FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: HB 1505 COMPANION BILL: SB 1288 (Grall)

TITLE: Parental Rights

LINKED BILLS: None
SPONSOR(S): Plakon, Kendall

RELATED BILLS: None

Committee References

Health & Human Services
19 Y, 7 N

Education & Employment

SUMMARY

Effect of the Bill:

HB 1505 expands the rights of parents with respect to their minor children. The bill grants additional rights to parents relating to surveys and questionnaires intended for their children.

The bill eliminates exceptions to a parent's rights relating to health care decisions, medical record access, and DNA collection for a minor child. The bill further modifies parental consent requirements for health care services and the use of biofeedback devices on minors. The bill restricts medical procedures on minors in health care facilities, requiring written parental consent unless emergency care is needed or a court order is obtained.

Fiscal or Economic Impact:

None

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ANALYSIS

EFFECT OF THE BILL:

Parental Rights

The "Parents' Bill of Rights," (PBR) Chapter 1014, F.S., enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures. The PBR outlines specific parental rights as well as guarantees that a parent of a minor child has inalienable rights that are more comprehensive than those specified in law. The state, its political subdivisions, and any other governmental entities or institutions, are prohibited from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.

HB 1505 expands the rights of parents with respect to their minor children. The bill establishes new parental rights relating to a minor child's completion of surveys and questionnaires administered to minor children by the state, any of its political subdivisions, and any other governmental entity or institution. (Section $\underline{1}$). The bill grants parents the right to:

- Review and consent to any survey or questionnaire given to their child; and
- Approve the sharing or distribution of survey or questionnaire responses or results, after receiving notice of the recipient, purpose, and specific information to be shared.

Parental Rights Relating to Health Care

STORAGE NAME: h1505a.HHS

DATE: 3/31/2025

Under current law, the PBR recognizes that in certain circumstances a parent's authority to exercise a particular right may be prohibited or otherwise limited by existing law and establishes exceptions to the parental right for those instances. HB 1505 removes this exception to the parental rights to:

- Make health care decisions for his or her minor child:
- Access and review all medical records of his or her minor child, unless the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released; and
- Consent in writing before any record of his or her minor child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as authorized pursuant to a court order. (Section 1).

Current law also allows a health care practitioner to provide certain health care services to a minor without parental consent where expressly authorized by law. The bill removes this exception, thus prohibiting a health care practitioner, or an individual employed by such a practitioner, from providing, soliciting, or arranging to provide health care services or prescribing medicinal drugs to a minor child without first obtaining written parental consent, with no exceptions. (Section 2).

The bill further removes an exception that previously allowed a medical procedure to be performed on a minor child by a health care provider without parental consent if otherwise authorized by law. Under the bill, a health care provider may not allow a medical procedure to be performed on a minor child in its facility without first obtaining written parental consent, except in cases of emergency medical care or when authorized by a court order. (Section 2).

By removing these exceptions, the bill essentially overrides provisions in current law which authorize minors to obtain certain health care services without parental consent. This includes current law related to:

- Family planning services²
- Treatment for sexually transmissible diseases;3
- Mental health services:4
- Blood donation;⁵
- Pregnancy-related care:6 and
- Substance abuse treatment.⁷

The bill classifies the use of a biofeedback device as a health care service and requires express written permission from a parent or guardian before such a device may be used on a minor child. The bill defines a "biofeedback device" as an instrument or sensor used to measure bodily functions, such as heart rate variability, brain waves, or breathing rate for the purpose of improving performance. The bill requires all results from a biofeedback device be shared with the child's parent or guardian and otherwise held as a confidential medical record. (Section 2).

The bill re-enacts portions of s. 408.813, F.S., and s. 456.072, F.S., to maintain the validity of cross-references to the PBR. (Sections 3 and 4).

The bill provides an effective date of July 1, 2025. (Section 5).

⁷ S. <u>397.601, F.S.</u>

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¹ The term "provider" under Florida law refers to any facility, agency, or service that is regulated by the Agency for Health Care Administration and requires licensure to provide services. Licensed providers include, but are not limited to, hospitals, nursing homes, home medical equipment providers, and health care clinics. See, ss. 408.802, F.S., and 408.803, F.S.

² S. <u>381.0051, F.S.</u>

³ S. <u>384.30, F.S.</u>

⁴ S. <u>394.4784, F.S.</u>

⁵ S. <u>743.06, F.S.</u>

⁶ S. 743.065, F.S.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Parental Rights in Florida

Florida law protects a broad set of parental rights, ensuring that parents retain authority over education, healthcare, and other key decisions affecting their children.⁸

In 2021,9 the legislature established the <u>Parent's Bill of Rights</u> (PBR) which enumerates parental rights with respect to a minor child for education, health care, and criminal justice procedures.¹⁰ The PBR expressly prohibits the state, its political subdivisions, any other governmental entities and any other institutions from infringing upon the fundamental right of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating a compelling state interest for such actions.¹¹

The PBR enumerates several rights of a parent, including:12

- The right to direct the education and care of his or her minor child;
- The right to direct the upbringing and the moral or religious training of the minor child;
- The right to access and review all school records relating to the minor child;
- The right to make health care decisions for his or her minor child, unless otherwise prohibited by law; and
- The right to access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.

The PBR is not exhaustive but, unless required by law, the rights of a parent of a minor child in Florida may not be limited or denied. To this end, any employee of the state, or any of its political subdivisions, or any governmental entity, may be subject to disciplinary action if they encourage or coerce a minor child to withhold information from his or her parent. Here

However, the PBR specifies that it does not:15

- Authorize a parent of a minor child in this state to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law;
- Condone, authorize, approve, or apply to a parental action or decision that would end life;
- Prohibit a court of competent jurisdiction, law enforcement officer, or employees of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority;
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law; or
- Apply to abortion, which is governed by chapter 390, F.S.¹⁶

Florida parents also possess the right to examine and provide consent before a school district may administer a student well-being questionnaire or health screening form to a student in kindergarten through grade 3.17

17 S. 1001.42(8), F.S.

⁸ S. 1014.04(1), F.S.

⁹ Ch. 2021-199, L.O.F.

¹⁰ Ch. 1014, F.S.

¹¹ S. <u>1014.03, F.S.</u>

¹² S. <u>1014.04(1), F.S.</u>

¹³ S. <u>1014.04(4), F.S.</u>

¹⁴ S. <u>1014.04(3)</u>, F.S.

¹⁵ S. <u>1014.04(2), F.S.</u>

¹⁶ S. <u>1014.06, F.S.</u>

Parental Rights Relating to Health Care

Parents have broad authority to make health care decisions for their minor children including access to medical records and control over medical services and personal health data. The PBR grants parents the right to:

- Make health care decisions for his or her minor child, unless otherwise prohibited by law;
- Access and review all medical records, unless prohibited by law or the parent is under investigation for a crime against the child and law enforcement has requested records not be released;
- Consent in writing before a biometric scan of his or her minor child is made, shared, or stored; and
- Consent in writing before any record of his or her minor child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as required by general law or authorized pursuant to a court order.

Health care practitioners²⁰ are prohibited from providing, soliciting, or arranging to provide health care services or prescribe medicinal drugs to a minor child without written parental consent, unless otherwise authorized by law. Health care providers²¹ may not allow a medical procedure to be performed on a minor child without written parental consent, unless otherwise authorized by law or by a court order.²²

Exceptions to Parental Consent in Health Care

Current law allows for minors to make certain health care decisions independently without requiring prior parental approval. The PBR does not interfere with these exceptions outlined in current law. Exceptions to a parent's right to make health care decisions for their minor child include:

- Family Planning Services A physician²³ may render maternal health and contraceptive information and services of a nonsurgical nature to a minor without parental consent in certain circumstances;²⁴
- Parental Notice and Consent for Abortion A minor may petition a circuit court for a judicial waiver of the parental notice and consent requirements for a minor to obtain an abortion;²⁵
- Treatment for Sexually Transmissible Diseases (STDs) A minor may consent to examination and treatment for STDs without parental involvement;²⁶
- Emergency Medical Treatment A minor may receive emergency medical care if parental consent is unavailable;²⁷
- Mental Health Services A minor aged 13 or older may consent to diagnostic and evaluative mental health services. However, parental consent is required for therapeutic services beyond two visits within a oneweek period;²⁸
- Blood Donation A minor at least 17 years old may donate blood, provided there is no written objection from the parent or guardian;²⁹

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¹⁸ S. <u>1014.04(1), F.S.</u>

¹⁹ S. <u>1014.04(1)</u>, F.S.

²⁰ A health care practitioner is any person licensed to practice a health care profession regulated under the Department of Health. The term includes physicians, nurses, pharmacists, mental health professionals, and other medical providers. See, <u>s. 456.001(4), F.S.</u>

²¹ The term "provider" under Florida law refers to any facility, agency, or service that is regulated by the Agency for Health Care Administration and requires licensure to provide services. Licensed providers include, but are not limited to, hospitals, nursing homes, home medical equipment providers, and health care clinics. *See*, s<u>s. 408.802, F.S.</u>, and <u>408.803, F.S.</u>

²² S. <u>1014.06(1), F.S.</u>

²³ This is limited to physicians licensed under chapter 458 or chapter 459, F.S.

²⁴ S. <u>381.0051, F.S.</u>

 $^{^{25}}$ S. $\frac{390.01114$, F.S. and Fla. Const. Art. X, S. 29.; the rights enumerated in the PBR expressly do not apply to abortion, which is governed by ch. 390, F.S., see, s. $\frac{1014.06(3)}{5}$, F.S.

²⁶ S. <u>384.30, F.S.</u>; see also, Nelson, K. M., Skinner, A., & Underhill, K. (2022). *Minor Consent Laws for Sexually Transmitted Infection and HIV Services*. JAMA, 328(7), 674–676. https://doi.org/10.1001/jama.2022.10777; all 50 states and D.C. allow minors to consent to testing and treatment for sexually transmitted infections without parental involvement. Some states impose a minimum age of consent of 12 or 14 for this treatment. See also, Pampati, S., Liddon, N., Dittus, P. J., Adkins, S. H., & Steiner, R. J. (2019). *Confidentiality Matters but How Do We Improve Implementation in Adolescent Sexual and Reproductive Health Care?*. The Journal of adolescent health: official publication of the Society for Adolescent Medicine, 65(3), 315–322. https://doi.org/10.1016/j.jadohealth.2019.03.021; research has shown that adolescents are more likely to seek sexual and reproductive health care and provide honest information when confidentiality is protected.

²⁷ S. <u>743.064, F.S.</u>

²⁸ S. <u>394.4784, F.S.</u>

- Pregnancy-Related Care An unwed, pregnant minor may consent to medical or surgical care related to her pregnancy. However, this does not include medical care unrelated to pregnancy;³⁰
- Substance Abuse Treatment A minor may consent to substance abuse treatment without parental approval;31 and
- Substitute Consent If a parent or legal guardian is unavailable and cannot be contacted after reasonable attempts, certain relatives—including stepparents, grandparents, adult siblings, or adult aunts and uncles—may provide consent for the minor's medical treatment.³²

Current law allows physicians, paramedics, emergency medical technicians, or other emergency medical services personnel to provide emergency medical care or treatment to a minor without parental consent when a child has been injured in an accident or is suffering from an acute illness, disease, or condition and delaying treatment would endanger the health or physical well-being of the minor. Even in emergency situations, medical treatment can only be provided without parental consent if:33

- The child's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the child to the hospital; and
- The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.

After emergency medical care or treatment has been administered, the hospital must notify the parent or legal guardian as soon as possible. Hospital records are required to document the reason why parental consent was not initially obtained, the reasonable attempts that were made to contact the parent or guardian, and a statement from the attending physician that immediate emergency medical care or treatment was necessary for the child's health or physical well-being.34

Court-Ordered Limits on Parental Rights in Health Care

In certain circumstances, a parent may be legally prohibited from making health care decisions for their minor child, including:

- Termination or Restriction of Parental Rights A parent loses medical decision-making authority if a court terminates their rights due to abuse, neglect, or abandonment. In such cases, a legal guardian, foster parent, or the Department of Children and Families (DCF) assumes this role;35
- Court Orders for Abuse, Neglect, or Domestic Violence A court may issue a protective order restricting a parent's ability to make medical decisions;36
- Incapacity or Unfitness of the Parent A parent deemed legally incapacitated, such as due to severe mental illness or substance abuse, may lose decision-making authority, which transfers to a court-appointed guardian;37 and
- Court-Ordered Medical Treatment A court may override parental consent if a parent refuses life-saving or medically necessary treatment for their child.³⁸

These legal provisions ensure that minors receive necessary medical treatment when a parent is legally prohibited from providing consent.

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<sup>29</sup> S. 743.06, F.S.
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³⁰ S. <u>743.065, F.S.</u>

³¹ S. <u>397.601, F.S.</u>

³² S. 743.0645, F.S.

³³ S. <u>743.064, F.S.</u>

³⁴ S. <u>743.064(3)</u>, F.S.

³⁵ S. <u>39.806, F.S.</u>

³⁶ S. <u>741.30, F.S.</u>

³⁷ S. 744.3215, F.S.

³⁸ S. 39.407(2), F.S.

Enforcement of Parental Consent Requirements

Health care practitioners³⁹ are subject to disciplinary action for violations of professional standards or statutory requirements, including the failure to comply with parental consent requirements.⁴⁰ The Department of Health (DOH) investigates complaints against practitioners, facilitates the legal response when necessary, and then recommends a course of action to the appropriate professional regulatory board. The professional regulatory board ultimately determines the disciplinary action to be taken against practitioners.⁴¹ For professions that have no board, DOH determines the action and discipline to take against a practitioner and issues the final orders.⁴² DOH is responsible for ensuring that licensees comply with the terms and penalties imposed by the boards.⁴³ If a case is appealed, DOH defends the board's (or DOH's) final actions before the appropriate appellate court.44

A health care practitioner who has violated parental consent requirements may be subject to disciplinary action, including the following penalties:45

- Suspension or permanent revocation of a license;
- Administrative fines up to \$10,000 per violation;
- Practice restrictions, including limitations on work settings or the type of services the practitioner may provide:
- Probationary conditions, such as mandated supervision, continuing education, or corrective actions;
- Issuance of a reprimand or letter of concern; or
- Requirement to refund fees billed to a patient or third-party payer.

Additionally, the Agency for Health Care Administration may penalize providers⁴⁶ that fail to comply with parental consent requirements, up to \$500 per offense.⁴⁷

Family Planning Services

Federal Law

Title X of the Public Health Service Act establishes a grant program for family planning services.⁴⁸ Family planning services are a broad range of medically approved services, including Food and Drug Administration-approved contraceptive products and natural family planning methods, for clients who want to prevent pregnancy and space births, pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, sexually transmitted infection services, and other preconception health services.⁴⁹ Recipients of Title X grants are required to maintain the confidentiality of the individuals receiving services through the family planning services project.

Federal law expressly states that Title X projects may not require consent of parents or guardians for the provision of services to minors and project staff is prohibited from notifying a parent or guardian before or after a minor has requested and/or received Title X family planning services.⁵⁰

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³⁹ A health care practitioner is any person licensed to practice a health care profession regulated under the Department of Health. The term includes physicians, nurses, pharmacists, mental health professionals, and other medical providers. See, s. 456.001(4), F.S. ⁴⁰ S. <u>456.072(1), F.S.</u>

⁴¹ S. <u>456.072, F.S.</u>; See also, Department of Health, A Quick Guide to the MQA Disciplinary Process: Probable Cause Panels. Available at https://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/_documents/a-quick-guide-to-the-mqadisciplinary-process.pdf (last visited March 29, 2025)

⁴² Id. Professions which do not have a board include naturopathy, nursing assistants, midwifery, respiratory therapy, dietetics and nutrition, electrolysis, medical physicists, and school psychologists.

⁴³ *Id.*

⁴⁴ *Id*.

⁴⁵ S. 456.072(2), F.S.

⁴⁶ The term "provider" under Florida law refers to any facility, agency, or service that is regulated by the Agency for Health Care Administration and requires licensure to provide services. Licensed providers include, but are not limited to, hospitals, nursing homes, home medical equipment providers, and health care clinics. See, ss. 408.802, F.S., and 408.803, F.S.

⁴⁷ S. <u>408.813(3), F.S.</u>

⁴⁸ 42 U.S.C. s. 300.

⁴⁹ 42 C.F.R. 59.2

^{50 2} U.S.C. s. 300.

The bill's provisions related to family planning services funded through a Title X grant may be preempted by federal law.⁵¹

Florida Law

Current law requires DOH to establish a comprehensive family planning program which must include, at a minimum:⁵²

- Comprehensive family planning education and counseling programs;
- Prescription for and provision of all medically recognized methods of contraception;
- Medical evaluation, including cytological examination and other appropriate laboratory studies;
- Treatment of physical complications other than pregnancy resulting from the use of contraceptive methods;
- Provision of services at locations and times readily available to the population served; and
- Emphasis and stress on services for postpartum mothers.

A physician⁵³ under this program may render maternal health and contraceptive information and services of a nonsurgical nature to a minor without the consent of a parent or legal guardian if the minor:

- Is married;
- Is a parent;
- Is pregnant; or
- May, in the opinion of the physician, suffer probable health hazards if such services are not provided.

The program is funded by both state funds and Federal Title X funds, so it is subject to Title X regulations, including the prohibition on informing parents of a minor's use of program services. The exact impact of the Title X preemption on the program and the bill's provisions is uncertain.

Biofeedback Devices

Biofeedback is a technique that enables individuals to gain control over physiological processes by providing real-time feedback on bodily functions such as heat rate, muscle tension, and brainwave activity.⁵⁴

Biofeedback Applications

In educational settings, biofeedback has been explored as a tool to enhance student performance, manage stress, and address behavioral and learning challenges.⁵⁵ Studies have investigated its effectiveness in treating childhood behavioral and learning disorders, including anxiety and attention-related conditions.⁵⁶ Some studies suggest that biofeedback can be comparable to cognitive-behavioral therapy (CBT) for anxiety-related disorders, with no significant differences in treatment outcomes.⁵⁷ Other studies indicate that biofeedback, when combined with

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 $^{^{51}}$ The U.S. 5^{th} District Court of Appeals recently held that a Texas law granting parents the right to consent to their minor children's medical care was not preempted by Title X. See *Deanda v. Becerra* 96 F.4th 750 (5th DCA 2024).

⁵² S. <u>381.0051</u>, F.S.

⁵³ This is limited to physicians licensed under chapter 458 or chapter 459, F.S.

⁵⁴ Mayo Clinic, *Biofeedback Basics*. Available at https://www.mayoclinic.org/tests-procedures/biofeedback/about/pac-20384664 (last visited March 28, 2025).

⁵⁵ ResearchGate, *Reducing Anxiety and Improving Academic Performance Through a Biofeedback Relaxation Training Program*. Available at https://www.researchgate.net/publication/317660383 Reducing Anxiety and Improving Academic Performance Through a Biofeedback Relaxation Training Program (last visited March 28, 2025).

⁵⁶ ResearchGate, *The Use of Biofeedback on Students: A Systematic Review*. Available at https://www.researchgate.net/publication/355655679 The Use of Biofeedback on Students a Systematic Review (last visited March 28, 2025).

⁵⁷ ScienceDirect, Comparing Cognitive-Behavioral Therapy and Biofeedback for Anxiety Disorders. Available at https://www.sciencedirect.com/science/article/abs/pii/000579679500008L (last visited March 28, 2025).

behavior modification training, has shown improvements in attention regulation and behavioral outcomes for children with ADHD.⁵⁸

Biofeedback devices are also marketed for non-clinical educational applications. Some products, such as wearable biofeedback tools and neurofeedback headsets, claim to help students improve focus and emotional regulation.⁵⁹ Educational programs have incorporated biofeedback training in stress management programs and learning interventions.⁶⁰

Regulation of Biofeedback Devices in Florida

Florida law regulates certain biofeedback applications under the practice of psychology and the practice of school psychology, as defined in the Psychological Services Act.⁶¹ The law includes biofeedback as one of the scientific and applied psychological principles, methods, and procedures used for modifying human behavior and treating mental, nervous, psychological, and emotional disorders.⁶² The use of biofeedback for psychological purposes is restricted to psychologists appropriately trained in its use.⁶³

Additionally, school psychologists are authorized to provide psychoeducational, developmental, and behavioral interventions in school settings.⁶⁴ The practice of school psychology includes counseling, behavior techniques, environmental management, and group processes—services that may overlap with certain biofeedback applications.⁶⁵

Neurofeedback, a subset of biofeedback that specifically targets brainwave activity, is regulated by the Board of Occupational Therapy Practice.⁶⁶ Practitioners using neurofeedback for clinical purposes must complete at least 16 hours of didactic instruction and five supervised treatments in a clinical setting.⁶⁷

Biofeedback devices marketed for educational or non-clinical applications are not specifically addressed under Florida law. While some biofeedback tools are designed for licensed professionals, others are sold directly to consumers, including educators and students.⁶⁸

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⁵⁸ Frontiers in Psychiatry, *Behavior Modification and EEG Biofeedback Therapy for ADHD*. Available at https://www.frontiersin.org/journals/child-and-adolescent-psychiatry/articles/10.3389/frcha.2023.1235310/full (last visited March 28, 2025)

⁵⁹ Biofeedback & Neurofeedback Therapy, *Biofeedback for Academic Success*. Available at <a href="https://biofeedback-neurofee

⁶⁰ Biofeedback & Neurofeedback Therapy, *Biofeedback for Academic Success*. Available at <a href="https://biofeedback-neurofee

⁶¹ Ss. 490.001, F.S., and 490.003, F.S.

⁶² S. 490.003(4), F.S.

⁶³ S. 490.003(4)(b), F.S.

⁶⁴ S. <u>490.003(5), F.S.</u>

⁶⁵ S. 490.003(5), F.S.

⁶⁶ Florida Board of Occupational Therapy, *Regulations on Neurofeedback Devices*. Available at https://floridasoccupationaltherapy.gov/prescription-devices-modalities-certification-faqs/ (last visited March 28, 2025).

⁶⁷ Rule 64B11-4.001(3), F.A.C.

⁶⁸ Mayo Clinic, *Biofeedback: What is it and how does it work?* Available at https://www.mayoclinic.org/tests-procedures/biofeedback/about/pac-20384664 (last visited March 28, 2025); MindBody Devices, *Biofeedback Devices*. Available at https://mindbodydevices.com/biofeedback-devices/ (last visited March 28, 2025); Biofeedback & Neurofeedback Therapy, *Biofeedback for Academic Success*. Available at https://biofeedback-neurofeedback-neurofeedback-therapy.com/biofeedback-for-academic-success/ (last visited March 28, 2025).

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COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Health & Human Services	19 Y, 7 N	3/31/2025	Calamas	McElroy
Committee				
<u>Judiciary Committee</u>				
Education & Employment				
<u>Committee</u>				

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