers are delegated, a statement of delegated and non-delegated powers, effective and expiration dates, time limits, signatures, and authorization of a notary public.

The bill requires a qualified nonprofit organization to complete a child abuse and criminal history background check, in accordance s. 943.0542, F.S., on all employees or volunteers who may have unsupervised contact with a child placed with an agent pursuant to this section, including the agent and all members of the agent's household who are 12 years of age and older.

The bill requires disclosure by a family seeking to utilize a power of attorney under this section of any open DCF investigations or involvement. The bill requires a qualified nonprofit organization to notify the parents that failure to disclose this information may be grounds for termination of services or reporting to DCF. If a qualified nonprofit organization learns of DCF involvement, the bill requires the qualified nonprofit organization to inform DCF.

Child Welfare

Abuse Investigations and DCF Custody

The bill provides that the execution of a power of attorney by a parent or legal guardian may not be construed as abandonment, abuse, or neglect as defined in s. 39.01, F.S., unless the parent or legal guardian fails to take custody of the child or execute a new power of attorney after one year. The bill also bars DCF from opening an investigation based solely on receipt of notification of the placement of a child with an agent.

The bill states that the section shall not be interpreted to prevent the department or law enforcement from investigating allegations of abuse, abandonment, neglect, or unlawful desertion of a child.

The bill requires DCF, during a child protective investigation that does not result in an out-of-home placement, to provide information to a parent regarding respite care services, voluntary temporary placement, or other support services for families in crisis if deemed appropriate by a child protective investigator.

Licensure

The bill amends s. 409.175, F.S., exempting agents who care for children, under s. 709.2209, F.S., from licensure by DCF. The bill states that agents are not required to meet foster care licensing requirements and are not family foster homes.

The bill also states that a qualified nonprofit organization is not a child-placing agency as defined in s. 409.175(2)(d), F.S., and is not required to be licensed as such unless the qualified nonprofit organization pursues child-placing activities as provided in s. 409.175(2)(d), F.S.

Background Screening

Although volunteer agent homes and qualified nonprofit organizations are exempt from licensure, the bill requires all qualified nonprofit organizations employees and volunteers who have unsupervised contact with children, including volunteer agents, and household members of agents who are 12 years of age or older to complete a criminal history background check, in accordance with s. 943.0542, F.S.

The bill requires notarization of the power of attorney document, and that the parties to the power of attorney provide the notary public with a notarized letter from the qualified nonprofit organization that the required background checks were completed and favorable.

The bill does not require background screens to go through any specified state agency or to be held in the Care Provider Background Screening Clearinghouse under s. 435.12, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 409.175, F.S., relating to licensure of family foster homes.

Section 2: Creates a new section of law, s. 709.2209, F.S. entitled "Power of attorney for temporary care of minor child."

Section 3: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires a qualified nonprofit organization to complete a criminal history background screening on certain individuals. The cost for a background screening under s. 943.0452, F.S., ranges from \$38 to \$75 depending upon the selected vendor.²⁸

The bill also requires use of a notary public, which may involve an additional cost.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

²⁸ Department of Children and Families, *Livescan Vendor Locations*, available at <http://www.dcf.state.fl.us/programs/backgroundscreening/map.asp> (last viewed November 5, 2015).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 11, 2015, the Children, Families and Seniors Subcommittee adopted a strike-all amendment. The amendment made the following changes:

- Restructured the bill's sections for clarity and readability.
- Narrowed the definition of "agent" for purposes of this subsection to include only natural persons who do not receive payment and prohibits successor agents.
- Expands the definition of qualified nonprofit organization to include duties to train, identify appropriate and safe placements based on background screening and home visits, as well as provide services.
- Requires employees or volunteers who may have unsupervised contact with a child placed with an agent, including the agent and all members of the agent's household who are 12 years or older, to be background screened pursuant to s. 943.0542.
- Removes the requirement of sharing background screenings with a notary public, instead requiring a notarized letter signed by a representative of the qualified nonprofit organization attesting to the existence of favorable background screenings.
- Removes the requirement for DCF to share confidential information with a qualified nonprofit organization and instead requires the parent to inform the qualified nonprofit organization of any DCF involvement with the family.
- Clarifies that the section shall not be interpreted to prevent the department or law enforcement from investigating allegations of abuse, abandonment, neglect, or unlawful desertion of a child.
- Exempts the agents from foster care licensure requirements under s.409.175, F.S.
- Requires DCF to provide information to a parent regarding respite care services, voluntary temporary placement, or other support services for families in crisis if deemed appropriate by a child protective investigator.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.