

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 363 Temporary Care of a Child

**SPONSOR(S):** White and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 200

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	14 Y, 0 N	Tuszynski	Brazzell
2) Civil Justice & Claims Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Families are often confronted with circumstances, such as drug abuse, illness, unemployment, or homelessness, which, if not appropriately addressed, can lead to abuse, neglect, or abandonment of their children. Several private organizations in Florida work to support such families in crisis. The organizations assist parents with finding safe temporary placements to ensure their children do not enter the child welfare system while parents work to reestablish a safe and stable living environment.

HB 363 creates s. 409.1761, F.S., which authorizes organizations to provide assistance to families in crisis by finding volunteer respite families to care for children not in the child welfare system.

The bill authorizes the parent of a minor child to execute a contract for care to delegate certain powers regarding the care and custody of the child to a volunteer respite family that is screened and trained by certain nonprofit organizations. The delegation does not change parental rights, obligations, or authority regarding custody, visitation, or support unless determined by a court to be in the best interests of the child. The bill includes various requirements to ensure child safety. It:

- Prohibits a parent or agent from receiving compensation related to the delegation of care and custody;
- Limits the contract for care to a period of 6 months;
- Requires that either both parents to sign the contract for care or notice be provided to a noncustodial parent;
- Specifies requirements for the execution, form, and revocation of the contract for care;
- Requires nonprofit organizations that assist with the temporary placement of a child with a volunteer respite family to conduct background screenings, provide support services and training to the families, maintain certain records, and register with the Department of Children and Families (DCF); and
- Permits DCF to provide information regarding temporary care programs to parents during a child protective investigation, if appropriate.

The bill also exempts the nonprofit organization assisting with the placement and the volunteer respite family from licensure and regulation by DCF. However, the bill does not prevent DCF or law enforcement from investigating allegations of abandonment, abuse, neglect, unlawful desertion of a child, or human trafficking.

The bill has no fiscal impact on local government. The bill has an indeterminate fiscal impact on state expenditures.

The bill has an effective date of July 1, 2017.

# FULL ANALYSIS

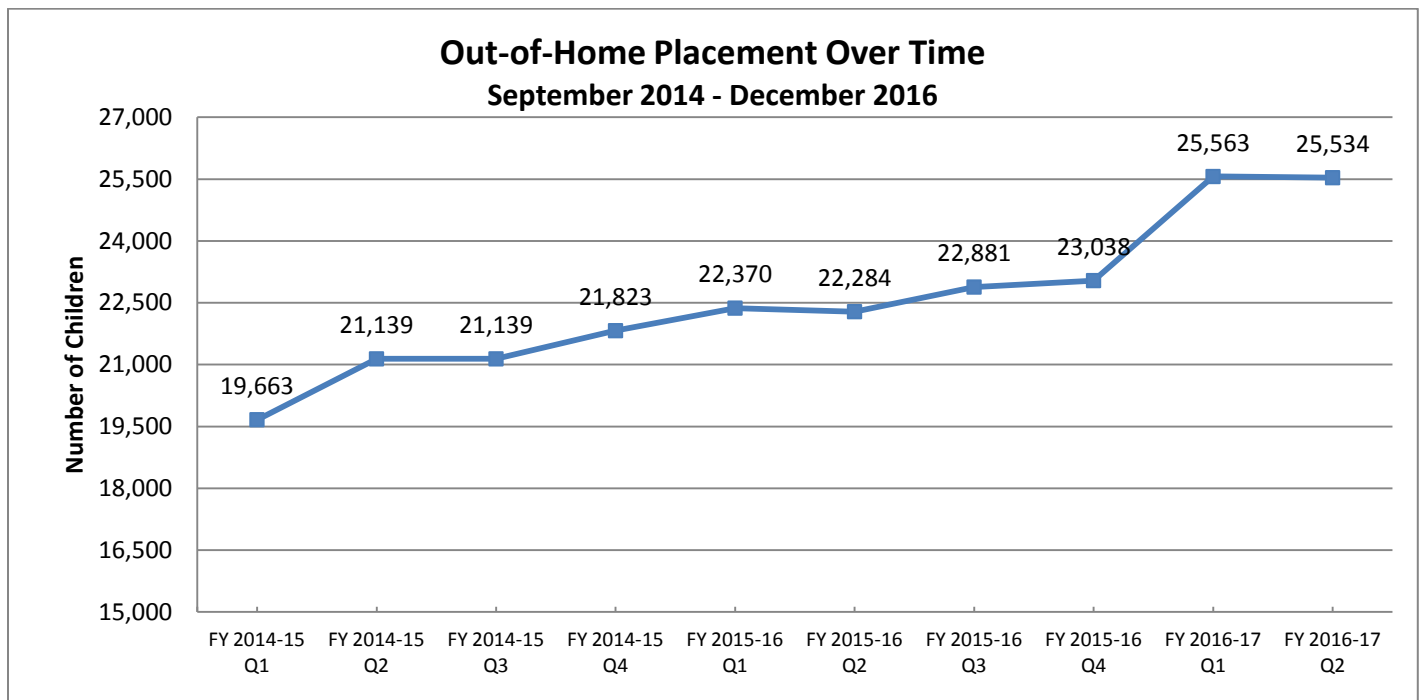
## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Child Welfare System

Families are often confronted with circumstances, such as drug abuse, illness, domestic violence, unemployment, mental health issues, or homelessness, which, if not appropriately addressed, can lead to abuse, neglect, or abandonment of their children.<sup>1</sup> Parents in crisis may be unable to simultaneously deal with both the crisis and parenting due to the lack of family or supportive relationships.<sup>2</sup> This type of social isolation combined with the stress of a crisis can increase the likelihood of child abuse, often through child neglect as a parent must choose between addressing the immediate crisis and adequately caring for his or her child.<sup>3</sup>

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 safe out-of-home placements for children, such as relative and non-relative caregivers, foster families, or adoptive families.<sup>4</sup> As of December 31, 2016, there were 25,534 children under the supervision of the Department of Children and Families (DCF) in out-of-home care.<sup>5</sup> Generally, out-of-home placements have been increasing for the past few years:<sup>6</sup>



<sup>1</sup> Murray, K, et al., *Safe Families for Children's Program Model and Logic Model Description Report*, unpublished presentation, University of Maryland School of Social Work (2012) (on file with Children, Families, & Seniors Subcommittee).

<sup>2</sup> *Id.* at pg. 4.

<sup>3</sup> *Id.* at pg. 2.

<sup>4</sup> See s. 39.001(1), F.S.

<sup>5</sup> "Out-of-home care" includes both children in board-paid foster care and those receiving protective supervision in the home of a relative or approved non-relative after a removal. Children under protective supervision in the home of a relative or approved non-relative after removal are considered "out-of-home," as they are entitled to the same safeguards as board-paid foster children. See Florida Department of Children and Families, DCF Quick Facts, *2016-17 Quarter 2 Program Data*, <http://www.dcf.state.fl.us/general-information/quick-facts/cw/> (last visited February 8, 2017).

<sup>6</sup> Department of Children and Families, DCF Quick Facts, available at <http://www.dcf.state.fl.us/general-information/quick-facts/> (last visited February 10, 2017).

Prevention

DCF’s Child Welfare Program works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children.

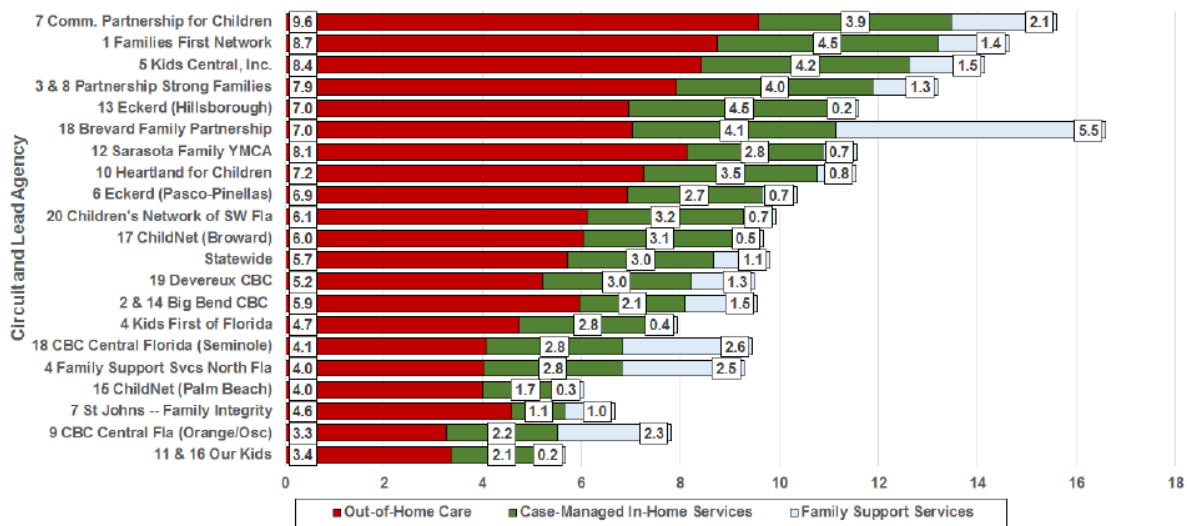
Child welfare services seek to prevent child abandonment, abuse, and neglect.<sup>7</sup> DCF’s practice model is based on the safety of the child within his or her home, prioritizing the use of in-home services such as parenting coaching and counseling to maintain and strengthen that child’s natural supports in his or her home environment. DCF provides these child welfare and related services throughout the state by contracting with lead agencies, also known as community-based-care organizations (CBCs).<sup>8</sup>

Statute requires DCF to offer preventive services<sup>9</sup> to families to avoid removal of children from their homes.<sup>10</sup> Family Support Services (FSS) are preventive services that DCF offers. FSS are used when an investigator has determined that children in the family are safe but have a high or very high risk level and potential of removal. These services are designed to reduce risk and prevent removal by:<sup>11</sup>

- a. Strengthening protective factors in the family;
- b. Enhancing the social and emotional well-being of each child and family;
- c. Enabling families to use other resources and opportunities in the community; and
- d. Assisting families with creating and strengthening family resource networks.

The rate of FSS services provided varies by CBC. As of December 2016, the variation ranged from a low as 0.2 children per 1,000 (11<sup>th</sup>, 16<sup>th</sup>, and 13<sup>th</sup> circuits) to a high of 5.5 children per 1,000 (18<sup>th</sup> Circuit).<sup>12</sup>

Children Receiving Services by Type – Rates per 1,000 Child Population<sup>13</sup>



<sup>7</sup> S. 39.001(8), F.S.

<sup>8</sup> Community-Based Care, The Department of Children and Families, accessible at <http://www.myflfamilies.com/service-programs/community-based-care> (last accessed January 28, 2017).

<sup>9</sup> S. 39.01(60), F.S., “Preventive services” means social services and other supportive and rehabilitative services provided to the parent or legal custodian of the child and to the child for the purpose of averting the removal of the child from the home or disruption of a family which will or could result in the placement of a child in foster care.

<sup>10</sup> S. 39.401(7), F.S.

<sup>11</sup> Department of Children and Families, Operating Procedures, CFOP 170-1, Family Support Services, May 30, 2016, available at <http://www.dcf.state.fl.us/admin/publications/policies.asp?path=CFOP%20170-xx%20Child%20Welfare> (last accessed February 10, 2017).

<sup>12</sup> Department of Children and Families, Child Welfare Key Indicators Monthly Report, pg. 23, December 2016, available at [http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_December\\_2016\\_v2.pdf](http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_December_2016_v2.pdf) (last accessed February 10, 2017).

<sup>13</sup> Id.

However, when a child cannot safely remain in his or her own home, DCF works to keep the child safe out of home while providing services to reunify the child and family as soon as it is safe to do so.

Ultimately, if a child's home remains unsafe and the court is unable to reunify the child with his or her family, the child welfare system works to find an adoptive family for the child.

### *Types of Placements and Licensure*

For children who cannot safely remain in their own homes, the child welfare system finds an appropriate out-of-home placement. The placements range from temporary placement with a family member to a permanent adoptive placement with a family previously unknown to the child.

The following placements do not require licensure by DCF:

- Relative caregivers, such as a grandmother or aunt;
- Non-relative caregivers, such as a neighbor or family friend;
- 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.<sup>14</sup>

Placements that do require licensure and regulation include family foster homes, residential child-caring agencies, and child-placing agencies.<sup>15</sup>

Section 409.175(2)(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.

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.

Licensed entities must comply with DCF rules 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 good moral character of personnel based upon screening, education, training, and experience requirements.<sup>16</sup>

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<sup>14</sup> S. 409.175, F.S.

<sup>15</sup> S. 409.175, F.S.

<sup>16</sup> S. 409.175, F.S.

## *Background Screening*

DCF is required to determine the good moral character of personnel of the child welfare system,<sup>17</sup> through level 2 background screenings.<sup>18</sup> "Personnel" includes all owners, operators, employees, and volunteers working in a child-placing agency, family foster home, or residential child-caring agency.<sup>19</sup> Family members and persons between the ages of 12 and 18 residing with the owner or operator of a family foster home or agency must also undergo a delinquency record check, but such record check does not require fingerprinting.<sup>20</sup>

A level 2 background 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).<sup>21</sup> 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.<sup>22</sup> 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.

### *Care Provider Background Screening Clearinghouse*

The Care Provider Background Screening Clearinghouse<sup>23</sup> (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.

### Safe Families Model

In 2002, the Safe Families for Children (SFFC) program originated in Chicago as a ministry of the LYDIA Home Association, a Christian social service organization. The 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 and losing custody of their children.<sup>24</sup> 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, such as hospitalization, or a longer-term crisis, such as drug treatment or incarceration. 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.<sup>25</sup> One of the main tenets of this model is the creation of networks and relationships to help care for the child and stabilize the family.<sup>26</sup>

These private, voluntary placements require that the parent sign an agreement with terms and conditions of the arrangement, including what the parent will need to do to be reunified with their children and how the program will respond if the parent is unable to complete performance.<sup>27</sup> The parent thereafter delegates care and custody of the child to the host volunteer family.

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<sup>17</sup> S. 409.175(5)(a), F.S.

<sup>18</sup> S. 409.175(2)(k), F.S.

<sup>19</sup> S. 409.175(2)(i), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S. 435.04, F.S.

<sup>22</sup> S. 435.04(2), F.S.

<sup>23</sup> S. 435.12, F.S.

<sup>24</sup> *Supra* note 1, pg. 3.

<sup>25</sup> *Id.*

<sup>26</sup> *Supra* note 1, pg. 5.

<sup>27</sup> The Florida Senate, Committee on Children, Families, and Elder Affairs, *Issue Brief 2010-304: "Temporary Parents" as an Alternative to the Foster Care System (September 2009)*, at 2, available at

[http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-304cf.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-304cf.pdf) (last accessed February 8, 2017).

SFFC reports that under the program parents retain full legal custody of children; volunteer families are screened and supported; and there is an average length of stay of 6 weeks.<sup>28</sup> Volunteers and families served often continue a relationship after reunification has occurred, reducing social isolation and providing ongoing support.<sup>29</sup>

Programs based on the SFFC model are active in 70 cities in the U.S., Canada, and the U.K.,<sup>30</sup> with 9 U.S. states codifying similar models in statute.<sup>31</sup> Florida currently has 3 areas where SFFC models operate: SFFC Naples, SFFC Orlando, and SFFC Tampa Bay.<sup>32</sup>

Safe Families in Illinois in conjunction with the Illinois Department of Children & Family Services is currently being evaluated in a randomized control evaluation by the University of North Carolina School of Social Work, and Safe Families in the United Kingdom is being evaluated<sup>33</sup> by the Dartington Social Research Unit.<sup>34</sup>

The U.S. Department of Health and Human Service Child Welfare Information Gateway only lists one 2014 article describing, but not evaluating, the SFFC model,<sup>35</sup> and SFFC is not currently listed with the California Evidence Based Clearinghouse for Child Welfare.<sup>36</sup>

### *Liability and Insurance*

Should a child become ill or injured while in the care of a SFFC volunteer host family, the host family may have limited personal liability pursuant to the federal Volunteer Protection Act<sup>37</sup> (VPA) and Florida Volunteer Protection Act<sup>38</sup> (FVPA). The VPA provides that a volunteer of a nonprofit organization may not be liable for harm caused by his or her act or omission if:

- The volunteer was acting within the scope of his or her responsibilities for the organization; and
- The harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.<sup>39</sup>

The FVPA also provides immunity from civil liability if the volunteer was acting with good faith within the scope of his or her duties, as an ordinary reasonable person would have acted under the same or similar circumstances, and the harm was not caused by wanton or willful misconduct.<sup>40</sup> Neither the VPA or the FVPA provide immunity to the nonprofit organization itself.

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<sup>28</sup> Safe Families for Children, How Safe Families Works, available at: <http://safe-families.org/about/how-safe-families-works/> (last accessed February 8, 2017).

<sup>29</sup> *Id.*

<sup>30</sup> Safe Families for Children, About Us, available at <http://safe-families.org/about/> (last accessed February 8, 2017).

<sup>31</sup> Indiana (Burns Ind. Code Ann. § 29-3-9-1); Kansas (K.S.A. § 38-2403); Kentucky (KRS § 403.352); Maine (18-A M.R.S. § 5-104); Mississippi (Miss. Code Ann. § 93-31-3); Oklahoma (10 Okl. St. § 700); Oregon (ORS § 109.056); West Virginia (W. Va. Code § 49-8-3); and Wisconsin (Wis. Stat. § 48.979).

<sup>32</sup> Safe Families for Children, Locations, available at <http://safe-families.org/about/locations/> (last visited February 9, 2017).

<sup>33</sup> <https://www.dartington.org.uk/projects/view/9>

<sup>34</sup> Safe Families for Children, About Us, Impact, available at <http://safe-families.org/about/impact/> (last accessed February 10, 2017).

<sup>35</sup> U.S. Department of Health and Human Services, Child Welfare Information Gateway, Library, <https://library.childwelfare.gov/cwig/ws/library/> (last accessed February 11, 2017).

<sup>36</sup> California Evidence Based Clearinghouse for Child Welfare, <http://www.cebc4cw.org/> (last accessed February 10, 2017).

<sup>37</sup> Volunteer Protection Act of 1997, 42 U.S.C. § 14501 *et seq.*

<sup>38</sup> S. 768.1355, F.S.

<sup>39</sup> 42 U.S.C. § 14503.

<sup>40</sup> S. 768.1355(1), F.S.

## Effect of Proposed Changes

HB 363 creates s. 409.1761, F.S., relating to organizations providing respite care for children not in the child welfare system. The purpose of the statute is to prevent the entry of a child at risk of abuse or neglect into the child welfare system.

The bill establishes requirements for a “qualified nonprofit organization,” defined as a Florida private nonprofit organization that assists parents by providing temporary respite care for children by volunteer respite families under a contract for care. The nonprofit organization must:

- Register and provide certain information to DCF about the organization.
- Identify appropriate and safe placements for children based on the results of the background screenings and home visits.
- Train volunteer families that will serve as volunteer respite families under a contract for care.
- Provide ongoing services and resources to support the minor child, parents, and volunteer respite families.

In addition, the organization must ensure that level 2 background screenings are conducted on the employees and volunteers of the organization as well as members of the volunteer respite families who are 18 years of age or older. All members of the volunteer family household between 12 and 18 years of age are not required to be fingerprinted but must be screened for delinquency records. The department must inform the organization if such screened persons are eligible to volunteer with children pursuant to s. 409.175, F.S., and ch. 435, F.S.

The bill excludes a qualified nonprofit organization from the definition of a “child-placing agency”<sup>41</sup> under ch. 409, F.S., thereby exempting the organization from DCF licensure requirements unless the qualified nonprofit organization pursues child-placing activities. Further, the bill provides that facilitating the care of a child with a volunteer respite family with a contract for care does not constitute placing the child in foster care and the volunteer respite home is not required to be licensed as a family foster home.

### *Contract for Care*

The bill authorizes a parent of a minor child to delegate the care of his or her child to a volunteer respite family by executing a contract for care. The bill prohibits the parent and the agent from receiving any compensation related to the delegation of care and custody.

The contract for care may not exceed a period of 6 months, and may not delegate the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights of the child.

The contract for care must be signed by both parents, if both parents are living and have shared custody of the child. If the parents do not have shared custody, the parent with sole custody may execute the contract but must notify the noncustodial parent at his or her last known address within 5 days. Notification is not required to a noncustodial parent whose parental rights have been terminated. The contract for care must also be signed by all household members of the volunteer respite family 18 years of age and older and by a representative of the nonprofit organization attesting that the agent has successfully completed the required training and background screening. Finally, the contract for care must be witnessed by two people and notarized.

The bill details the requirements of a contract for care to include sixteen distinct pieces of information relating to the identity of the child and parent(s), the identity of the volunteer respite family, delegated

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<sup>41</sup> “Child-placing agency” means any person, corporation, or agency, public or private, other than the parent or legal guardian of the child or an intermediary acting pursuant to chapter 63, 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. S. 409.175(2)(d), F.S.

and non-delegated powers, expiration date, and the health, education, normalcy, and discipline of the child.

Any parent of the child with custodial rights may revoke the contract for care prior to its expiration, and the volunteer respite family must return the child to the custody of the revoking parent as soon as reasonably possible.

The bill further specifies that the execution of a contract for care does not deprive a parent of parental rights, obligations, or authority regarding custody, visitation, or support.

#### *Child Welfare Investigations*

The bill permits DCF, during a child protective investigation that does not result in an out-of-home placement, to provide information to a parent regarding temporary respite care services by a qualified nonprofit organization. This aligns with DCF's requirement to provide information on family support resources and prevention services in the community.

The execution of a contract for care authorized by the bill after using such community services may not be construed as abandonment, abuse, or neglect as defined in s. 39.01, F.S. without other evidence or except as otherwise provided by law. However, the bill does not prevent DCF or law enforcement from investigating allegations of abuse, abandonment, neglect, unlawful desertion of a child, or human trafficking.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 409.1761, F.S., relating to organizations providing respite care for children not in the child welfare system.

**Section 2:** Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill requires Level 2 background screening for employees and volunteers of a nonprofit agency that may have unsupervised contact with the children, the agent and any household members 12 and older. The number of individuals required to be screened by DCF is indeterminate, but most likely not significant.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.



C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires notarization of a contract for care for the temporary care of a minor child. The cost of notarial services varies but is expected to be insignificant. Additionally, a custodial parent that is required to provide notice to a noncustodial parent of the delegation of care and custody may incur approximately \$6.74 in postage costs. The bill requires a qualified nonprofit organization to complete a criminal history record check on certain individuals at \$44 per individual.<sup>42</sup> Also, additional fees may be charged by each live scan<sup>43</sup> provider for their services.

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:

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.<sup>44</sup> The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.<sup>45</sup>

These constitutional protections extend to the parenting interests of custodial and non-custodial parents alike.<sup>46</sup> To the extent that the bill authorizes delegation of the care and custody of a minor child to a volunteer respite family through a contract for care without the consent of both parents, such delegation may be unenforceable if challenged by a nonconsenting parent.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>42</sup> The cost breakdown is \$20 for the state and national criminal history checks and \$24 for 5 year fingerprint retention in the Care Provider Screening Clearinghouse.

<sup>43</sup> Live Scan is an inkless electronic fingerprinting technology, allowing the electronic recording, storage, and transmission of fingerprints.

<sup>44</sup> *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

<sup>45</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

<sup>46</sup> See *Stanley v. Illinois*, 405 U.S. 645(1972); *Caban v. Mohammed*, 441 U.S. 380 (1979).