Future of Florida's Families Committee

Wednesday, March 28, 2006
10:30 AM – NOON
12 House Office Building

Revised

Bill Galvano
Chair

Aaron Bean
Vice Chair

Florida House of Representatives

Future of Florida's Families Committee

Bill Galvano
Chair

AGENDA
March 28, 2006
10:30 AM – NOON
12 HOB

Opening Remarks by Chair Galvano

Consideration of the following bills:

HB 457 – Guardianship by Rep. Sands

HB 459 – Public Records by Rep. Sands

HB 999 CS – Suicide Prevention by Rep. Adams

HB 1047 CS – Parental Relocation with a Child by Rep. Stargel

HB 1099 CS – Court Actions Involving Families by Rep. Planas

HB 1239 – Child Abuse by Rep. Detert

HB 1491 – Children in Foster Care by Rep. A. Gibson

HB 7151 – Adoption by Civil Justice and Rep. Mahon

Consideration of Proposed Committee Bills:

PCB FFF 06-02 – Child Support

PCB FFF 06-05 – Forensic Treatment and Training

Closing Remarks by Chair Galvano

214 House Office Building, 402 South Monroe Street Tallahassee, Florida 32399-1300 (850) 488-8315

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 457 Guardianship
SPONSOR(S): Sands
TIED BILLS: HB 459 **IDEN./SIM. BILLS:** CS/SB 472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee		Preston	Collins
2) Civil Justice Committee			
3) Judiciary Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

HB 457 incorporates the recommendations of the 2003 Guardianship Task Force, the Florida State Guardianship Association, the Statewide Public Guardianship Office, and the State Long-term Care Ombudsman Program within the Department of Elder Affairs (DOEA). Provisions of the bill address:

- Creating definitions for the terms "audit" and "surrogate guardian," and amending the definition of the term "professional guardian."
- Increasing the dollar threshold required for a court to appoint a guardian ad litem to review a settlement from $15,000 to $50,000 when the settlement involves a minor.
- Creating new reporting requirements related to the appointment of emergency temporary guardians.
- Creating new requirements related to investigations of credit history and background screening for guardians, including background investigations using inkless electronic fingerprints instead of fingerprint cards.
- Decreasing the amount of time during which a guardian must complete the required instruction and education from 1 year to 4 months.
- Emphasizing the importance of an incapacitated person's right to quality of life, clarifying which rights cannot be delegated, reinforcing the significance of the right to marry, and subjecting the right to marry to court approval.
- Creating new restrictions and requirements relating to the appointment of an attorney for an alleged incapacitated person and providing for new requirements for members of examining committees.
- Creating requirements for additional information that must be included in an annual guardianship plan.
- Creating additional requirements relating to proof of payment for expenditures and disbursements made on behalf of a ward.
- Providing clerks of court with the authority to audit simplified and final accountings.
- Creating a new section of law related to the appointment of surrogate guardians.

The bill allows for the imposition of a surcharge on non-criminal traffic infractions and certain criminal violations to fund a county's participation in the public guardianship program. The surcharge must be approved by either a vote of two-thirds of the board of county commissioners or a referendum approved by the county's electors. The bill also provides for an $18 surcharge to be added to the fine for all misdemeanors; $15 of which would be used to fund public guardianship programs, with the remaining $3 to be retained by the clerks of the court as a service fee.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases requirements and duties for a number of entities, including guardians, the clerks of court, and the Statewide Public Guardianship Office, with the goal of reducing risk to those being served through the guardianship process. The bill also requires the Statewide Public Guardianship Office to adopt a rule related to acceptable methods for completing credit investigations. The Florida Department of Law Enforcement must adopt a rule to establish procedures for the retention of guardian fingerprints and dissemination of search results of all arrest fingerprint cards.

Ensure lower taxes – The bill allows the imposition of a surcharge on non-criminal traffic infractions and some criminal violations to fund a county's public guardianship program. The surcharge must be approved by either a vote of two-thirds of the board of county commissioners or a referendum approved by the county's electors. The bill also provides for an additional surcharge on the fine for all misdemeanors; a portion of which would be used to fund public guardianship programs, with the remaining portion being retained by the clerks of court as a service fee.

Safeguard individual liberty – The bill contains provisions designed to reduce risk to wards and ensure that they are better served by the guardianship process.

Empower families – The bill has the potential to increase the number of individuals able to access the services of a public guardian.

B. EFFECT OF PROPOSED CHANGES:

Guardianship and Public Guardianship

Guardianship is the process designed to protect and exercise the legal rights of individuals with functional limitations that prevent them from being able to make their own decisions when they have not otherwise planned in advance for such a loss of capacity. Those individuals in need of guardianship may have dementia, Alzheimer's disease, a developmental disability, chronic mental illness or other such conditions that may limit function. In such instances, a guardian may be appointed by the court to manage some or all the affairs of another.

Prior to a guardianship being established, it must first be determined that a person lacks the capacity required to make decisions concerning his or her personal and/or financial matters and that no other less restrictive alternatives exist. Upon making such a determination, the court may appoint either a limited guardian[1] or a plenary guardian.[2] In the vast majority of cases that result in guardianship, the court will appoint a family member or close friend of the ward to act as guardian. However, when a family member or close friend is unavailable or unwilling to act as guardian, there are generally two options a court may use to provide assistance to the incapacitated person:

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[1] A limited guardian is defined as a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of limited guardian. See section 744.102(8)(a), Florida Statutes.

[2] A plenary guardian is defined as a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property. See section 744.102(8)(b), Florida Statutes.

- Appoint a professional guardian to act on the ward's behalf when the ward has assets that may be used to pay for guardianship services provided;[3] or

- Appoint a public guardian in instances where the incapacitated ward does not have enough assets to afford a professional guardian.[4]

Department of Elder Affairs, the Statewide Public Guardianship Office, and the Guardianship Task Force

In order to ensure that Florida's incapacitated residents who are indigent receive appropriate public guardianship services, the 1999 Florida Legislature created the Statewide Public Guardianship Office (SPGO). The SPGO is responsible for establishing local offices of public guardian and ensuring the registration and education of public and professional guardians.[5] Currently, public guardianship services are provided to persons in 22 counties through 15 local offices of public guardian and during 2003, those 15 offices served a total of 1716 wards. In May 2003, the SPGO was transferred under the direct supervision of the Secretary of Elder Affairs.[6]

The 2003 Legislature also created the Guardianship Task Force within DOEA, for the purpose of recommending specific statutory and other changes for achieving best practices in guardianship and for achieving citizen access to quality guardianship services. The final report was submitted to the Secretary of Elder Affairs on January 1, 2005.[7]

Public Guardianship Funding Through Court Filing Fees

Until July 2004, each county was authorized under section 28.241, Florida Statutes, to impose, by ordinance or by special or local law, a fee of up to $15 for each civil action filed, for the establishment, maintenance, or supplementation of a public guardian. However, this authority was rescinded as part of the legislative implementation of Constitutional Revision 7 to Article V of the State Constitution. Revision 7, adopted by the voters in 1998, required the state to shift primary costs and funding for the operation of the state courts system to the state and to reallocate other costs and expenses among the local governments and other users and participants in the state courts system. As part of this implementation, all filing fees for trial and appellate proceedings were regulated by the state, with a portion to revert directly to the Department of Revenue to be used to fund court proceedings. However, the $15 allowable for additional expenses that counties were formerly authorized to implement in order to fund public guardianship programs was also removed.[8]

HB 457

The bill incorporates the recommendations of the Guardianship Task Force, the Florida State Guardianship Association, the Statewide Public Guardianship Office, and the State Long-term Care Ombudsman Program within the Department of Elder Affairs. Specifically, the bill contains provisions related to the following:

Definitions

The bill defines the term "audit" for purposes of Chapter 744 as a systematic review of financial documents in accordance with generally accepted auditing standards. The term "surrogate guardian" is defined as a professional guardian who is designated by a guardian to exercise the powers of the guardian if the guardian is unavailable to act. A change to the definition of professional guardian

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[3] See sections 744.102(16) and 744.334, Florida Statutes.
[4] See section 744.703, Florida Statutes.
[5] See section 744.7021, Florida Statutes and Chapter 99-227, Laws of Florida.
[6] See Chapter 2003-57, Laws of Florida.
[7] See Chapter 2003-57, Laws of Florida.
[8] See Chapter 2003-402, Laws of Florida.

clarifies that professional guardians do not have to receive compensation in order to serve as professional guardians as long as they meet all statutory requirements.

Natural Guardians

The bill clarifies that if a parent of a minor child dies, the surviving parent remains as the sole natural guardian even if he or she remarries. Regarding claims or causes of action on behalf of minor children, the bill clarifies that natural guardians are authorized to make certain financial decisions for minor children when the aggregate amount is not more than $15,000. Natural guardians are precluded from using a ward's property for the guardian's benefit or to satisfy the guardian's support obligation to the ward without court approval.

Guardian ad Litem Appointments for Minors

- The court is authorized to appoint a guardian ad litem to represent the minor's interest, before approving a settlement in which a minor has a damages claim in which the gross settlement is more than $15,000, and the court is required to appoint a guardian ad litem where the gross settlement is $50,000 or more;
- The guardian ad litem appointment is required to be without the necessity of bond or notice;
- The duty of the guardian ad litem is to protect the minor's interests in accordance with Florida Probate Rules;
- A court is not required to appoint a guardian ad litem if a guardian has previously been appointed who does not have an adverse interest to the minor; however, a court may appoint a guardian ad litem if the court believes it necessary to protect the minor's interests; and
- The court is required to award reasonable fees and costs to the guardian ad litem, unless waived, to be paid against the gross proceeds of the settlement.

Emergency Temporary Guardians

- The bill increases the initial length of time of an emergency temporary guardianship from 60 days to 90 days;
- An emergency temporary guardian is a guardian for the property and, as such, must include certain information related to accounting and inventory in the final report;
- In instances where the emergency temporary guardian is a guardian of the person, the final report must include such information as residential placement, medical condition, mental health and rehabilitative services, and the social condition of the ward; and
- An emergency temporary guardian is required to file a final report within 30 days upon expiration of the guardianship and a copy of the final report must be provided to the successor guardian and the ward.

Standby Guardianships

- The court may appoint a standby guardian upon petition by the natural guardians or a legally appointed guardian;
- The court may also appoint an alternate if the standby guardian does not serve or ceases to serve;
- The court must serve a notice of hearing on the parents, next of kin, and any currently serving guardian unless notice is waived in writing or by the court for good cause shown; and
- The standby guardian must submit to a credit and criminal investigation.

Credit and Criminal Background Checks

- If a credit or criminal investigation is required, the court must consider investigation results before the appointment of a guardian;
- The court may require a credit investigation at any time;
- The clerk of the court is required to keep a file on each appointed guardian, retain investigation documents, and is required to collect up to $7.50 from each professional guardian for handling and processing of files;
- The court and the Statewide Public Guardianship Office are required to accept the satisfactory completion of a criminal background investigation by any method stated in these provisions;
- A guardian complies with background requirements by paying for and undergoing an electronic fingerprint criminal history check or a criminal history record check using a fingerprint card. The results of the criminal history check shall be immediately forwarded to the clerk who will maintain the results in the guardian's file, and the Statewide Public Guardianship Office;
- A professional guardian is required to complete and pay for a level 2 background screening every five years, a level 1 background screening every two years, unless screened using inkless electronic fingerprinting equipment, and a credit history investigation at least once every two years after appointment;
- Effective December 15, 2006, all fingerprints electronically submitted to Department of Law Enforcement shall be retained as provided by rule and entered into the statewide automated fingerprint identification system. The Department of Law Enforcement shall search all arrest fingerprint cards against those in the system, reporting any matches to the clerk of the court;
- The clerk of the court is required to forward any arrest records to the Statewide Public Guardianship Office within five days upon receipt;
- Guardians who elect to participate in electronic criminal history checks are required to pay a fee, unless the clerk of the court absorbs the fee;
- The Statewide Public Guardianship Office is required to adopt a rule detailing acceptable methods for completing a credit investigation, and may set a fee of up to $25 to reimburse costs; and
- The Statewide Public Guardianship Office may inspect at any time the results of any credit or criminal history check of a public or professional guardian.

Procedures to Determine Incapacity

- Attorneys representing the ward must be appointed from an attorney registry compiled by the circuit's Article V indigent services committee and must, effective January 1, 2007, have completed a minimum of 8 hours education in guardianship;
- A member appointed is precluded from subsequently being appointed as a guardian of the person;
- Each member must file an affidavit certifying completion of course requirements or that they will be completed within four months upon appointment;
- The initial training and continuing education program must be established by the Statewide Public Guardianship Office, in conjunction with other listed entities; and
- The committee's report must include the names of all persons present during the member's examination, the signature of each member, and the date and time each member examined the alleged incapacitated person.

Voluntary Guardianships

- A guardian must include in the annual report filed with the court a certificate from a licensed physician who examined the ward no more than 90 days before the annual report is filed with the court, which certifies that the ward is competent to understand the nature of the guardianship and is also aware of the ward's authority to delegate powers to the voluntary guardian; and
- Where a ward files a notice of termination of guardianship with the court, the notice must include a certificate from a licensed physician who has examined the ward no more than 30 days before the ward filed the notice, certifying that the ward is competent to understand the significance of the termination.

Surrogate Guardians

- A guardian may designate a surrogate guardian if the guardian is unavailable, but the surrogate must be a professional guardian;
- A guardian must file a petition with the court requesting permission to designate a surrogate;
- Upon approval, the court's order must contain certain information, including the duration of appointment, which is up to 30 days, extendable for good cause; and
- The guardian is liable for the acts of the surrogate guardian and may terminate the surrogate's authority by filing a written notice with the court.

Other Provisions

- An incapacitated person retains the right to receive necessary services and rehabilitation necessary to maximize the quality of life and the right to marry unless the right to enter into a contract has been removed, in which case the court must approve the right to marry;
- Professional and public guardians are required to ensure that each of the guardian's wards is personally visited by the guardian or staff at least once every calendar quarter, unless appointed only as a guardian of the property. During the visit, the guardian or staff person must assess the ward's physical appearance and condition, current living situation, and need for additional services;
- The annual guardianship report is required to be filed by April 1, rather than within 90 days after the end of the calendar year, which is current law;
- Annual guardianship plans for minors must include information about the minor's residence, medical and mental health conditions, and treatment and rehabilitation needs of the minor, and the minor's educational progress;
- Property that is under the guardian's control, including any trust of which the ward is a beneficiary but not under the control or administration of the guardian, is not subject to annual accounting requirements;
- If the ward dies, the guardian must file a final report with the court within 45 days after being served with letters of administration or curatorship, rather than the prompt filing requirement under current law; and
- Regarding the discharge of a guardian named as a personal representative for the ward's estate, any interested person may file a notice of a hearing on any objections filed by the beneficiaries of the ward's estate. If a notice is not served within 90 days after filing, objections are considered abandoned.

C. SECTION DIRECTORY:

Section 1. Amends s. 744.102, F.S., relating to definitions.

Section 2. Amends s. 744.1083, F.S., relating to professional guardian registration.

Section 3. Amends s. 744.301, F.S., relating to natural guardians.

Section 4. Creates s. 744.3025, F.S., relating to claims of minors.

Section 5. Amends s. 744.3031, F.S., relating to emergency temporary guardianship.

Section 6. Amends s. 744.304, F.S., relating to standby guardianship.

Section 7. Amends s. 744.3115, F.S., relating to advance directives for health care.

Section 8. Amends s. 744.3135, F.S., relating to credit and criminal investigation.

Section 9. Amends s. 744.3145, F.S., relating to guardian education requirements.

Section 10. Amends s. 744.3215, F.S., relating to rights of persons determined to be incapacitated.

Section 11. Amends s. 744.331, F.S., relating to procedures to determine incapacity.

Section 12. Amends s. 744.341, F.S., relating to voluntary guardianship.

Section 13. Amends s. 744.361, F.S., relating to powers and duties of a guardian.

Section 14. Amends s. 744.365, F.S., relating to verified inventory.

Section 15. Amends s. 744.367, F.S., relating to the duty to file an annual guardianship report.

Section 16. Amends s. 744.3675, F.S., relating to the annual guardianship plan.

Section 17. Amends s. 744.3678, F.S., relating to annual accounting.

Section 18. Amends s. 744.3679, F.S., relating to simplified accounting procedures in certain cases.

Section 19. Amends s. 744.368, F.S., relating to responsibilities of the clerk of the circuit court.

Section 20. Amends s. 744.441, FS., relating to the powers of a guardian upon court approval.

Section 21. Creates s. 744.442, F.S., relating to the delegation of authority.

Section 22. Amends s. 744.464, F.S., relating to the restoration to capacity.

Section 23. Amends s. 744.474, F.S., relating to reasons for removing a guardian.

Section 24. Amends s. 744.511, F.S., relating to the accounting upon removal of a guardian.

Section 25. Amends s. 744.527, F.S., relating to final reports and application for discharge of guardian.

Section 26. Amends s. 744.528, F.S., relating to the discharge of a guardian named as a personal representative.

Section 27. Amends s. 744.708, F.S., relating to reports and standards.

Section 28. Amends s. 765.101, F.S., relating to definitions.

Section 29. Amends s. 28.345, F.S., relating to the exemption from court-related fees and charges.

Section 30. Amends s. 121.091, F.S., relating to benefits payable.

Section 31. Amends s. 121.4501, F.S., relating to Public Employee Optional Retirement Program.

Section 32. Amends s. 709.08, F.S., relating to durable power of attorney.

Section 33. Amends s. 744.1085, F.S., relating to the regulation of professional guardians.

Section 34. Reenacts s. 117.107, F.S., relating to prohibited acts.

Section 35. Amends s. 318.18, F.S., relating to amount of civil penalties.

Section 36. Creates s. 938.065, F.S., relating to additional costs for public guardianship programs.

Section 37. Provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons involved in guardianship will be required to have additional training. These persons may also have to spend more time drafting reports regarding a person's capacity. The cost of these reports may be borne by the ward. Guardians will have to visit their wards more frequently.

D. FISCAL COMMENTS:

The bill allows for the imposition of a $15 surcharge on non-criminal traffic infractions and criminal violations listed in section 318.17, Florida Statutes, to fund a county's public guardianship program. The surcharge must be approved by either a vote of two-thirds of the board of county commissioners or a referendum approved by the county's electors. The bill also provides for an $18 surcharge on all misdemeanors; $15 of which would be used to fund public guardianship programs, with the remaining $3 going to the clerks of court as a service fee.

According to the Department of Highway Safety and Motor Vehicles in 2004 the traffic statistics for criminal traffic, non-criminal moving, and non-moving infractions were as follows:

Total Violations: 4,418,401
Guilty: 434,691
Pending Disposition: 563,948

Adjudication withheld by Judge: 515,594
Adjudication withheld by Clerk: 541,581

Guilty: $6,520,365
Adjudication withheld by Judge: $7,733,910
Total: $14,254,275

These numbers assume 100% collection, that each county would utilize this mechanism for public guardianship funding, and that fines are imposed for each adjudication withheld.

The department estimates there is a minimum of 5,000 to 10,000 indigent and incapacitated persons per year that require the services of a public guardian. Currently, public guardians serve slightly over 1,700 of those individuals. The majority of the state does not have access to a public guardian, and even those areas that do have a public guardian, services are not readily available because the current office is at capacity. These provisions replace the public guardianship funding that was removed in July 2004 in implementing Article V revisions.

The number of misdemeanors where a fine would be imposed for 2004 was:191,432. Multiplying that figure by $15 (not the full $18) results in a possible $2,871,480 for public guardianship. Again, this assumes 100% collection. The clerks of court would retain $574,296 in service fees.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the Statewide Public Guardianship Office to adopt a rule related to acceptable methods for completing credit investigations. It also requires the Florida Department of Law Enforcement to adopt a rule to establish procedures for the retention of guardian fingerprints and dissemination of search results of all arrest fingerprint cards.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to guardianship; amending s. 744.102,
3 F.S.; defining the terms "audit" and "surrogate guardian";
4 amending s. 744.1083, F.S.; providing that the Statewide
5 Public Guardianship Office need not review credit and
6 criminal investigations from a college or university
7 before registering the institution as a professional
8 guardian; amending s. 744.301, F.S.; providing that in the
9 event of death, the surviving parent is the sole natural
10 guardian of a minor; prohibiting a natural guardian from
11 using the property of the ward for the guardian's benefit
12 without a court order; creating s. 744.3025, F.S.;
13 authorizing a court to appoint a guardian ad litem to
14 represent a minor's interest in certain claims that exceed
15 a specified amount; requiring a court to appoint a
16 guardian ad litem to represent a minor's interest in
17 certain claims that exceed a specified amount; providing
18 that a court need not appoint a guardian ad litem under
19 certain circumstances; requiring a court to award
20 reasonable fees and costs to the guardian ad litem;
21 amending s. 744.3031, F.S.; increasing the time an
22 emergency temporary guardian may serve; increasing the
23 time of an extension; requiring an emergency temporary
24 guardian to file a final report; providing for the
25 contents of the final report; amending s. 744.304, F.S.;
26 specifying the persons who may file a petition for a
27 standby guardian; requiring that notice of the appointment
28 hearing be served on the ward's next of kin; clarifying

29 when a standby guardian may assume the duties of guardian;
30 requiring that each standby guardian submit to credit and
31 criminal background checks; amending s. 744.3115, F.S.;
32 defining the term "health care decision"; amending s.
33 744.3135, F.S.; providing procedures for completing a
34 guardian's criminal background investigation; authorizing
35 a guardian to use inkless electronic fingerprinting
36 equipment that is available for background investigations
37 of public employees; providing that a guardian need not be
38 rescreened if he or she uses certain inkless electronic
39 fingerprinting equipment; providing for fees; requiring
40 the Statewide Public Guardianship Office to adopt a rule
41 for credit investigations of guardians; amending s.
42 744.3145, F.S.; reducing the time in which a guardian must
43 complete the education courses; amending s. 744.3215,
44 F.S.; providing that an incapacitated person retains the
45 right to receive services and rehabilitation necessary to
46 maximize the quality of the person's life; revising
47 provisions relating to rights that may be removed from a
48 person determined incapacitated; amending s. 744.331,
49 F.S.; requiring that the court appoint an attorney for an
50 alleged incapacitated person from a specified registry;
51 requiring attorneys to complete certain training programs;
52 providing that a member of the examining committee may not
53 be related to or associated with certain persons;
54 prohibiting a person who served on an examining committee
55 from being appointed as the guardian; requiring each
56 member of an examining committee to file an affidavit

57 stating that he or she has completed or will timely
58 complete the mandatory training; providing for training
59 programs; requiring each member to report the time and
60 date that he or she examined the person alleged to be
61 incapacitated, the names of all persons present during the
62 examination, and the response and name of each person
63 supplying an answer posed to the examinee; providing for
64 an award of attorney's fees; amending s. 744.341, F.S.;
65 requiring the voluntary guardian to include certain
66 information in the annual report; requiring that certain
67 specified information be included in the notice to
68 terminate a voluntary guardianship; amending s. 744.361,
69 F.S.; requiring a professional guardian to ensure that
70 each of his or her wards is personally visited at least
71 quarterly; providing for the assessment of certain
72 conditions during the personal visit; providing an
73 exemption; amending s. 744.365, F.S.; requiring that the
74 verified inventory include information on any trust to
75 which a ward is a beneficiary; amending s. 744.367, F.S.;
76 requiring that the annual report of the guardian filing on
77 a calendar-year basis be filed on or before a specified
78 date; exempting all minor wards from service of the annual
79 report; amending s. 744.3675, F.S.; requiring that the
80 annual guardianship plan include information on the mental
81 condition of the ward; providing for an annual
82 guardianship plan for wards who are minors; amending s.
83 744.3678, F.S.; providing that property of the ward which
84 is not under the control of the guardian, including

85 certain trusts, is not subject to annual accounting;
86 requiring certain documentation for the annual accounting;
87 amending s. 744.3679, F.S.; removing a provision
88 prohibiting the clerk of the court from having
89 responsibility for monitoring or auditing accounts in
90 certain cases; amending s. 744.368, F.S.; requiring that
91 the verified inventory and the accountings be audited
92 within a specified time period; amending s. 744.441, F.S.;
93 requiring the court to retain oversight for assets of a
94 ward transferred to a trust; creating s. 744.442, F.S.;
95 providing that a guardian may designate a surrogate
96 guardian to exercise the powers of the guardian if the
97 guardian is unavailable to act; requiring the surrogate
98 guardian to be a professional guardian; providing the
99 procedures to be used in appointing a surrogate guardian;
100 providing the duties of a surrogate guardian; requiring
101 the guardian to be liable for the acts of the surrogate
102 guardian; authorizing the guardian to terminate the
103 services of the surrogate guardian by filing a written
104 notice of the termination with the court; amending s.
105 744.464, F.S.; removing the state attorney from the list
106 of persons to be served a notice of a hearing on
107 restoration of capacity; removing a time limitation on the
108 filing of a suggestion of capacity; amending s. 744.474,
109 F.S.; revising provisions relating to removal of a
110 guardian who is not a family member; revising provisions
111 relating to removal of a guardian upon a showing that
112 removal of the current guardian is in the best interest of

113 the ward; amending s. 744.511, F.S.; providing that a ward
114 who is a minor need not be served with the final report of
115 a removed guardian; amending s. 744.527, F.S.; providing
116 that final reports for a deceased ward be filed at a
117 specified time; amending s. 744.528, F.S.; providing for a
118 notice of the hearing for objections to a report filed by
119 a guardian; amending s. 744.708, F.S.; requiring a public
120 guardian to ensure that each of his or her wards is
121 personally visited at least quarterly; providing for the
122 assessment of certain conditions during the personal
123 visit; amending s. 765.101, F.S.; redefining the term
124 "health care decision" to include informed consent for
125 mental health treatment services; amending s. 28.345,
126 F.S.; revising provisions relating to exemptions from
127 paying court-related fees and charges; amending ss.
128 121.091, 121.4501, 709.08, and 744.1085, F.S.; conforming
129 cross-references; reenacting s. 117.107(4), F.S., relating
130 to prohibited acts of a notary public, to incorporate the
131 amendment made to s. 744.3215, F.S., in a reference
132 thereto; amending s. 318.18, F.S.; authorizing a county to
133 impose a surcharge on certain civil penalties to fund
134 local participation in the public guardianship program;
135 prescribing prerequisites for imposing the surcharge;
136 providing a limit on the surcharge; creating s. 938.065,
137 F.S.; requiring that a specified surcharge be assessed
138 against all misdemeanor offenses; providing that the clerk
139 of the court may retain a service charge; directing that
140 the funds collected be used to fund public guardianship

141 programs; providing an effective date.
142
143 Be It Enacted by the Legislature of the State of Florida:
144
145 Section 1. Section 744.102, Florida Statutes, is amended
146 to read:
147 744.102 Definitions.--As used in this chapter, the term:
148 (1) "Attorney for the alleged incapacitated person" means
149 an attorney who represents the alleged incapacitated person. The
150 ~~Such~~ attorney shall represent the expressed wishes of the
151 alleged incapacitated person to the extent it is consistent with
152 the rules regulating The Florida Bar.
153 (2) "Audit" means a systematic review of financial
154 documents with adherence to generally accepted auditing
155 standards.
156 (3) ~~(2)~~ "Clerk" means the clerk or deputy clerk of the
157 court.
158 (4) ~~(3)~~ "Corporate guardian" means a corporation authorized
159 to exercise fiduciary or guardianship powers in this state and
160 includes a nonprofit corporate guardian.
161 (5) ~~(4)~~ "Court" means the circuit court.
162 (6) ~~(5)~~ "Court monitor" means a person appointed by the
163 court under ~~pursuant to~~ s. 744.107 to provide the court with
164 information concerning a ward.
165 (7) ~~(6)~~ "Estate" means the property of a ward subject to
166 administration.
167 (8) ~~(7)~~ "Foreign guardian" means a guardian appointed in
168 another state or country.

169 (9) ~~(8)~~ "Guardian" means a person who has been appointed by
170 the court to act on behalf of a ward's person or property, or
171 both.
172 (a) "Limited guardian" means a guardian who has been
173 appointed by the court to exercise the legal rights and powers
174 specifically designated by court order entered after the court
175 has found that the ward lacks the capacity to do some, but not
176 all, of the tasks necessary to care for his or her person or
177 property, or after the person has voluntarily petitioned for
178 appointment of a limited guardian.
179 (b) "Plenary guardian" means a person who has been
180 appointed by the court to exercise all delegable legal rights
181 and powers of the ward after the court has found that the ward
182 lacks the capacity to perform all of the tasks necessary to care
183 for his or her person or property.
184 (10) ~~(9)~~ "Guardian ad litem" means a person who is
185 appointed by the court having jurisdiction of the guardianship
186 or a court in which a particular legal matter is pending to
187 represent a ward in that proceeding.
188 (11) ~~(10)~~ "Guardian advocate" means a person appointed by a
189 written order of the court to represent a person with
190 developmental disabilities under s. 393.12. As used in this
191 chapter, the term does not apply to a guardian advocate
192 appointed for a person determined incompetent to consent to
193 treatment under s. 394.4598.
194 (12) ~~(11)~~ "Incapacitated person" means a person who has
195 been judicially determined to lack the capacity to manage at
196 least some of the property or to meet at least some of the

197 essential health and safety requirements of the ~~such~~ person.
198 (a) To "manage property" means to take those actions
199 necessary to obtain, administer, and dispose of real and
200 personal property, intangible property, business property,
201 benefits, and income.
202 (b) To "meet essential requirements for health or safety"
203 means to take those actions necessary to provide the health
204 care, food, shelter, clothing, personal hygiene, or other care
205 without which serious and imminent physical injury or illness is
206 more likely than not to occur.
207 (13) ~~(12)~~ "Minor" means a person under 18 years of age
208 whose disabilities have not been removed by marriage or
209 otherwise.
210 (14) ~~(13)~~ "Next of kin" means those persons who would be
211 heirs at law of the ward or alleged incapacitated person if the
212 ~~such~~ person were deceased and includes the lineal descendants of
213 the ~~such~~ ward or alleged incapacitated person.
214 (15) ~~(14)~~ "Nonprofit corporate guardian" means a nonprofit
215 corporation organized for religious or charitable purposes and
216 existing under the laws of this state.
217 (16) ~~(15)~~ "Preneed guardian" means a person named in a
218 written declaration to serve as guardian in the event of the
219 incapacity of the declarant as provided in s. 744.3045.
220 (17) ~~(16)~~ "Professional guardian" means any guardian who
221 ~~receives or~~ has at any time ~~received compensation for services~~
222 rendered services to three or more ~~than two~~ wards as their
223 guardian. A person serving as a guardian for two or more
224 relatives as defined in s. 744.309(2) is not considered a

225 professional guardian. A public guardian shall be considered a
226 professional guardian for purposes of regulation, education, and
227 registration.
228 (18) ~~(17)~~ "Property" means both real and personal property
229 or any interest in it and anything that may be the subject of
230 ownership.
231 (19) ~~(18)~~ "Standby guardian" means a person empowered to
232 assume the duties of guardianship upon the death or adjudication
233 of incapacity of the last surviving natural or appointed
234 guardian.
235 (20) "Surrogate guardian" means a guardian designated
236 according to s. 744.442.
237 (21) ~~(19)~~ "Totally incapacitated" means incapable of
238 exercising any of the rights enumerated in s. 744.3215(2) and
239 (3).
240 (22) ~~(20)~~ "Ward" means a person for whom a guardian has
241 been appointed.
242 Section 2. Subsection (10) of section 744.1083, Florida
243 Statutes, is amended to read:
244 744.1083 Professional guardian registration.--
245 (10) A state college or university or an independent
246 college or university described in s. 1009.98(3)(a), may, but is
247 not required to, register as a professional guardian under this
248 section. If a state college or university or independent college
249 or university elects to register as a professional guardian
250 under this subsection, the requirements of subsections (3) and
251 (4) ~~subsection (3)~~ do not apply and the registration must
252 include only the name, address, and employer identification

253 number of the registrant.
254 Section 3. Section 744.301, Florida Statutes, is amended
255 to read:
256 744.301 Natural guardians.--
257 (1) The mother and father jointly are natural guardians of
258 their own children and of their adopted children, during
259 minority. If one parent dies, the surviving parent remains the
260 sole natural guardian even if he or she ~~the natural guardianship~~
261 ~~shall pass to the surviving parent, and the right shall continue~~
262 ~~even though the surviving parent~~ remarries. If the marriage
263 between the parents is dissolved, the natural guardianship
264 belongs ~~shall belong~~ to the parent to whom ~~the~~ custody of the
265 child is awarded. If the parents are given joint custody, then
266 both ~~shall~~ continue as natural guardians. If the marriage is
267 dissolved and neither the father nor the mother is given custody
268 of the child, neither shall act as natural guardian of the
269 child. The mother of a child born out of wedlock is the natural
270 guardian of the child and is entitled to primary residential
271 care and custody of the child unless a court of competent
272 jurisdiction enters an order stating otherwise.
273 (2) ~~The~~ Natural ~~guardian or~~ guardians are authorized, on
274 behalf of any of their minor children, to:
275 (a) Settle and consummate a settlement of any claim or
276 cause of action accruing to any of their minor children for
277 damages to the person or property of any of said minor children;
278 (b) Collect, receive, manage, and dispose of the proceeds
279 of any such settlement;

280 (c) Collect, receive, manage, and dispose of any real or
281 personal property distributed from an estate or trust;
282 (d) Collect, receive, manage, and dispose of and make
283 elections regarding the proceeds from a life insurance policy or
284 annuity contract payable to, or otherwise accruing to the
285 benefit of, the child; and
286 (e) Collect, receive, manage, dispose of, and make
287 elections regarding the proceeds of any benefit plan as defined
288 by s. 710.102, of which the minor is a beneficiary, participant,
289 or owner,
290
291 without appointment, authority, or bond, when the amounts
292 received, in the aggregate, do ~~amount involved in any instance~~
293 ~~does~~ not exceed $15,000.
294 (3) All instruments executed by a natural guardian for the
295 benefit of the ward under the powers specified ~~provided for~~ in
296 subsection (2) shall be binding on the ward. The natural
297 guardian may not, without a court order, use the property of the
298 ward for the guardian's benefit or to satisfy the guardian's
299 support obligation to the ward.
300 ~~(4)(a) In any case where a minor has a claim for personal~~
301 ~~injury, property damage, or wrongful death in which the gross~~
302 ~~settlement for the claim of the minor exceeds $15,000, the court~~
303 ~~may, prior to the approval of the settlement of the minor's~~
304 ~~claim, appoint a guardian ad litem to represent the minor's~~
305 ~~interests. In any case in which the gross settlement involving a~~
306 ~~minor equals or exceeds $25,000, the court shall, prior to the~~
307 ~~approval of the settlement of the minor's claim, appoint a~~

308 ~~guardian ad litem to represent the minor's interests. The~~
309 ~~appointment of the guardian ad litem must be without the~~
310 ~~necessity of bond or a notice. The duty of the guardian ad litem~~
311 ~~is to protect the minor's interests. The procedure for carrying~~
312 ~~out that duty is as prescribed in the Florida Probate Rules. If~~
313 ~~a legal guardian of the minor has previously been appointed and~~
314 ~~has no potential adverse interest to the minor, the court may~~
315 ~~not appoint a guardian ad litem to represent the minor's~~
316 ~~interests, unless the court determines that the appointment is~~
317 ~~otherwise necessary.~~
318 ~~(b) Unless waived, the court shall award reasonable fees~~
319 ~~and costs to the guardian ad litem to be paid out of the gross~~
320 ~~proceeds of the settlement.~~
321 Section 4. Section 744.3025, Florida Statutes, is created
322 to read:
323 744.3025 Claims of minors.--
324 (1)(a) The court may appoint a guardian ad litem to
325 represent the minor's interest before approving a settlement of
326 the minor's portion of the claim in any case in which a minor
327 has a claim for personal injury, property damage, wrongful
328 death, or other cause of action in which the gross settlement of
329 the claim exceeds $15,000.
330 (b) The court shall appoint a guardian ad litem to
331 represent the minor's interest before approving a settlement of
332 the minor's claim in any case in which the gross settlement
333 involving a minor equals or exceeds $50,000.
334 (c) The appointment of the guardian ad litem must be
335 without the necessity of bond or notice.

336 (d) The duty of the guardian ad litem is to protect the
337 minor's interests as described in the Florida Probate Rules.
338 (e) A court need not appoint a guardian ad litem for the
339 minor if a guardian of the minor has previously been appointed
340 and that guardian has no potential adverse interest to the
341 minor. A court may appoint a guardian ad litem if the court
342 believes a guardian ad litem is necessary to protect the
343 interests of the minor.
344 (2) Unless waived, the court shall award reasonable fees
345 and costs to the guardian ad litem to be paid out of the gross
346 proceeds of the settlement.
347 Section 5. Subsection (3) of section 744.3031, Florida
348 Statutes, is amended, and subsection (8) is added to that
349 section, to read:
350 744.3031 Emergency temporary guardianship.--
351 (3) The authority of an emergency temporary guardian
352 expires 90 ~~60~~ days after the date of appointment or when a
353 guardian is appointed, whichever occurs first. The authority of
354 the emergency temporary guardian may be extended for an
355 additional 90 ~~30~~ days upon a showing that the emergency
356 conditions still exist.
357 (8)(a) An emergency temporary guardian shall file a final
358 report no later than 30 days after the expiration of the
359 emergency temporary guardianship.
360 (b) An emergency temporary guardian is a guardian for the
361 property. The final report must consist of a verified inventory
362 of the property, as provided in s. 744.365, as of the date the
363 letters of emergency temporary guardianship were issued, a final

364 accounting that gives a full and correct account of the receipts
365 and disbursements of all the property of the ward over which the
366 guardian had control, and a statement of the property of the
367 ward on hand at the end of the emergency temporary guardianship.
368 If the emergency temporary guardian becomes the successor
369 guardian of the property, the final report must satisfy the
370 requirements of the initial guardianship report for the guardian
371 of the property as provided in s. 744.362.
372 (c) If the emergency temporary guardian is a guardian of
373 the person, the final report must summarize the activities of
374 the temporary guardian with regard to residential placement,
375 medical condition, mental health and rehabilitative services,
376 and the social condition of the ward to the extent of the
377 authority granted to the temporary guardian in the letters of
378 guardianship. If the emergency temporary guardian becomes the
379 successor guardian of the person, the report must satisfy the
380 requirements of the initial report for a guardian of the person
381 as stated in s. 744.362.
382 (d) A copy of the final report of the emergency temporary
383 guardianship shall be served on the successor guardian and the
384 ward.
385 Section 6. Section 744.304, Florida Statutes, is amended
386 to read:
387 744.304 Standby guardianship.--
388 (1) Upon a petition by the natural guardians or a guardian
389 appointed under s. 744.3021, the court may appoint a standby
390 guardian of the person or property of a minor ~~or consent of both~~
391 ~~parents, natural or adoptive, if living, or of the surviving~~

392 ~~parent, a standby guardian of the person or property of a minor~~
393 ~~may be appointed by the court~~. The court may also appoint an
394 alternate to the guardian to act if the standby guardian does
395 not serve or ceases to serve after appointment. Notice of a
396 hearing on the petition must be served on the parents, natural
397 or adoptive, and on any guardian currently serving unless the
398 notice is waived in writing by them or waived by the court for
399 good cause shown ~~shall renounce, die, or become incapacitated~~
400 ~~after the death of the last surviving parent of the minor~~.
401 (2) Upon petition of a currently serving guardian, a
402 standby guardian of the person or property of an incapacitated
403 person may be appointed by the court. Notice of the hearing
404 shall be served on the ward's next of kin.
405 (3) The standby guardian or alternate shall be empowered
406 to assume the duties of guardianship ~~his or her office~~
407 immediately on the death, removal, or resignation of the
408 guardian of a minor, or on the death or adjudication of
409 incapacity of the last surviving natural guardian ~~or adoptive~~
410 ~~parent~~ of a minor, or upon the death, removal, or resignation of
411 the guardian for an adult. The~~; however, such a~~ guardian of the
412 ward's property may not be empowered to deal with the ward's
413 property, other than to safeguard it, before ~~prior to~~ issuance
414 of letters of guardianship. If the ward ~~incapacitated person~~ is
415 over the age of 18 years, the court shall conduct a hearing as
416 provided in s. 744.331 before confirming the appointment of the
417 standby guardian, unless the ward has previously been found to
418 be incapacitated.
419 (4) Within 20 days after assumption of duties as guardian,

420 a standby guardian shall petition for confirmation of
421 appointment. If the court finds the standby guardian to be
422 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309 and
423 744.312, appointment of the guardian must be confirmed. Each
424 guardian so confirmed shall file an oath in accordance with s.
425 744.347, ~~and~~ shall file a bond, and shall submit to a credit and
426 criminal investigation as set forth in s. 744.3135, if required.
427 Letters of guardianship must then be issued in the manner
428 provided in s. 744.345.
429 (5) After the assumption of duties by a standby guardian,
430 the court shall have jurisdiction over the guardian and the
431 ward.
432 Section 7. Section 744.3115, Florida Statutes, is amended
433 to read:
434 744.3115 Advance directives for health care.--In each
435 proceeding in which a guardian is appointed under this chapter,
436 the court shall determine whether the ward, prior to incapacity,
437 has executed any valid advance directive under ~~pursuant to~~
438 chapter 765. If any ~~such~~ advance directive exists, the court
439 shall specify in its order and letters of guardianship what
440 authority, if any, the guardian shall exercise over the
441 surrogate. Pursuant to the grounds listed in s. 765.105, the
442 court, upon its own motion, may, with notice to the surrogate
443 and any other appropriate parties, modify or revoke the
444 authority of the surrogate to make health care decisions for the
445 ward. For purposes of this section, the term "health care
446 decision" has the same meaning as in s. 765.101.
447 Section 8. Section 744.3135, Florida Statutes, is amended

448 to read:
449 744.3135 Credit and criminal investigation.--
450 (1) The court may require a nonprofessional guardian and
451 shall require a professional or public guardian, and all
452 employees of a professional guardian who have a fiduciary
453 responsibility to a ward, to submit, at their own expense, to an
454 investigation of the guardian's credit history and to undergo
455 level 2 background screening as required under s. 435.04. If a
456 credit or criminal investigation is required, the court must
457 consider the results of any investigation before appointing a
458 guardian. At any time, the court may require a guardian or the
459 guardian's employees to submit to an investigation of the
460 person's credit history and complete a level 1 background
461 screening as set forth in s. 435.03. The court shall consider
462 the results of any investigation when reappointing a guardian.
463 The clerk of the court shall maintain a file on each guardian
464 appointed by the court and retain in the file documentation of
465 the result of any investigation conducted under this section. A
466 professional guardian must pay the clerk of the court a fee of
467 up to $7.50 for handling and processing professional guardian
468 files.
469 (2) The court and the Statewide Public Guardianship Office
470 shall accept the satisfactory completion of a criminal
471 background investigation by any method described in this
472 subsection. A guardian satisfies the requirements of this
473 section by undergoing:
474 (a) An inkless electronic fingerprint criminal background
475 investigation. A guardian may use any inkless electronic

476 fingerprinting equipment used for criminal background
477 investigations of public employees. The guardian shall pay the
478 actual costs incurred by the Federal Bureau of Investigation and
479 the Department of Law Enforcement for the criminal background
480 investigation. The agency that operates the equipment used by
481 the guardian may charge the guardian an additional fee, not to
482 exceed $10, for the use of the equipment. The agency completing
483 the investigation must immediately send the results of the
484 criminal background investigation to the clerk of the court and
485 the Statewide Public Guardianship Office. The clerk of the court
486 shall maintain the results in the guardian's file and shall make
487 the results available to the court; or
488 (b) A criminal background investigation using a
489 fingerprint card. The clerk of the court shall obtain
490 fingerprint cards from the Federal Bureau of Investigation and
491 make them available to guardians. Any guardian who is so
492 required shall have his or her fingerprints taken and forward
493 the proper fingerprint card along with the necessary fee to the
494 ~~Florida~~ Department of Law Enforcement for processing. ~~The~~
495 ~~professional guardian shall pay to the clerk of the court a fee~~
496 ~~of up to $7.50 for handling and processing professional guardian~~
497 ~~files.~~ The results of the fingerprint card background
498 investigations ~~checks~~ shall be forwarded to the clerk of the
499 court who shall maintain the results in the guardian's ~~a~~
500 ~~guardian~~ file and ~~shall~~ make the results available to the court
501 and the Statewide Public Guardianship Office.
502 (3)(a) A professional guardian, and each employee of a
503 professional guardian who has a fiduciary responsibility to a

504 ward, must complete, at his or her own expense, a level 2
505 background screening as set forth in s. 435.04 before and at
506 least once every 5 years after the date the guardian is
507 appointed. A professional guardian, and each employee of a
508 professional guardian who has a fiduciary responsibility to a
509 ward, must complete, at his or her own expense, a level 1
510 background screening as set forth in s. 435.03 at least once
511 every 2 years after the date the guardian is appointed. However,
512 a person is not required to resubmit fingerprints for a criminal
513 background investigation if he or she has been screened using
514 inkless electronic fingerprinting equipment that is capable of
515 notifying the clerk of the court of any crime charged against
516 the person in this state or elsewhere, as appropriate.
517 (b) Effective December 15, 2006, all fingerprints
518 electronically submitted to the Department of Law Enforcement
519 under this section shall be retained by the Department of Law
520 Enforcement in a manner provided by rule and entered in the
521 statewide automated fingerprint identification system authorized
522 by s. 943.05(2)(b). The fingerprints shall thereafter be
523 available for all purposes and uses authorized for arrest
524 fingerprint cards entered in the Criminal Justice Information
525 Program under s. 943.051.
526 (c) Effective December 15, 2006, the Department of Law
527 Enforcement shall search all arrest fingerprint cards received
528 under s. 943.051 against the fingerprints retained in the
529 statewide automated fingerprint identification system under
530 paragraph (b). Any arrest record that is identified with the
531 fingerprints of a person described in this paragraph must be

532 reported as soon as possible to the clerk of the court. The
533 clerk of the court must forward any arrest record received for a
534 professional guardian to the Statewide Public Guardianship
535 Office within 5 days. Each guardian who elects to undergo an
536 inkless electronic background investigation shall participate in
537 this search process by paying an annual fee to the clerk of the
538 court and by informing the clerk of the court of any change in
539 the status of his or her guardianship appointment. The amount of
540 the annual fee to be imposed upon each clerk of the court for
541 performing these searches and the procedures for the retention
542 of guardian fingerprints and the dissemination of search results
543 shall be established by rule of the Department of Law
544 Enforcement. The fee may be borne by the clerk of the court or
545 the guardian, but may not exceed $10.
546 (4)(a) A professional guardian, and each employee of a
547 professional guardian who has a fiduciary responsibility to a
548 ward, must complete, at his or her own expense, an investigation
549 of his or her credit history before and at least once every 2
550 years after the date of the guardian's appointment.
551 (b) The Statewide Public Guardianship Office shall adopt a
552 rule detailing the acceptable methods for completing a credit
553 investigation under this section. If appropriate, the Statewide
554 Public Guardianship Office may administer credit investigations.
555 If the office chooses to administer the credit investigation,
556 the office may adopt a rule setting a fee, not to exceed $25, to
557 reimburse the costs associated with the administration of a
558 credit investigation.
559 (5) The Statewide Public Guardianship Office may inspect

560 at any time the results of any credit or criminal investigation
561 of a public or professional guardian conducted under this
562 section. The office shall maintain copies of the credit or
563 criminal results in the guardian's registration file. If the
564 results of a credit or criminal investigation of a public or
565 professional guardian have not been forwarded to the Statewide
566 Public Guardianship Office by the investigating agency, the
567 clerk of the court shall forward copies of the results of the
568 investigations to the office upon receiving them. ~~If credit or~~
569 ~~criminal investigations are required, the court must consider~~
570 ~~the results of the investigations before appointing a guardian.~~
571 ~~Professional guardians and all employees of a professional~~
572 ~~guardian who have a fiduciary responsibility to a ward, so~~
573 ~~appointed, must resubmit, at their own expense, to an~~
574 ~~investigation of credit history, and undergo level 1 background~~
575 ~~screening as required under s. 435.03, at least every 2 years~~
576 ~~after the date of their appointment. At any time, the court may~~
577 ~~require guardians or their employees to submit to an~~
578 ~~investigation of credit history and undergo level 1 background~~
579 ~~screening as required under s. 435.03. The court must consider~~
580 ~~the results of these investigations in reappointing a guardian.~~
581 ~~(1) Upon receiving the results of a credit or criminal~~
582 ~~investigation of any public or professional guardian, the clerk~~
583 ~~of the court shall forward copies of the results to the~~
584 ~~Statewide Public Guardianship Office in order that the results~~
585 ~~may be maintained in the guardian's registration file.~~
586 (6) ~~(2)~~ The requirements of this section do ~~does~~ not apply
587 to a professional guardian, or to the employees of a

588 professional guardian, that ~~which~~ is a trust company, a state
589 banking corporation or state savings association authorized and
590 qualified to exercise fiduciary powers in this state, or a
591 national banking association or federal savings and loan
592 association authorized and qualified to exercise fiduciary
593 powers in this state.
594 Section 9. Subsection (4) of section 744.3145, Florida
595 Statutes, is amended to read:
596 744.3145 Guardian education requirements.--
597 (4) Each person appointed by the court to be a guardian
598 must complete the required number of hours of instruction and
599 education within 4 months ~~1 year~~ after his or her appointment as
600 guardian. The instruction and education must be completed
601 through a course approved by the chief judge of the circuit
602 court and taught by a court-approved organization. Court-
603 approved organizations may include, but are not limited to,
604 community or junior colleges, guardianship organizations, and
605 the local bar association or The Florida Bar.
606 Section 10. Paragraph (i) of subsection (1) and subsection
607 (2) of section 744.3215, Florida Statutes, are amended to read:
608 744.3215 Rights of persons determined incapacitated.--
609 (1) A person who has been determined to be incapacitated
610 retains the right:
611 (i) To receive ~~necessary~~ services and rehabilitation
612 necessary to maximize the quality of life.
613 (2) Rights that may be removed from a person by an order
614 determining incapacity but not delegated to a guardian include
615 the right:

616 (a) To marry. If the right to enter into a contract has
617 been removed, the right to marry is subject to court approval.
618 (b) To vote.
619 (c) To personally apply for government benefits.
620 (d) To have a driver's license.
621 (e) To travel.
622 (f) To seek or retain employment.
623 Section 11. Subsections (2), (3), and (7) of section
624 744.331, Florida Statutes, are amended to read:
625 744.331 Procedures to determine incapacity.--
626 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--
627 (a) When a court appoints an attorney for an alleged
628 incapacitated person, the court must appoint an attorney who is
629 included in the attorney registry compiled by the circuit's
630 Article V indigent services committee. Appointments must be made
631 on a rotating basis, taking into consideration conflicts arising
632 under this chapter.
633 (b) ~~(a)~~ The court shall appoint an attorney for each person
634 alleged to be incapacitated in all cases involving a petition
635 for adjudication of incapacity. The alleged incapacitated person
636 may substitute her or his own attorney for the attorney
637 appointed by the court, subject to court approval.
638 (c) ~~(b)~~ Any attorney representing an alleged incapacitated
639 person may not serve as guardian of the alleged incapacitated
640 person or as counsel for the guardian of the alleged
641 incapacitated person or the petitioner.
642 (d) Effective January 1, 2007, an attorney seeking to be
643 appointed by a court for incapacity and guardianship proceedings

644 must have completed a minimum of 8 hours of education in
645 guardianship. A court may waive the initial training requirement
646 for an attorney who has served as a court-appointed attorney in
647 incapacity proceedings or as an attorney of record for guardians
648 for not less than 3 years.
649 (3) EXAMINING COMMITTEE.--
650 (a) Within 5 days after a petition for determination of
651 incapacity has been filed, the court shall appoint an examining
652 committee consisting of three members. One member must be a
653 psychiatrist or other physician. The remaining members must be
654 either a psychologist, gerontologist, another psychiatrist, or
655 other physician, a registered nurse, nurse practitioner,
656 licensed social worker, a person with an advanced degree in
657 gerontology from an accredited institution of higher education,
658 or other person who by knowledge, skill, experience, training,
659 or education may, in the court's discretion, advise the court in
660 the form of an expert opinion, including a professional
661 guardian. One of three members of the committee must have
662 knowledge of the type of incapacity alleged in the petition.
663 Unless good cause is shown, the attending or family physician
664 may not be appointed to the committee. If the attending or
665 family physician is available for consultation, the committee
666 must consult with the physician. Members of the examining
667 committee may not be related to or associated with one another,
668 ~~or~~ with the petitioner, with counsel for the petitioner or the
669 proposed guardian, or with the person alleged to be totally or
670 partially incapacitated. A member may not be employed by any
671 private or governmental agency that has custody of, or

672 furnishes, services or subsidies, directly or indirectly, to the
673 person or the family of the person alleged to be incapacitated
674 or for whom a guardianship is sought. A petitioner may not serve
675 as a member of the examining committee. Members of the examining
676 committee must be able to communicate, either directly or
677 through an interpreter, in the language that the alleged
678 incapacitated person speaks or to communicate in a medium
679 understandable to the alleged incapacitated person if she or he
680 is able to communicate. The clerk of the court shall send notice
681 of the appointment to each person appointed no later than 3 days
682 after the court's appointment.
683 (b) A person who has been appointed to serve as a member
684 of an examining committee to examine an alleged incapacitated
685 person may not thereafter be appointed as a guardian for the
686 person who was the subject of the examination.
687 (c) Each person appointed to an examining committee must
688 file an affidavit with the court stating that he or she has
689 completed the required courses or will do so no later than 4
690 months after his or her initial appointment. Each year, the
691 chief judge of the circuit must prepare a list of persons
692 qualified to be members of the examining committee.
693 (d) A member of an examining committee must complete a
694 minimum of 4 hours of initial training. The person must complete
695 2 hours of continuing education during each 2-year period after
696 the initial training. The initial training and continuing
697 education program must be developed under the supervision of the
698 Statewide Public Guardianship Office, in consultation with the
699 Florida Conference of Circuit Court Judges; the Elder Law and

700 the Real Property, Probate and Trust Law sections of The Florida
701 Bar; the Florida State Guardianship Association; and the Florida
702 Guardianship Foundation. The court may waive the initial
703 training requirement for a person who has served for not less
704 than 5 years on examining committees. If a person wishes to
705 obtain his or her continuing education on the Internet or by
706 watching a video course, the person must first obtain the
707 approval of the chief judge before taking an Internet or video
708 course.
709 (e) ~~(b)~~ Each member of the examining committee shall
710 examine the person. Each ~~The~~ examining committee member must
711 ~~shall~~ determine the alleged incapacitated person's ability to
712 exercise those rights specified in s. 744.3215. In addition to
713 the examination, each ~~the~~ examining committee member must ~~shall~~
714 have access to, and may consider, previous examinations of the
715 person, including, but not limited to, habilitation plans,
716 school records, and psychological and psychosocial reports
717 voluntarily offered for use by the alleged incapacitated person.
718 Each member of the examining committee must ~~shall~~ submit a
719 report within 15 days after appointment.
720 (f) ~~(c)~~ The examination of the alleged incapacitated person
721 must include a comprehensive examination, a report of which
722 shall be filed by the examining committee as part of its written
723 report. The comprehensive examination report should be an
724 essential element, but not necessarily the only element, used in
725 making a capacity and guardianship decision. The comprehensive
726 examination must include, if indicated:
727 1. A physical examination;

728 2. A mental health examination; and
729 3. A functional assessment.
730
731 If any of these three aspects of the examination is not
732 indicated or cannot be accomplished for any reason, the written
733 report must explain the reasons for its omission.
734 (g) ~~(d)~~ The committee's written report must include:
735 1. To the extent possible, a diagnosis, prognosis, and
736 recommended course of treatment.
737 2. An evaluation of the alleged incapacitated person's
738 ability to retain her or his rights, including, without
739 limitation, the rights to marry; vote; contract; manage or
740 dispose of property; have a driver's license; determine her or
741 his residence; consent to medical treatment; and make decisions
742 affecting her or his social environment.
743 3. The results of the comprehensive examination and the
744 committee members' assessment of information provided by the
745 attending or family physician, if any.
746 4. A description of any matters with respect to which the
747 person lacks the capacity to exercise rights, the extent of that
748 incapacity, and the factual basis for the determination that the
749 person lacks that capacity.
750 5. The names of all persons present during the time the
751 committee member conducted his or her examination. If a person
752 other than the person who is the subject of the examination
753 supplies answers posed to the alleged incapacitated person, the
754 report must include the response and the name of the person
755 supplying the answer.

756 6.~~5.~~ The signature of each member of the committee and the
757 date and time that each member conducted his or her examination.
758 (h)~~(e)~~ A copy of the report must be served on the
759 petitioner and on the attorney for the alleged incapacitated
760 person within 3 days after the report is filed and at least 5
761 days before the hearing on the petition.
762 (7) FEES.--
763 (a) The examining committee and any attorney appointed
764 under subsection (2) are entitled to reasonable fees to be
765 determined by the court.
766 (b) The fees awarded under paragraph (a) shall be paid by
767 the guardian from the property of the ward or, if the ward is
768 indigent, by the state. The state shall have a creditor's claim
769 against the guardianship property for any amounts paid under
770 this section. The state may file its claim within 90 days after
771 the entry of an order awarding attorney ad litem fees. If the
772 state does not file its claim within the 90-day period, the
773 state is thereafter barred from asserting the claim. Upon
774 petition by the state for payment of the claim, the court shall
775 enter an order authorizing immediate payment out of the property
776 of the ward. The state shall keep a record of the ~~such~~ payments.
777 (c) If the petition is dismissed, costs and attorney's
778 fees of the proceeding may be assessed against the petitioner if
779 the court finds the petition to have been filed in bad faith.
780 Section 12. Subsection (4) of section 744.341, Florida
781 Statutes, is renumbered as subsection (5) and amended, and a new
782 subsection (4) is added to that section, to read:
783 744.341 Voluntary guardianship.--

784 (4) A guardian must include in the annual report filed
785 with the court a certificate from a licensed physician who
786 examined the ward not more than 90 days before the annual report
787 is filed with the court. The certificate must certify that the
788 ward is competent to understand the nature of the guardianship
789 and of the ward's authority to delegate powers to the voluntary
790 guardian.
791 (5) ~~(4)~~ A voluntary guardianship may be terminated by the
792 ward by filing a notice with the court that the voluntary
793 guardianship is terminated. The notice must be accompanied by a
794 certificate from a licensed physician who has examined the ward
795 not more than 30 days before the ward filed the notice with the
796 court. The physician must certify that the ward is competent to
797 understand the implications of terminating the guardianship. A
798 copy of the notice and certificate must be served on all
799 interested persons.
800 Section 13. Subsection (9) is added to section 744.361,
801 Florida Statutes, to read:
802 744.361 Powers and duties of guardian.--
803 (9) A professional guardian must ensure that each of the
804 guardian's wards is personally visited by the guardian or one of
805 the guardian's professional staff at least once each calendar
806 quarter. During the personal visit, the guardian or the
807 guardian's professional staff person shall assess:
808 (a) The ward's physical appearance and condition.
809 (b) The appropriateness of the ward's current living
810 situation.
811 (c) The need for any additional services and the necessity

812 for continuation of existing services, taking into consideration
813 all aspects of social, psychological, educational, direct
814 service, health, and personal care needs.
815
816 This subsection does not apply to a professional guardian who
817 has been appointed only as guardian of the property.
818 Section 14. Subsection (2) of section 744.365, Florida
819 Statutes, is amended to read:
820 744.365 Verified inventory.--
821 (2) CONTENTS.--The verified inventory must include the
822 following:
823 (a) All property of the ward, real and personal, that has
824 come into the guardian's possession or knowledge, including a
825 statement of all encumbrances, liens, and other secured claims
826 on any item, any claims against the property, ~~and~~ any cause of
827 action accruing to the ward, and any trusts of which the ward is
828 a beneficiary.~~;~~
829 (b) The location of the real and personal property in
830 sufficient detail so that it may be clearly identified or
831 located.~~; and~~
832 (c) A description of all sources of income, including,
833 without limitation, social security benefits and pensions.
834 Section 15. Subsections (1) and (3) of section 744.367,
835 Florida Statutes, are amended to read:
836 744.367 Duty to file annual guardianship report.--
837 (1) Unless the court requires filing on a calendar-year
838 basis, each guardian of the person shall file with the court an
839 annual guardianship plan within 90 days after the last day of

840 the anniversary month the letters of guardianship were signed,
841 and the plan must cover the coming fiscal year, ending on the
842 last day in such anniversary month. If the court requires
843 calendar-year filing, the guardianship plan must be filed on or
844 before April 1 of each year ~~within 90 days after the end of the~~
845 ~~calendar year~~.
846 (3) The annual guardianship report of a guardian of the
847 property must consist of an annual accounting, and the annual
848 report of a guardian of the person ~~of an incapacitated person~~
849 must consist of an annual guardianship plan. The annual report
850 shall be served on the ward, unless the ward is a minor ~~under~~
851 ~~the age of 14 years~~ or is totally incapacitated, and on the
852 attorney for the ward, if any. The guardian shall provide a copy
853 to any other person as the court may direct.
854 Section 16. Section 744.3675, Florida Statutes, is amended
855 to read:
856 744.3675 Annual guardianship plan.--Each guardian of the
857 person must file with the court an annual guardianship plan
858 which updates information about the condition of the ward. The
859 annual plan must specify the current needs of the ward and how
860 those needs are proposed to be met in the coming year.
861 (1) Each plan for an adult ward must, if applicable,
862 include:
863 (a) Information concerning the residence of the ward,
864 including:
865 1. The ward's address at the time of filing the plan.~~;~~
866 2. The name and address of each place where the ward was
867 maintained during the preceding year.~~;~~

868 3. The length of stay of the ward at each place.~~;~~
869 4. A statement of whether the current residential setting
870 is best suited for the current needs of the ward.~~; and~~
871 5. Plans for ensuring during the coming year that the ward
872 is in the best residential setting to meet his or her needs.
873 (b) Information concerning the medical and mental health
874 conditions ~~condition~~ and treatment and rehabilitation needs of
875 the ward, including:
876 1. A resume of any professional medical treatment given to
877 the ward during the preceding year.~~;~~
878 2. The report of a physician who examined the ward no more
879 than 90 days before the beginning of the applicable reporting
880 period. The ~~Such~~ report must contain an evaluation of the ward's
881 condition and a statement of the current level of capacity of
882 the ward.~~; and~~
883 3. The plan for providing ~~provision of~~ medical, mental
884 health, and rehabilitative services in the coming year.
885 (c) Information concerning the social condition of the
886 ward, including:
887 1. The social and personal services currently used
888 ~~utilized~~ by the ward.~~;~~
889 2. The social skills of the ward, including a statement of
890 how well the ward communicates and maintains interpersonal
891 relationships. ~~with others;~~
892 ~~3. A description of the ward's activities at communication~~
893 ~~and visitation; and~~
894 3.~~4.~~ The social needs of the ward.
895 (2) Each plan filed by the legal guardian of a minor must

896 include:
897 (a) Information concerning the residence of the minor,
898 including:
899 1. The minor's address at the time of filing the plan.
900 2. The name and address of each place the minor lived
901 during the preceding year.
902 (b) Information concerning the medical and mental health
903 conditions and treatment and rehabilitation needs of the minor,
904 including:
905 1. A resume of any professional medical treatment given to
906 the minor during the preceding year.
907 2. A report from the physician who examined the minor no
908 more than 180 days before the beginning of the applicable
909 reporting period that contains an evaluation of the minor's
910 physical and mental conditions.
911 3. The plan for providing medical services in the coming
912 year.
913 (c) Information concerning the education of the minor,
914 including:
915 1. A summary of the school progress report.
916 2. The social development of the minor, including a
917 statement of how well the minor communicates and maintains
918 interpersonal relationships.
919 3. The social needs of the minor.
920 (3) ~~(2)~~ Each plan for an adult ward must address the issue
921 of restoration of rights to the ward and include:
922 (a) A summary of activities during the preceding year that
923 ~~which~~ were designed to enhance ~~increase~~ the capacity of the

924 ward.~~;~~
925 (b) A statement of whether the ward can have any rights
926 restored.~~; and~~
927 (c) A statement of whether restoration of any rights will
928 be sought.
929 (4)~~(3)~~ The court, in its discretion, may require
930 reexamination of the ward by a physician at any time.
931 Section 17. Subsections (2) and (3) of section 744.3678,
932 Florida Statutes, are amended to read:
933 744.3678 Annual accounting.--
934 (2) The annual accounting must include:
935 (a) A full and correct account of the receipts and
936 disbursements of all of the ward's property over which the
937 guardian has control and a statement of the ward's property on
938 hand at the end of the accounting period. This paragraph does
939 not apply to any property or any trust of which the ward is a
940 beneficiary but which is not under the control or administration
941 of the guardian.
942 (b) A copy of the annual or year-end statement of all of
943 the ward's cash accounts from each of the institutions where the
944 cash is deposited.
945 (3) The guardian must obtain a receipt, ~~or~~ canceled check,
946 or other proof of payment for all expenditures and disbursements
947 made on behalf of the ward. The guardian must preserve all
948 evidence of payment ~~the receipts and canceled checks~~, along with
949 other substantiating papers, for a period of 3 years after his
950 or her discharge. The receipts, proofs of payment ~~checks~~, and
951 substantiating papers need not be filed with the court but shall

952 be made available for inspection and review at the ~~such~~ time and
953 ~~in such~~ place and before the ~~such~~ persons as the court may ~~from~~
954 ~~time to time~~ order.
955 Section 18. Section 744.3679, Florida Statutes, is amended
956 to read:
957 744.3679 Simplified accounting procedures in certain
958 cases.--
959 (1) In a guardianship of property, when all assets of the
960 estate are in designated depositories under s. 69.031 and the
961 only transactions that occur in that account are interest
962 accrual, deposits from a ~~pursuant to~~ settlement, or financial
963 institution service charges, the guardian may elect to file an
964 accounting consisting of:
965 (a) The original or a certified copy of the year-end
966 statement of the ward's account from the financial institution;
967 and
968 (b) A statement by the guardian under penalty of perjury
969 that the guardian has custody and control of the ward's property
970 as shown in the year-end statement.
971 ~~(2) The clerk has no responsibility to monitor or audit~~
972 ~~the accounts and may not accept a fee for doing so.~~
973 (2)~~(3)~~ The accounting allowed by subsection (1) is in lieu
974 of the accounting and auditing procedures under s. 744.3678(2)
975 ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party
976 may seek judicial review as provided in s. 744.3685.
977 (3)~~(4)~~ The guardian need not be represented by an attorney
978 in order to file the annual accounting allowed by subsection
979 (1).

980 Section 19. Subsection (3) of section 744.368, Florida
981 Statutes, is amended to read:
982 744.368 Responsibilities of the clerk of the circuit
983 court.--
984 (3) Within 90 days after the filing of the verified
985 inventory and accountings ~~initial or annual guardianship report~~
986 by a guardian of the property, the clerk shall audit the
987 verified inventory and ~~or~~ the accountings ~~annual accounting~~. The
988 clerk shall advise the court of the results of the audit.
989 Section 20. Subsection (19) of section 744.441, Florida
990 Statutes, is amended to read:
991 744.441 Powers of guardian upon court approval.--After
992 obtaining approval of the court pursuant to a petition for
993 authorization to act, a plenary guardian of the property, or a
994 limited guardian of the property within the powers granted by
995 the order appointing the guardian or an approved annual or
996 amended guardianship report, may:
997 (19) Create or amend revocable or irrevocable trusts of
998 property of the ward's estate which may extend beyond the
999 disability or life of the ward in connection with estate, gift,
1000 income, or other tax planning or in connection with estate
1001 planning. The court shall retain oversight of the assets
1002 transferred to a trust, unless otherwise ordered by the court.
1003 Section 21. Section 744.442, Florida Statutes, is created
1004 to read:
1005 744.442 Delegation of authority.--
1006 (1) A guardian may designate a surrogate guardian to
1007 exercise the powers of the guardian if the guardian is

1008 unavailable to act. A person designated as a surrogate guardian
1009 under this section must be a professional guardian.
1010 (2)(a) A guardian must file a petition with the court
1011 requesting permission to designate a surrogate guardian.
1012 (b) If the court approves the designation, the order must
1013 specify the name and business address of the surrogate guardian
1014 and the duration of appointment, which may not exceed 30 days.
1015 The court may extend the appointment for good cause shown. The
1016 surrogate guardian may exercise all powers of the guardian
1017 unless limited by order of the court. The surrogate guardian
1018 must file with the court an oath swearing or affirming that he
1019 or she will faithfully perform the duties delegated. The court
1020 may require the surrogate guardian to post a bond.
1021 (3) This section does not limit the responsibility of the
1022 guardian to the ward and to the court. The guardian is liable
1023 for the acts of the surrogate guardian. The guardian may
1024 terminate the authority of the surrogate guardian by filing a
1025 written notice of the termination with the court.
1026 (4) The surrogate guardian is subject to the jurisdiction
1027 of the court as if appointed to serve as guardian.
1028 Section 22. Paragraphs (c), (e), and (f) of subsection (2)
1029 and subsection (4) of section 744.464, Florida Statutes, are
1030 amended to read:
1031 744.464 Restoration to capacity.--
1032 (2) SUGGESTION OF CAPACITY.--
1033 (c) The court shall immediately send notice of the filing
1034 of the suggestion of capacity to the ward, the guardian, the
1035 attorney for the ward, if any, ~~the state attorney,~~ and any other

1036 interested persons designated by the court. Formal notice must
1037 be served on the guardian. Informal notice may be served on
1038 other persons. Notice need not be served on the person who filed
1039 the suggestion of capacity.
1040 (e) If an objection is timely filed, or if the medical
1041 examination suggests that full restoration is not appropriate,
1042 the court shall set the matter for hearing. If the ward does not
1043 have an attorney, the court shall appoint one to represent the
1044 ward.
1045 (f) Notice of the hearing and copies of the objections and
1046 medical examination reports shall be served upon the ward, the
1047 ward's attorney, the guardian, ~~the state attorney,~~ the ward's
1048 next of kin, and any other interested persons as directed by the
1049 court.
1050 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
1051 ~~CAPACITY.--Notwithstanding this section, a suggestion of~~
1052 ~~capacity may not be filed within 90 days after an adjudication~~
1053 ~~of incapacity or denial of restoration, unless good cause is~~
1054 ~~shown.~~
1055 Section 23. Paragraph (a) of subsection (19) of section
1056 744.474, Florida Statutes, is amended, and paragraph (b) of that
1057 subsection is redesignated as subsection (20) of that section
1058 and amended, to read:
1059 744.474 Reasons for removal of guardian.--A guardian may
1060 be removed for any of the following reasons, and the removal
1061 shall be in addition to any other penalties prescribed by law:
1062 (19) Upon a showing by a person who did not receive notice
1063 of the petition for adjudication of incapacity, when such notice

1064 is required, or who is related to the ward within the
1065 relationships specified for nonresident relatives in ss.
1066 744.309(2) and 744.312(2) and who has not previously been
1067 rejected by the court as a guardian that~~:~~
1068 ~~(a)~~ the current guardian is not a family member~~;~~ and
1069 subsection (20) applies.
1070 (20)~~(b)~~ Upon a showing that removal of the current
1071 guardian is in the best interest of the ward, the court may
1072 remove the current guardian and appoint the petitioner, or such
1073 person as the court deems in the best interest of the ward,
1074 either as guardian of the person or of the property, or both.
1075 Section 24. Section 744.511, Florida Statutes, is amended
1076 to read:
1077 744.511 Accounting upon removal.--A removed guardian shall
1078 file with the court a true, complete, and final report of his or
1079 her guardianship within 20 days after removal and shall serve a
1080 copy on the successor guardian and the ward, unless the ward is
1081 a minor ~~under 14 years of age~~ or has been determined to be
1082 totally incapacitated.
1083 Section 25. Section 744.527, Florida Statutes, is amended
1084 to read:
1085 744.527 Final reports and application for discharge;
1086 hearing.--
1087 (1) When the court terminates the guardianship for any of
1088 the reasons set forth in s. 744.521, the guardian shall promptly
1089 file his or her final report. If the ward has died, the guardian
1090 must file a final report with the court no later than 45 days
1091 after he or she has been served with letters of administration

1092 or letters of curatorship. If no objections are filed and if it
1093 appears that the guardian has made full and complete
1094 distribution to the person entitled and has otherwise faithfully
1095 discharged his or her duties, the court shall approve the final
1096 report. If objections are filed, the court shall conduct a
1097 hearing in the same manner as provided for a hearing on
1098 objections to annual guardianship reports.
1099 (2) The guardian applying for discharge may ~~is authorized~~
1100 ~~to~~ retain from the funds in his or her possession a sufficient
1101 amount to pay the final costs of administration, including
1102 guardian and attorney's fees regardless of the death of the
1103 ward, accruing between the filing of his or her final returns
1104 and the order of discharge.
1105 Section 26. Subsection (3) of section 744.528, Florida
1106 Statutes, is amended to read:
1107 744.528 Discharge of guardian named as personal
1108 representative.--
1109 (3) Any interested person may file a notice of ~~The court~~
1110 ~~shall set~~ a hearing on any objections filed by the
1111 beneficiaries. Notice of the hearing must ~~shall~~ be served upon
1112 the guardian, beneficiaries of the ward's estate, and any other
1113 person to whom the court directs service. If a notice of hearing
1114 on the objections is not served within 90 days after filing of
1115 the objections, the objections are deemed abandoned.
1116 Section 27. Subsection (6) of section 744.708, Florida
1117 Statutes, is amended to read:
1118 744.708 Reports and standards.--
1119 (6) A ~~The~~ public guardian shall ensure that each of the

1120 guardian's wards is personally visited ~~ward is seen~~ by the
1121 public guardian or by one of the guardian's ~~a~~ professional staff
1122 ~~person~~ at least once each calendar quarter ~~four times a year~~.
1123 During this personal visit, the public guardian or the
1124 professional staff person shall assess:
1125 (a) The ward's physical appearance and condition.
1126 (b) The appropriateness of the ward's current living
1127 situation.
1128 (c) The need for any additional services and the necessity
1129 for continuation of existing services, taking into consideration
1130 all aspects of social, psychological, educational, direct
1131 service, health, and personal care needs.
1132 Section 28. Paragraph (a) of subsection (5) of section
1133 765.101, Florida Statutes, is amended to read:
1134 765.101 Definitions.--As used in this chapter:
1135 (5) "Health care decision" means:
1136 (a) Informed consent, refusal of consent, or withdrawal of
1137 consent to any and all health care, including life-prolonging
1138 procedures and mental health treatment, unless otherwise stated
1139 in the advance directives.
1140 Section 29. Section 28.345, Florida Statutes, is amended
1141 to read:
1142 28.345 Exemption from court-related fees and
1143 charges.--Notwithstanding any other ~~provision of this chapter or~~
1144 law to the contrary, judges and those court staff acting on
1145 behalf of judges, state attorneys, guardians ad litem, public
1146 guardians, attorneys ad litem, court-appointed private counsel,
1147 and public defenders, acting in their official capacity, and

1148 state agencies~~,~~ are exempt from all court-related fees and
1149 charges assessed by the clerks of the circuit courts.
1150 Section 30. Paragraph (c) of subsection (8) of section
1151 121.091, Florida Statutes, is amended to read:
1152 121.091 Benefits payable under the system.--Benefits may
1153 not be paid under this section unless the member has terminated
1154 employment as provided in s. 121.021(39)(a) or begun
1155 participation in the Deferred Retirement Option Program as
1156 provided in subsection (13), and a proper application has been
1157 filed in the manner prescribed by the department. The department
1158 may cancel an application for retirement benefits when the
1159 member or beneficiary fails to timely provide the information
1160 and documents required by this chapter and the department's
1161 rules. The department shall adopt rules establishing procedures
1162 for application for retirement benefits and for the cancellation
1163 of such application when the required information or documents
1164 are not received.
1165 (8) DESIGNATION OF BENEFICIARIES.--
1166 (c) Notwithstanding the member's designation of benefits
1167 to be paid through a trust to a beneficiary that is a natural
1168 person as provided in s. 121.021(46), and notwithstanding the
1169 provisions of the trust, benefits shall be paid directly to the
1170 beneficiary if the ~~such~~ person is no longer a minor or an
1171 incapacitated person as defined in s. 744.102~~(11) and (12)~~.
1172 Section 31. Paragraph (c) of subsection (20) of section
1173 121.4501, Florida Statutes, is amended to read:
1174 121.4501 Public Employee Optional Retirement Program.--
1175 (20) DESIGNATION OF BENEFICIARIES.--

1176 (c) Notwithstanding the participant's designation of
1177 benefits to be paid through a trust to a beneficiary that is a
1178 natural person, and notwithstanding the provisions of the trust,
1179 benefits shall be paid directly to the beneficiary if the ~~such~~
1180 person is no longer a minor or an incapacitated person as
1181 defined in s. 744.102~~(11) and (12)~~.
1182 Section 32. Subsection (1) and paragraphs (b), (d), and
1183 (f) of subsection (4) of section 709.08, Florida Statutes, are
1184 amended to read:
1185 709.08 Durable power of attorney.--
1186 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
1187 power of attorney is a written power of attorney by which a
1188 principal designates another as the principal's attorney in
1189 fact. The durable power of attorney must be in writing, must be
1190 executed with the same formalities required for the conveyance
1191 of real property by Florida law, and must contain the words:
1192 "This durable power of attorney is not affected by subsequent
1193 incapacity of the principal except as provided in s. 709.08,
1194 Florida Statutes"; or similar words that show the principal's
1195 intent that the authority conferred is exercisable
1196 notwithstanding the principal's subsequent incapacity, except as
1197 otherwise provided by this section. The durable power of
1198 attorney is exercisable as of the date of execution; however, if
1199 the durable power of attorney is conditioned upon the
1200 principal's lack of capacity to manage property as defined in s.
1201 744.102(12)~~(11)~~(a), the durable power of attorney is exercisable
1202 upon the delivery of affidavits in paragraphs (4)(c) and (d) to
1203 the third party.

1204 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;
1205 AFFIDAVITS.--
1206 (b) Any third party may rely upon the authority granted in
1207 a durable power of attorney that is conditioned on the
1208 principal's lack of capacity to manage property as defined in s.
1209 744.102(12) ~~(11)~~(a) only after receiving the affidavits provided
1210 in paragraphs (c) and (d), and such reliance shall end when the
1211 third party has received notice as provided in subsection (5).
1212 (d) A determination that a principal lacks the capacity to
1213 manage property as defined in s. 744.102(12) ~~(11)~~(a) must be made
1214 and evidenced by the affidavit of a physician licensed to
1215 practice medicine pursuant to chapters 458 and 459 as of the
1216 date of the affidavit. A judicial determination that the
1217 principal lacks the capacity to manage property pursuant to
1218 chapter 744 is not required prior to the determination by the
1219 physician and the execution of the affidavit. For purposes of
1220 this section, the physician executing the affidavit must be the
1221 primary physician who has responsibility for the treatment and
1222 care of the principal. The affidavit executed by a physician
1223 must state where the physician is licensed to practice medicine,
1224 that the physician is the primary physician who has
1225 responsibility for the treatment and care of the principal, and
1226 that the physician believes that the principal lacks the
1227 capacity to manage property as defined in s. 744.102(12) ~~(11)~~(a).
1228 The affidavit may, but need not, be in the following form:
1229
1230 STATE OF_____
1231 COUNTY OF_____

1232
1233 Before me, the undersigned authority, personally appeared
1234 (name of physician) , Affiant, who swore or affirmed that:
1235 1. Affiant is a physician licensed to practice medicine in
1236 (name of state, territory, or foreign country) .
1237 2. Affiant is the primary physician who has responsibility
1238 for the treatment and care of (principal's name) .
1239 3. To the best of Affiant's knowledge after reasonable
1240 inquiry, Affiant believes that the principal lacks the capacity
1241 to manage property, including taking those actions necessary to
1242 obtain, administer, and dispose of real and personal property,
1243 intangible property, business property, benefits, and income.
1244
1245
1246 _____
1247 (Affiant)
1248
1249 Sworn to (or affirmed) and subscribed before me this (day
1250 of) (month) , (year) , by (name of person making
1251 statement)
1252
1253 (Signature of Notary Public-State of Florida)
1254
1255 (Print, Type, or Stamp Commissioned Name of Notary Public)
1256
1257 Personally Known OR Produced Identification
1258 (Type of Identification Produced)
1259 (f) A third party may not rely on the authority granted in

1260 a durable power of attorney conditioned on the principal's lack
1261 of capacity to manage property as defined in s.
1262 744.102(12)~~(11)~~(a) when any affidavit presented has been
1263 executed more than 6 months prior to the first presentation of
1264 the durable power of attorney to the third party.
1265 Section 33. Subsection (3) of section 744.1085, Florida
1266 Statutes, is amended to read:
1267 744.1085 Regulation of professional guardians;
1268 application; bond required; educational requirements.--
1269 (3) Each professional guardian defined in s.
1270 744.102(17)~~(16)~~ and public guardian must receive a minimum of 40
1271 hours of instruction and training. Each professional guardian
1272 must receive a minimum of 16 hours of continuing education every
1273 2 calendar years after the year in which the initial 40-hour
1274 educational requirement is met. The instruction and education
1275 must be completed through a course approved or offered by the
1276 Statewide Public Guardianship Office. The expenses incurred to
1277 satisfy the educational requirements prescribed in this section
1278 may not be paid with the assets of any ward. This subsection
1279 does not apply to any attorney who is licensed to practice law
1280 in this state.
1281 Section 34. For the purpose of incorporating the amendment
1282 made by this act to section 744.3215, Florida Statutes, in a
1283 reference thereto, subsection (4) of section 117.107, Florida
1284 Statutes, is reenacted to read:
1285 117.107 Prohibited acts.--
1286 (4) A notary public may not take the acknowledgment of or
1287 administer an oath to a person whom the notary public actually

1288 knows to have been adjudicated mentally incapacitated by a court
1289 of competent jurisdiction, where the acknowledgment or oath
1290 necessitates the exercise of a right that has been removed
1291 pursuant to s. 744.3215(2) or (3), and where the person has not
1292 been restored to capacity as a matter of record.
1293 Section 35. Subsection (13) of section 318.18, Florida
1294 Statutes, is amended to read:
1295 318.18 Amount of civil penalties.--The penalties required
1296 for a noncriminal disposition pursuant to s. 318.14 are as
1297 follows:
1298 (13) In addition to any penalties imposed for noncriminal
1299 traffic infractions under ~~pursuant to~~ this chapter or imposed
1300 for criminal violations listed in s. 318.17, notwithstanding s.
1301 318.121, a board of county commissioners or any unit of local
1302 government which is consolidated as provided by s. 9, Art. VIII
1303 of the State Constitution of 1885, as preserved by s. 6(e), Art.
1304 VIII of the Constitution of 1968:
1305 (a) May impose by ordinance a surcharge of up to $15 for
1306 any infraction or violation to fund state court facilities. The
1307 court may ~~shall~~ not waive this surcharge. Up to 25 percent of
1308 the revenue from such surcharge may be used to support local law
1309 libraries provided that the county or unit of local government
1310 provides a level of service equal to that provided prior to July
1311 1, 2004, which shall include the continuation of library
1312 facilities located in or near the county courthouse or annexes.
1313 (b) That imposed increased fees or service charges by
1314 ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the
1315 purpose of securing payment of the principal and interest on

1316 bonds issued by the county before July 1, 2003, to finance state
1317 court facilities, may impose by ordinance a surcharge for any
1318 infraction or violation for the exclusive purpose of securing
1319 payment of the principal and interest on bonds issued by the
1320 county before July 1, 2003, to fund state court facilities until
1321 the date of stated maturity. The court may ~~shall~~ not waive this
1322 surcharge. The ~~Such~~ surcharge may not exceed an amount per
1323 violation calculated as the quotient of the maximum annual
1324 payment of the principal and interest on the bonds as of July 1,
1325 2003, divided by the number of traffic citations for county
1326 fiscal year 2002-2003 certified as paid by the clerk of the
1327 court of the county. The ~~Such~~ quotient shall be rounded up to
1328 the next highest dollar amount. The bonds may be refunded only
1329 if savings will be realized on payments of debt service and the
1330 refunding bonds are scheduled to mature on the same date or
1331 before the bonds being refunded.
1332 (c) May impose an additional $15 surcharge to fund the
1333 county's participation in the public guardianship program under
1334 chapter 744. Imposition of this surcharge must be by vote of
1335 two-thirds of the board of county commissioners or after a
1336 referendum approved by the electors of the county. Before
1337 imposing the surcharge, the county commission must demonstrate
1338 that available revenue sources are insufficient to fund such
1339 participation. The court may not waive this surcharge.
1340
1341 A county may not impose ~~both of~~ the surcharges authorized under
1342 both paragraphs (a) and (b) concurrently. The clerk of court
1343 shall report, no later than 30 days after the end of the

1344 quarter, the amount of funds collected under this subsection
1345 during each quarter of the fiscal year. The clerk shall submit
1346 the report, in a format developed by the Office of State Courts
1347 Administrator, to the chief judge of the circuit, the Governor,
1348 the President of the Senate, and the Speaker of the House of
1349 Representatives.
1350 Section 36. Section 938.065, Florida Statutes, is created
1351 to read:
1352 938.065 Additional cost for public guardianship
1353 programs.--
1354 (1) In addition to any fine prescribed by law for any
1355 misdemeanor offense, there is assessed as a court cost an
1356 additional surcharge of $18 on each fine, which shall be imposed
1357 by each county and circuit court and collected by the clerk of
1358 the court together with the fine.
1359 (2) The clerk of the court shall collect and forward, on a
1360 monthly basis, all costs assessed under this section, less $3
1361 per assessment as a service charge to be retained by the clerk,
1362 to the Department of Revenue for deposit into the General
1363 Revenue Fund. The funds collected shall be used exclusively to
1364 fund public guardianship programs in this state.
1365 Section 37. This act shall take effect July 1, 2006.

HB 459

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 459 Public Records
SPONSOR(S): Sands
TIED BILLS: HB 457 **IDEN./SIM. BILLS:** SB 474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee		Preston	Collins
2) Civil Justice Committee			
3) Governmental Operations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The bill creates a public records exemption for identifying information of persons making a donation to the direct-support organization of the Statewide Public Guardianship Office. Such anonymity must also be maintained in any publication concerning the direct-support organization.

This bill provides for future review and repeal of the exemption on October 2, 2010, and provides a statement of public necessity.

The bill could have a minimal fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level. Section (24)(a), Art. I of the State Constitution provides that:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law [1] also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term "public records" to include:

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used "to perpetuate, communicate, or formalize knowledge."[2] Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.[3]

Under s. 24(c), Art. I of the State Constitution, the Legislature may provide for the exemption of records from the public records requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

The Open Government Sunset Review Act, s. 119.15, F.S., provides for the review, repeal, and reenactment of an exemption. A new exemption is repealed on the October 2nd in the fifth year after enactment, unless the exemption is reenacted by the Legislature. An exemption may be created or maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose.

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[1] Chapter 119, F.S.
[2] *Shevin v. Byron, Harless, Schaffer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[3] See *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

Statewide Public Guardianship Office

The Statewide Public Guardianship Office (SPGO) is housed within the Department of Elderly Affairs.[4] The purpose of the SPGO is to provide public guardians to incapacitated persons for whom there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian.[5] The Legislature also authorized the creation of a direct-support organization to support the SPGO.[6] The purpose of the direct-support organization is:

> to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the Statewide Public Guardianship Office . . . .[7]

The bill creates a public records exemption to allow donors and prospective donors to the direct-support organization for the Statewide Public Guardianship Office to remain anonymous, if they wish. The bill provides that the public records exemption is necessary because the release of information identifying donors will adversely affect the direct-support organization.

This bill takes effect July 1, 2006. The public records exemption will automatically repeal on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

C. SECTION DIRECTORY:

Section 1. Amends s. 744.7082, F.S., to create a public records exemption for identifying information of persons making a donation to the direct-support organization of the Statewide Public Guardianship Office.

Section 2. Provides for review and future repeal of the exemption on October 2, 2010.

Section 3. Provides a statement of public necessity.

Section 4. Provides for an effective date of July 1, 2006, if HB 457 becomes law.

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.

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[4] Section 744.7021, F.S.
[5] Section 744.702, F.S.
[6] Section 744.7082, F.S.
[7] Section 744.7082(1)(b), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The public records exemption will allow anonymous donations to the direct-support organization for the Statewide Public Guardianship Office. As such, those donors and potential donors who wish to donate anonymously will no longer be discouraged from donating by public records laws.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to public records; amending s. 744.7082,
3 F.S.; creating an exemption from public records
4 requirements for identifying information of persons making
5 a donation of funds or property to the direct-support
6 organization of the Statewide Public Guardianship Office;
7 providing for review and repeal under the Open Government
8 Sunset Review Act; providing a statement of public
9 necessity; providing a contingent effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Subsections (6) and (7) of section 744.7082,
14 Florida Statutes, are renumbered as subsections (7) and (8),
15 respectively, and a new subsection (6) is added to that section
16 to read:
17 744.7082 Direct-support organization; definition; use of
18 property; board of directors; audit; dissolution.--
19 (6) PUBLIC RECORDS.--The identity of a donor or
20 prospective donor of funds or property to the direct-support
21 organization who desires to remain anonymous, and all
22 information identifying the donor or prospective donor, is
23 confidential and exempt from the provisions of s. 119.07(1) and
24 s. 24(a), Art. I of the State Constitution, and that anonymity
25 must be maintained in any publication concerning the direct-
26 support organization.
27 Section 2. Subsection (6) of s. 744.7082, Florida
28 Statutes, is subject to the Open Government Sunset Review Act in

29 accordance with s. 119.15, Florida Statutes, and shall stand
30 repealed on October 2, 2010, unless reviewed and saved from
31 repeal through reenactment by the Legislature.
32 Section 3. The Legislature finds that it is a public
33 necessity that the name and other identifying information of a
34 donor or prospective donor to the direct-support organization of
35 the Statewide Public Guardianship Office be held confidential
36 and exempt from public disclosure because the disclosure of this
37 information would adversely impact the efforts of the direct-
38 support organization to collect funding or gifts of property to
39 support the statewide office. The sole purpose of the direct-
40 support organization is to raise funds for the statewide office,
41 and donor contributions are a key element in the ability of the
42 organization to achieve its goals. Some individuals who desire
43 to donate to the direct-support organization wish to remain
44 anonymous. The direct-support organization would be adversely
45 affected if identifying information of a donor is released to
46 the public. Therefore, the Legislature finds that any benefit
47 derived from public disclosure of identifying information of a
48 donor is outweighed by the necessity to keep the information
49 confidential.
50 Section 4. This act shall take effect July 1, 2006, if
51 House Bill 457, or similar legislation revising provisions
52 relating to the Statewide Public Guardianship Office, is adopted
53 in the same legislative session or an extension thereof and
54 becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 999 CS Suicide Prevention
SPONSOR(S): Adams
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1876

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) PreK-12 Committee	8 Y, 0 N, w/CS	Hatfield	Mizereck
2) Future of Florida's Families Committee		Preston	Collins
3) Education Appropriations Committee			
4) Education Council			
5)			

SUMMARY ANALYSIS

House Bill 999 establishes a pilot program on suicide and depression prevention to be conducted by the Signs of Suicide Prevention Program (SOS) for secondary schools in Brevard, Orange, Osceola, and Seminole counties during the 2006-2007 fiscal year.

In order for a county included in the pilot to receive funding, a proposal must be submitted to the Department of Education (DOE) by September 1, 2006.

The bill requires that local school personnel in each participating county receive materials necessary for program implementation. The parent of each student must be provided with a copy of a screening form and program information to assist the parent in the identification of depression and suicidal tendencies and to help initiate family discussions.

The bill requires a report to the President of the Senate and Speaker of the House of Representatives by January 1, 2007.

The bill appropriates $600,000 from the General Revenue Fund to the DOE for the 2006-2007 fiscal year for distribution to the Michael Buonauro Foundation. The foundation must provide matching funds in the amount of $600,000 to receive this appropriation. See FISCAL ANALYSIS for further details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides Limited Government-- The bill establishes a pilot program for secondary schools in selected counties on suicide and depression prevention.

Empower Families-- The bill requires parents of each student in a participating school to be provided with information that may assist the parent in the identification of depression and suicidal tendencies and to help initiate family discussions.

B. EFFECT OF PROPOSED CHANGES:

Background

According to the National Center for Health Statistics, the suicide rate for youths and young adults aged 15-24 years has tripled since 1950, and suicide is now the third leading cause of death in this age group. Recent studies indicate that the incidence of suicide attempts among adolescents may exceed 10% annually, although it is difficult to obtain reliable estimates because of the accompanying stigma with attempting suicide.[1]

A relatively new approach to reducing the incidence of suicide among adolescents is found in Signs of Suicide (SOS), a school-based prevention program.[2] According to Screening for Mental Health, Inc., (SMH), the SOS Program is a nationally recognized, easily implemented, cost-effective program of suicide prevention for secondary school students. It is the only school-based program to:

- Show a reduction in suicide attempts (by 40%) in a randomized controlled study (American Journal of Public Health, March, 2004).
- Be selected by the Substance Abuse and Mental Health Services Administration (SAMHSA) for its National Registry of Evidence-based Programs and Practices (NREPP).

The SOS Program has also documented a dramatic increase in help-seeking. (Adolescent and Family Health, 2003).[3]

Secondary schools participating in the SOS program may choose from program materials including a video and discussion guide and screening forms. The SOS program's primary objectives are to educate teens that depression is a treatable illness and to equip them to respond to a potential suicide involving a friend or family member using the SOS technique. SOS is an action-oriented approach instructing students how to **ACT** (**A**cknowledge, **C**are, and **T**ell) in the face of this mental health emergency.[4]

According to SAMHSA, the average amount of time to implement the program across 376 schools was approximately 2.5 days, although almost 40% of schools reported that they completed the program in one day. Results of a multi-site evaluation revealed:

- The average number of youth seeking counseling for depression/suicidality in the 30 days following the program (9.59) was significantly higher when compared with the average number

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[1] Robert H. Aseltine Jr, Ph.D., and Robert DeMartino, M.D., *An Outcome Evaluation of the SOS Suicide Prevention Program*, American Journal of Public Health, March 2004, Vol. 94, No. 3, at 446.
[2] Id.
[3] www.mentalhealthscreening.org/highschool/
[4] Id.

of youth seeking help per month over the past year (3.93). This was an increase of almost 150%.

- There was a 70% increase in the average number of youth seeking counseling for depression/suicidality on behalf of a friend in the 30 days following the program (3.79) when compared with the average number of youth seeking help for a friend per month over the past year (2.25).
- The average number of youth seeking counseling for depression/suicidality remained high in the 3 months following the program (9.74) per month, and was significantly higher than the previous school year (3.93). There was also a 25% increase in the number of youths seeking help for a friend 3 months after implementation (2.78) when compared to the past year (2.25).[5]

The Michael Buonauro Foundation

Judy and Frank Buonauro, whose son Michael died by suicide May 28, 2004, created the Michael Buonauro Foundation. The Foundation secured the SOS program for all public high school students in Orange County, Florida, for the 2005-2006 school year. Private schools were also invited to participate in the program.[6]

Effects of Proposed Changes

The bill establishes a pilot program on suicide and depression prevention for secondary schools in Brevard, Orange, Osceola, and Seminole counties during the 2006-2007 fiscal year.

The bill provides legislative intent including support and funding for the pilot program and encourages collaboration with local mental health facilities and individual professionals.

In order for one of the counties authorized to participate in this pilot program to receive funding, the bill requires an SOS entity to submit a program proposal to the DOE by September 1, 2006.

The bill requires the pilot program to provide local school personnel in each participating county with the materials necessary for implementation. The parent of each student in a participating school must be provided with program information and a copy of a screening form to assist the parent in the identification of depression and suicidal tendencies and to help initiate family discussions.

The bill requires the SOS pilot program to provide a report to the President of the Senate and Speaker of the House of Representatives by January 1, 2007. The report must include the following:

- An itemized list of program costs;
- An evaluation of participating schools;
- An assessment of the quality of the program components;
- An assessment of the safety of program implementation;
- An assessment of the burden on school support staff after implementation;
- An assessment of the efficacy of the program; and
- Recommendations regarding program effects and outcomes.

The information must be reported for the pilot program in the aggregate, for each participating county, and for each participating school in each participating county.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

[5] http://modelprograms.samhsa.gov/
[6] http://www.southwestorlandobulletin.com

Section 1: Provides for a pilot program to be conducted by the Signs of Suicide Prevention Program for secondary schools in specified counties.

Section 2: Provides conditions for program funding.

Section 3: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill appropriates $600,000 from the General Revenue Fund to the DOE for the 2006-2007 fiscal year. Release of funds to the Michael Buonauro Foundation is contingent on the Foundation providing equivalent matching funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In order for one of the counties authorized to participate in this pilot program to receive funding, the bill requires an SOS entity to submit a program proposal to the DOE by September 1, 2006. The bill also

requires the SOS pilot program to provide a report to the President of the Senate and Speaker of the House of Representatives by January 1, 2007, containing the following:

- An itemized list of program costs;
- An evaluation of participating schools;
- An assessment of the quality of the program components;
- An assessment of the safety of program implementation;
- An assessment of the burden on school support staff after implementation;
- An assessment of the efficacy of the program; and
- Recommendations regarding program effects and outcomes.

The amount of time between September 1, 2006 and January 1, 2007 may not allow enough time for the information required in the report to be obtained.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 21, 2006, the PreK-12 Committee adopted a strike-all amendment. This bill analysis reflects the bill as amended.

CHAMBER ACTION

1 The PreK-12 Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to suicide prevention; providing
7 legislative intent; providing for a pilot program to be
8 conducted by the Signs of Suicide Prevention Program for
9 secondary schools in specified counties; requiring the
10 submission of proposals to the Department of Education;
11 providing for student participation in the pilot program
12 and for the provision of certain information to parents;
13 requiring a report to the Legislature; providing an
14 appropriation; providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Signs of Suicide Prevention Program for
19 secondary schools; pilot program; legislative intent.--
20 (1) It is the intent of the Legislature to provide support
21 and funding for a suicide and depression prevention pilot
22 program conducted by the Signs of Suicide Prevention Program for
23 secondary schools, hereinafter referred to as "SOS." The pilot

24 program shall encourage collaboration with local mental health
25 facilities and individual professionals.
26 (2) During the 2006-2007 fiscal year, an SOS pilot program
27 shall be conducted in Brevard, Orange, Osceola, and Seminole
28 counties. In order to receive funding under this act, an SOS
29 entity for a county authorized to participate in the pilot
30 program must submit to the Department of Education by September
31 1, 2006, a proposal for suicide and depression prevention for
32 secondary school students who attend school in that county. The
33 pilot program shall provide school personnel in each
34 participating school with the materials necessary for
35 implementation.
36 (3) The parent of each student in a participating school
37 shall be provided with a copy of program information and a
38 screening form to assist the parent in the identification of
39 depression and suicidal tendencies and to help initiate family
40 discussions.
41 (4) By January 1, 2007, the district school board of each
42 participating county shall provide to the President of the
43 Senate and the Speaker of the House of Representatives a report
44 that includes an itemized list of program costs, an evaluation
45 of participating schools, an assessment of the quality of the
46 program components, an assessment of the safety of program
47 implementation, an assessment of the burden on school support
48 staff after implementation of the program, an assessment of the
49 efficacy of the program, and recommendations regarding program
50 effects and outcomes. The information shall be reported for the

51 pilot program in the aggregate, for each participating county,
52 and for each participating school in each participating county.
53 Section 2. The sum of $600,000 is appropriated from the
54 General Revenue Fund to the Department of Education for the
55 2006-2007 fiscal year to be distributed to the Michael Buonauro
56 Foundation to implement the Signs of Suicide Prevention Program
57 as a pilot program for secondary schools in Brevard, Orange,
58 Osceola, and Seminole counties in accordance with this act. The
59 Michael Buonauro Foundation shall provide matching funds in the
60 amount of $600,000 in order to receive the appropriation from
61 the General Revenue Fund.
62 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1047 CS Parental Relocation with a Child
SPONSOR(S): Stargel
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N, w/CS	Shaddock	Bond
2) Future of Florida's Families Committee		Preston	Collins
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

This bill creates a procedure that a primary residential parent must follow when seeking to relocate with a minor child. Under current law, only a limited number of primary residential parents must give notice of a planned relocation with the minor child. This bill requires any primary residential parent seeking to relocate more than 50 miles with a minor child to first notify all persons entitled to visitation of the planned move. Absent an objection, the move is allowed. If an objection is filed, this bill gives the court guidelines for determining whether to allow the relocation.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families – This bill increases the burdens of government on family decision-making.

B. EFFECT OF PROPOSED CHANGES:

Current Law

In single-parent families with children, a primary residential parent's attempt to relocate is addressed in two ways; with only one provided for in statute. When a residency restriction clause is provided in the final judgment of divorce, a framework exists in the statutes for what a court is to consider when reviewing a primary residential parent's petition for relocation.[1] That framework provides a court is to consider the following factors to determine whether the primary residential parent should be permitted to relocate with the child:

- Whether the move would be likely to improve the general quality of life for both the residential parent and the child.
- The extent to which visitation rights have been allowed and exercised.
- Whether the primary residential parent, once out of the jurisdiction, will be likely to comply with any substitute visitation arrangements.
- Whether the substitute visitation will be adequate to foster a continuing meaningful relationship between the child and the secondary residential parent.
- Whether the cost of transportation is financially affordable by one or both parties.
- Whether the move is in the best interests of the child.[2]

Section 61.13(2)(d), F.S., is explicit that "[n]o presumption shall arise in favor of or against a request to relocate when a primary residential parent seeks to move the child and the move will materially affect the current schedule of contact and access with the secondary residential parent." In essence, the existing statute "imposes a fact-specific framework that allows the trial court to base a relocation decision 'on what is best for the child, even though a result may not be best for the primary residential parent seeking to relocate.'"[3]

The existing statute is effective when a petition for relocation by a primary residential parent has been filed. However, in the absence of a residency restriction clause in the final judgment, many times the primary residential parent simply moves without authorization. The following excerpt from the Fourth District Court of Appeal, in *Leeds v. Adamse*, 832 So.2d 125, 127-28 (Fla. 4th DCA 2002), describes this scenario which it described as a "catch 22."

> The "catch 22" scenario unfolds as follows. Absent a residency restriction clause, the custodial parent is free to move the children without the consent of, or

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[1] Section 61.13(2)(d), F.S.

[2] Section 61.13(2)(d), F.S., was enacted to overrule a line of cases as this excerpt from *Berrebbi v. Clarke*, 870 So. 2d 172, 173-74 (Fla. 2d DCA 2004) explains:

> Section 61.13(2)(d) overrules a presumption previously adopted by the *Mize v. Mize*, 621 So.2d 417 (Fla.1993), and *Russenberger v. Russenberger*, 669 So.2d 1044 (Fla.1996), line of cases that a request for relocation should be favored when the request is made in good faith. *Borchard v. Borchard*, 730 So.2d 748 (Fla. 2d DCA 1999); *Flint* [*v. Fortson*], 744 So.2d 1217 [(Fla. 4th DCA 1999)]. Instead, the statute imposes a fact-specific framework that allows the trial court to base a relocation decision "on what is best for the child, even though a result may not be best for the primary residential parent seeking to relocate."

[3] *Berrebbi*, 870 So. 2d at 174 (citing *Flint v. Fortson*, 744 So.2d 1217, 1218)(Fla. 4th DCA 1999).

even notice to, the non-custodial parent. A trial court is prohibited from including a residency restriction clause in a final judgment unless the custodial parent seeks to relocate. An intent to relocate is often first revealed when the move takes place. At that point, the non-custodial parent's only option is to seek a modification of custody. However, to secure a modification of custody, he or she must show a substantial change of circumstances, and that the modification will be in the best interest of the children. [Section] 61.13(1)(a) Fla. Stat (2001). Until recently, relocation of the children without notice or consent was not a substantial change of circumstances that would support modification of the custody provisions of a final judgment. The non-custodial parent is up the custody creek without the proverbial paddle.

This "catch 22" scenario has been reduced by the recent amendment of section 61.13. It now provides that refusal to honor a non-custodial parent's visitation rights without just cause will support a modification of custody. But, the non-custodial parent must still show that the modification is in the best interest of the children. [Section] 61.13(4)(c)5 Fla. Stat. (2001). Boiled down to its essentials, under existing law, a custodial parent can conceal his or her intent to relocate the children, then after entry of the final judgment relocate to a place for [*sic*] enough away to effectively deny visitation to the non-custodial parent, and leave the non-custodial parent with the uphill battle.

At that point, much has changed, and an element of greatly increased hostility has been injected into the case. The judge's role is transformed from a thoughtful consideration of statutory criteria before the move to a fragile balancing act. The court must consider the significant economic factors inherent in a relocation, such as the purchase/sale of a residence, rent and utility deposits, school enrollment, and many other expenditures made by the custodial parent who relocates. The court must also consider the additional disruption of the children's lives that will occur if the court orders the custodial parent to return, or, by modifying custody, orders the children to be relocated a second time, this time without the presence and support of the parent with whom the children have lived. The longer the relocated parent can delay resolution of the issue, the greater the impact on the children of an additional relocation. In many cases, consideration of these factors, particularly those relating to disruption of the children's lives, actually bolsters the position of the relocated parent. The circumstances to be reviewed have already altered the pre-existing status quo.

For a non-custodial parent to be guaranteed of notification before a relocation takes place, a residency restriction clause must be in existence by agreement or order. All that an inclusion of such a provision will do to is allow the parties to either agree to the move or request leave of court to relocate. This will allow the trial court to review the factors outlined in section 61.13(2)(d), Florida Statutes (2001), in an objective and thoughtful manner instead of having to address these sensitive issues after the fact. It will prevent the infamous flights in the night that send families into the land of panic, chaos, and hostility, and which cause such disruption in the lives of children.[4]

Effect of Bill

[4] *Leeds v. Adamse*, 832 So.2d 125, 127-28 (Fla. 4th DCA 2002)(internal citations omitted).

The bill provides a mechanism for a court to determine the appropriateness of any relocation by a primary residential parent before the relocation. The bill defines the following terms:

- "Change of residence address" means the relocation of a child to a primary residence more than 50 miles away from his or her current primary place of residence, unless the move places the primary residence of the minor child less than 50 miles from the nonresidential parent.

- "Child" means any person who is under the jurisdiction of a state court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) or is the subject of any order granting to a parent or other person any right to residential care, custody, or visitation as provided under state law.

- "Court" means the circuit court in an original proceeding which has proper venue and jurisdiction in accordance with the UCCJEA, the circuit court in the county in which either parent and the child reside, or the circuit court in which the original action was adjudicated.

- "Other person" means an individual who is not the parent and who, by court order, maintains the primary residence of a child or has visitation rights with a child.

- "Parent" means any person so named by court order or express written agreement that is subject to court enforcement or a person reflected as a parent on a birth certificate and in whose home a child maintains a primary or secondary residence.

- "Person entitled to be the primary residential parent of a child" means a person so designated by court order or by an express written agreement that is subject to court enforcement or a person seeking such a designation, or, when neither parent has been designated as primary residential parent, the person seeking to relocate with a child.

- "Principal or primary residence of a child" means the home of the designated primary residential parent. When rotating custody is in effect, each parent shall be considered to be the primary residential parent.

- "Relocation" means a change in the principal residence of a child for a period of 60 consecutive days or more but does not include a temporary absence from the principal residence for purposes of vacation, education, or the provision of health care for the child.

A primary residential parent must notify the other parent and every other person entitled to visitation with the child of the proposed relocation. The primary residential parent must file a "Notice of Intent to Relocate" ("Notice") outlining the parent's intention to relocate with the child.

The Notice shall list the details of the proposed move and it must provide:

- If known, a description of the location of the new residence, including the state, city, and specific physical address.

- If known, the mailing address, if not the same as the physical address.

- If known, the home telephone number of the intended new residence.

- The date of the intended move.

- A detailed statement of the specific reasons for the proposed relocation of the child. If one of the reasons for the move is based on a written job offer, that written job offer must be attached.

- A proposal for a revised post-relocation schedule of visitation with the child.

- A statement that absent an objection the relocation will be permitted without a hearing. In order to properly file an objection, it must be in writing filed with the court, and served on the other parent within 30 days after service of the Notice.

- The mailing address of the parent or other person seeking to relocate to which an objection should be sent.

The Notice must be signed under oath under penalty of perjury. The contents of the Notice are not privileged; however, the Notice shall initially not be filed with the court, but instead, the Notice shall be served upon the nonrelocating parent and other persons entitled to visitation with the child. A primary residential parent required to give Notice, has a continuing duty to provide current and updated information in the Notice.

A parent seeking relocation must also prepare a "Certificate of Filing Notice of Intent to Relocate" ("Certificate"). This Certificate must certify the date the Notice was served on the other parent or other person entitled to receive the Notice.

The Notice and Certificate must be served on the other parent and on every person entitled to visitation. In cases where there is a pending action regarding the child, service may be according to court rule. Otherwise, the service must comply with the requirements of chapters 48 and 49, F.S.

As the Notice warns, if after 30 days after service no written objection is filed, the relocation is deemed authorized and may occur. If an objection is filed, the objection must include the specific factual basis for seeking a prohibition of the relocation, including a statement of the amount of participation or involvement the objecting party currently has or has had in the life of the child.

If a parent relocates a child without complying with the Notice procedure, that action subjects a parent to contempt and other proceedings to compel the return of the child. Further, the parent's failure to follow this procedure may be taken into account by a court in any action seeking a determination or modification of residence, custody, or visitation with the child as:

- A factor in making a determination regarding the relocation of a child.

- A factor in determining whether residence or contact, access, visitation, and time-sharing arrangements should be modified.

- A basis for ordering the temporary or permanent return of the child.

- Sufficient cause to order the parent seeking to relocate the child to pay reasonable expenses and attorney's fees incurred by the objecting party.

- For the award of reasonable attorney's fees and costs, including interim travel expenses incident to visitation or securing the return of the child.

The court may also order the return of the child, if a relocation has previously taken place, or other appropriate relief. But to require such action, the court must find: the Notice was not timely provided; the child was already relocated without Notice, written agreement or court approval; and based upon the evidence presented at a preliminary hearing, there is a likelihood that after a final hearing the court will not approve the relocation.

On the other hand, the court may grant a temporary order permitting the relocation. But the court must find the Notice was timely provided, and the evidence presented at a preliminary hearing demonstrates that there is a likelihood that after a final hearing the court will approve the relocation.

If temporary relocation of a child is permitted, the court may require the relocating parent to provide reasonable security, financial or otherwise, and guarantee that the court-ordered contact with the child will not be interrupted or interfered with by the relocating parent. However, if temporary relocation is authorized, the court may not give any weight to that determination in reaching its final decision.

No presumption will arise in favor of or against a request to relocate with the child when a primary residential parent seeks to move and the move will materially affect the current schedule of contact, access, and time-sharing with the nonrelocating parent. The court must evaluate all of the following factors in reaching a decision regarding a relocation:

- The nature, quality, extent of involvement, and duration of the child's relationship with the parent proposing to relocate with the child and with the nonrelocating parent, other persons, siblings, half-siblings, and other significant persons in the child's life.

- The age and developmental stage of the child, the needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.

- The feasibility of preserving the relationship between the nonrelocating parent or other person and the child through substitute arrangements that take into consideration the logistics of contact, access, visitation, and time-sharing, as well as the financial circumstances of the parties; whether those factors are sufficient to foster a continuing meaningful relationship between the child and the nonrelocating parent or other person; and the likelihood of compliance with the substitute arrangements by the relocating parent once he or she is out of the jurisdiction of the court.

- The child's preference, taking into consideration the age and maturity of the child.

- Whether the relocation will enhance the general quality of life for both the parent seeking the relocation and the child, including, but not limited to, financial or emotional benefits or educational opportunities.

- The reasons of each parent or other person for seeking or opposing the relocation.

- The current employment and economic circumstances of each parent or other person and whether or not the proposed relocation is necessary to improve the economic circumstances of the parent or other person seeking relocation of the child.

- That the relocation is sought in good faith, the extent to which the objecting parent has fulfilled his or her financial obligations to the parent or other person seeking relocation, including child support, spousal support, and marital property and marital debt obligations.

- The career and other opportunities available to the objecting parent or objecting other person if the relocation occurs.

- A history of substance abuse or domestic violence as defined in s. 741.28, F.S., or which meets the criteria of s. 39.806(1)(d), F.S., by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation.

- Any other factor affecting the best interest of the child or as set forth in s. 61.13, F.S.[5]

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[5] Currently, s. 61.13(2)(d), F.S., provides the following factors are to be considered by a court in making a determination as to whether the primary residential parent may relocate with a child: whether the move would be likely to improve the general quality of life for both the residential parent and the child; the extent to which visitation rights have been allowed and exercised; whether the primary residential parent, once out of the jurisdiction, will be likely to comply with any substitute visitation arrangements; whether the substitute visitation will be adequate to foster a continuing meaningful

If an objection is filed, the person seeking to relocate has the burden of proof and that person must initiate a court proceeding seeking court permission to relocate. The initial burden is on the person wishing to relocate to prove by a preponderance of the evidence that relocation is in the best interest of the child. If that burden is satisfied, the burden shifts to the nonrelocating parent or other person to show by a preponderance of the evidence the opposite.

If relocation is permitted, the court may, in its discretion, order contact with the nonrelocating parent, including access, visitation, time-sharing, telephone, Internet, web-cam, and other arrangements sufficient to ensure that the child has continuing and meaningful contact with the nonrelocating persons. This is only if that contact is financially affordable and in the best interest of the child.

Moreover, if applicable, the court must specify how the transportation costs will be allocated between the parents and other persons entitled to contact with the child(ren). And the court may adjust the child support award, as appropriate, considering the costs of transportation and the respective net incomes of the parents in accordance with state child support guidelines.

An evidentiary hearing on a pleading seeking temporary or permanent relocation must be accorded priority on the court's calendar. Throughout the process established in this bill, if a person seeking relocation of a child is entitled to have certain information prevented from disclosure due to an existing public records exception, the court may enter an order modifying the disclosure requirements of the bill.

The provisions of this section apply: before July 1, 2006, if the existing order defining custody, primary residence, and visitation or a written agreement does not expressly govern the relocation of the child; to an order, whether temporary or permanent, regarding primary residence of a child or visitation with a child issued after July 1, 2006; and to any relocation or proposed relocation, whether permanent or temporary, of a child during any pending proceeding wherein residence of or visitation with a child is an issue.

To the extent that a provision of this section conflicts with an existing order or enforceable written agreement signed by both parents, this section does not apply to the terms of that order or agreement that govern relocation of the child or a change in the principal residence address of a parent.

Finally, the bill removes the existing framework found in s. 61.13(2)(d), F.S., for dealing with a primary residential parent's relocation.

C. SECTION DIRECTORY:

Section 1. Amends s. 61.13(2)(d), F.S., by deleting standards for determining whether to allow a primary residential parent to move a child.

Section 2. Creates s. 61.13001, F.S., relating to parental relocation of children.

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

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relationship between the child and the secondary residential parent; whether the cost of transportation is financially affordable by one or both parties; and whether the move is in the best interests of the child.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Civil Justice committee adopted one amendment to the bill. The amendment made the following changes:

- Removed a requirement that the Notice of Intent to Relocate be filed 45 days before the intended move.
- Deleted s. 61.13(2)(d), F.S., regarding relocation of primary residential parent, which conflicts with the newly created statute.
- Provided for the exclusion of all information that may be privileged under the public records laws.

The bill was then reported favorably with a committee substitute.

CHAMBER ACTION

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1 The Civil Justice Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to parental relocation with a child;
7 amending s. 61.13, F.S.; deleting standards for
8 determining whether to allow a primary residential parent
9 to move a child; creating s. 61.13001, F.S.; providing
10 definitions; providing for notification of certain persons
11 of the intent to relocate the child and providing
12 procedures therefor; requiring certain information to be
13 provided on a Notice of Intent to Relocate; providing
14 procedures for objecting to the relocation of a child;
15 providing applicability of public records law; providing
16 for content of an objection to relocation; authorizing the
17 court to grant a temporary order restraining the
18 relocation of a child under certain circumstances;
19 prohibiting certain presumptions and requiring certain
20 factors to be evaluated by the court with regard to
21 relocation of a child; assigning the burden of proof in
22 cases of relocation of a child; authorizing the court to
23 order certain contact with the child by the nonrelocating

24 party; granting priority for certain hearings and trials
25 under s. 61.13001, F.S.; providing applicability;
26 providing an effective date.
27
28 Be It Enacted by the Legislature of the State of Florida:
29
30 Section 1. Paragraph (d) of subsection (2) of section
31 61.13, Florida Statutes, is amended to read:
32 61.13 Custody and support of children; visitation rights;
33 power of court in making orders.--
34 (2)
35 ~~(d) No presumption shall arise in favor of or against a~~
36 ~~request to relocate when a primary residential parent seeks to~~
37 ~~move the child and the move will materially affect the current~~
38 ~~schedule of contact and access with the secondary residential~~
39 ~~parent. In making a determination as to whether the primary~~
40 ~~residential parent may relocate with a child, the court must~~
41 ~~consider the following factors:~~
42 ~~1. Whether the move would be likely to improve the general~~
43 ~~quality of life for both the residential parent and the child.~~
44 ~~2. The extent to which visitation rights have been allowed~~
45 ~~and exercised.~~
46 ~~3. Whether the primary residential parent, once out of the~~
47 ~~jurisdiction, will be likely to comply with any substitute~~
48 ~~visitation arrangements.~~
49 ~~4. Whether the substitute visitation will be adequate to~~
50 ~~foster a continuing meaningful relationship between the child~~
51 ~~and the secondary residential parent.~~

52 ~~5. Whether the cost of transportation is financially~~
53 ~~affordable by one or both parties.~~
54 ~~6. Whether the move is in the best interests of the child.~~
55 Section 2. Section 61.13001, Florida Statutes, is created
56 to read:
57 61.13001 Parental relocation with a child.--
58 (1) DEFINITIONS.--As used in this section:
59 (a) "Change of residence address" means the relocation of
60 a child to a primary residence more than 50 miles away from his
61 or her current primary place of residence, unless the move
62 places the primary residence of the minor child less than 50
63 miles from the nonresidential parent.
64 (b) "Child" means any person who is under the jurisdiction
65 of a state court pursuant to the Uniform Child Custody
66 Jurisdiction and Enforcement Act or is the subject of any order
67 granting to a parent or other person any right to residential
68 care, custody, or visitation as provided under state law.
69 (c) "Court" means the circuit court in an original
70 proceeding which has proper venue and jurisdiction in accordance
71 with the Uniform Child Custody Jurisdiction and Enforcement Act,
72 the circuit court in the county in which either parent and the
73 child reside, or the circuit court in which the original action
74 was adjudicated.
75 (d) "Other person" means an individual who is not the
76 parent and who, by court order, maintains the primary residence
77 of a child or has visitation rights with a child.
78 (e) "Parent" means any person so named by court order or
79 express written agreement that is subject to court enforcement

80 or a person reflected as a parent on a birth certificate and in
81 whose home a child maintains a primary or secondary residence.
82 (f) "Person entitled to be the primary residential parent
83 of a child" means a person so designated by court order or by an
84 express written agreement that is subject to court enforcement
85 or a person seeking such a designation, or, when neither parent
86 has been designated as primary residential parent, the person
87 seeking to relocate with a child.
88 (g) "Principal or primary residence of a child" means the
89 home of the designated primary residential parent. For purposes
90 of this section only, when rotating custody is in effect, each
91 parent shall be considered to be the primary residential parent.
92 (h) "Relocation" means a change in the principal residence
93 of a child for a period of 60 consecutive days or more but does
94 not include a temporary absence from the principal residence for
95 purposes of vacation, education, or the provision of health care
96 for the child.
97 (2) NOTICE OF INTENT TO RELOCATE WITH A CHILD.--A parent
98 who is entitled to primary residence of the child shall notify
99 the other parent, and every other person entitled to visitation
100 with the child, of a proposed relocation of the child's
101 principal residence. The form of notice shall be according to
102 this section:
103 (a) The parent seeking to relocate shall prepare a Notice
104 of Intent to Relocate. The following information must be
105 included with the Notice of Intent to Relocate and signed under
106 oath under penalty of perjury:

107 1. A description of the location of the intended new
108 residence, including the state, city, and specific physical
109 address, if known.
110 2. The mailing address of the intended new residence, if
111 not the same as the physical address, if known.
112 3. The home telephone number of the intended new
113 residence, if known.
114 4. The date of the intended move or proposed relocation.
115 5. A detailed statement of the specific reasons for the
116 proposed relocation of the child. If one of the reasons is based
117 upon a job offer which has been reduced to writing, that written
118 job offer must be attached to the Notice of Intent to Relocate.
119 6. A proposal for a revised postrelocation schedule of
120 visitation with the child.
121 7. Substantially the following statement, in all capital
122 letters and in the same size type, or larger, as the type in the
123 remainder of the notice:
124
125 AN OBJECTION TO THE PROPOSED RELOCATION MUST BE MADE IN
126 WRITING, FILED WITH THE COURT, AND SERVED ON THE PARENT OR
127 OTHER PERSON SEEKING TO RELOCATE WITHIN 30 DAYS AFTER
128 SERVICE OF THIS NOTICE OF INTENT TO RELOCATE. IF YOU FAIL
129 TO TIMELY OBJECT TO THE RELOCATION, THE RELOCATION WILL BE
130 ALLOWED WITHOUT FURTHER NOTICE AND WITHOUT A HEARING.
131
132 8. The mailing address of the parent or other person
133 seeking to relocate to which the objection filed under

134 subsection (4) to the Notice of Intent to Relocate should be
135 sent.
136
137 The contents of the Notice of Intent to Relocate are not
138 privileged. For purposes of encouraging amicable resolution of
139 the relocation issue, a copy of the Notice of Intent to Relocate
140 shall initially not be filed with the court but instead served
141 upon the nonrelocating parent, other person, and every other
142 person entitled to visitation with the child, and the original
143 thereof shall be maintained by the parent or other person
144 seeking to relocate.
145 (b) The parent seeking to relocate shall also prepare a
146 Certificate of Filing Notice of Intent to Relocate. The
147 certificate shall certify the date that the Notice of Intent to
148 Relocate was served on the other parent and on every other
149 person entitled to visitation with the child.
150 (c) The Notice of Intent to Relocate, and the Certificate
151 of Filing Notice of Intent to Relocate, shall be served on the
152 other parent and on every other person entitled to visitation
153 with the child. If there is a pending court action regarding the
154 child, service of process may be according to court rule.
155 Otherwise, service of process shall be according to chapters 48
156 and 49.
157 (d) A person giving notice of a proposed relocation or
158 change of residence address under this section has a continuing
159 duty to provide current and updated information required by this
160 section when that information becomes known.

161 (e) If the other parent and any other person entitled to
162 visitation with the child fails to timely file an objection, the
163 relocation shall be allowed and the court shall enter an order.
164 If an objection is timely filed, the burden shifts to the parent
165 or person seeking to relocate to initiate court proceedings to
166 obtain court permission to relocate prior to doing so.
167 (f) The act of relocating the child after failure to
168 comply with the notice of intent to relocate procedure described
169 in this subsection subjects the party in violation thereof to
170 contempt and other proceedings to compel the return of the child
171 and may be taken into account by the court in any initial or
172 postjudgment action seeking a determination or modification of
173 residence, custody, or visitation with the child as:
174 1. A factor in making a determination regarding the
175 relocation of a child.
176 2. A factor in determining whether residence or contact,
177 access, visitation, and time-sharing arrangements should be
178 modified.
179 3. A basis for ordering the temporary or permanent return
180 of the child.
181 4. Sufficient cause to order the parent or other person
182 seeking to relocate the child to pay reasonable expenses and
183 attorney's fees incurred by the party objecting to the
184 relocation.
185 5. For the award of reasonable attorney's fees and costs,
186 including interim travel expenses incident to visitation or
187 securing the return of the child.

188 (3) APPLICABILITY OF PUBLIC RECORDS LAW.--If the parent or
189 other person seeking to relocate a child, or the child, is
190 entitled to prevent disclosure of location information under any
191 public records exemption applicable to that person, the court
192 may enter any order necessary to modify the disclosure
193 requirements of this section in compliance with the public
194 records exemption.
195 (4) CONTENT OF OBJECTION TO RELOCATION.--An objection
196 seeking to prevent the relocation of a child shall be verified
197 and served within 30 days after service of the Notice of Intent
198 to Relocate. The objection shall include the specific factual
199 basis supporting the reasons for seeking a prohibition of the
200 relocation, including a statement of the amount of participation
201 or involvement the objecting party currently has or has had in
202 the life of the child.
203 (5) TEMPORARY ORDER.--
204 (a) The court may grant a temporary order restraining the
205 relocation of a child or ordering the return of the child, if a
206 relocation has previously taken place, or other appropriate
207 remedial relief, if the court finds:
208 1. The required notice of a proposed relocation of a child
209 was not provided in a timely manner.
210 2. The child already has been relocated without notice or
211 written agreement of the parties or without court approval.
212 3. From an examination of the evidence presented at the
213 preliminary hearing that there is a likelihood that upon final
214 hearing the court will not approve the relocation of the primary
215 residence of the child.

216 (b) The court may grant a temporary order permitting the
217 relocation of the child pending final hearing, if the court:
218 1. Finds that the required Notice of Intent to Relocate
219 was provided in a timely manner.
220 2. Finds from an examination of the evidence presented at
221 the preliminary hearing that there is a likelihood that on final
222 hearing the court will approve the relocation of the primary
223 residence of the child, which findings must be supported by the
224 same factual basis as would be necessary to support the
225 permitting of relocation in a final judgment.
226 (c) If the court has issued a temporary order authorizing
227 a party seeking to relocate or move a child before a final
228 judgment is rendered, the court may not give any weight to the
229 temporary relocation as a factor in reaching its final decision.
230 (d) If temporary relocation of a child is permitted, the
231 court may require the person relocating the child to provide
232 reasonable security, financial or otherwise, and guarantee that
233 the court-ordered contact with the child will not be interrupted
234 or interfered with by the relocating party.
235 (6) NO PRESUMPTION; FACTORS TO DETERMINE CONTESTED
236 RELOCATION.--No presumption shall arise in favor of or against a
237 request to relocate with the child when a primary residential
238 parent seeks to move the child and the move will materially
239 affect the current schedule of contact, access, and time-sharing
240 with the nonrelocating parent or other person. In reaching its
241 decision regarding a proposed temporary or permanent relocation,
242 the court shall evaluate all of the following factors:

243 (a) The nature, quality, extent of involvement, and
244 duration of the child's relationship with the parent proposing
245 to relocate with the child and with the nonrelocating parent,
246 other persons, siblings, half-siblings, and other significant
247 persons in the child's life.
248 (b) The age and developmental stage of the child, the
249 needs of the child, and the likely impact the relocation will
250 have on the child's physical, educational, and emotional
251 development, taking into consideration any special needs of the
252 child.
253 (c) The feasibility of preserving the relationship between
254 the nonrelocating parent or other person and the child through
255 substitute arrangements that take into consideration the
256 logistics of contact, access, visitation, and time sharing, as
257 well as the financial circumstances of the parties; whether
258 those factors are sufficient to foster a continuing meaningful
259 relationship between the child and the nonrelocating parent or
260 other person; and the likelihood of compliance with the
261 substitute arrangements by the relocating parent once he or she
262 is out of the jurisdiction of the court.
263 (d) The child's preference, taking into consideration the
264 age and maturity of the child.
265 (e) Whether the relocation will enhance the general
266 quality of life for both the parent seeking the relocation and
267 the child, including, but not limited to, financial or emotional
268 benefits or educational opportunities.
269 (f) The reasons of each parent or other person for seeking
270 or opposing the relocation.

271 (g) The current employment and economic circumstances of
272 each parent or other person and whether or not the proposed
273 relocation is necessary to improve the economic circumstances of
274 the parent or other person seeking relocation of the child.
275 (h) That the relocation is sought in good faith, the
276 extent to which the objecting parent has fulfilled his or her
277 financial obligations to the parent or other person seeking
278 relocation, including child support, spousal support, and
279 marital property and marital debt obligations.
280 (i) The career and other opportunities available to the
281 objecting parent or objecting other person if the relocation
282 occurs.
283 (j) A history of substance abuse or domestic violence as
284 defined in s. 741.28 or which meets the criteria of s.
285 39.806(1)(d) by either parent, including a consideration of the
286 severity of such conduct and the failure or success of any
287 attempts at rehabilitation.
288 (k) Any other factor affecting the best interest of the
289 child or as set forth in s. 61.13.
290 (7) BURDEN OF PROOF.--The parent or other person wishing
291 to relocate has the burden of proof if an objection is filed and
292 must then initiate a proceeding seeking court permission for
293 relocation. The initial burden is on the parent or person
294 wishing to relocate to prove by a preponderance of the evidence
295 that relocation is in the best interest of the child. If that
296 burden of proof is met, the burden shifts to the nonrelocating
297 parent or other person to show by a preponderance of the

298 evidence that the proposed relocation is not in the best
299 interest of the child.
300 (8) ORDER REGARDING RELOCATION.--If relocation is
301 permitted:
302 (a) The court may, in its discretion, order contact with
303 the nonrelocating parent, including access, visitation, time
304 sharing, telephone, Internet, web-cam, and other arrangements
305 sufficient to ensure that the child has frequent, continuing,
306 and meaningful contact, access, visitation, and time sharing
307 with the nonrelocating parent or other persons, if contact is
308 financially affordable and in the best interest of the child.
309 (b) If applicable, the court shall specify how the
310 transportation costs will be allocated between the parents and
311 other persons entitled to contact, access, visitation, and time
312 sharing and may adjust the child support award, as appropriate,
313 considering the costs of transportation and the respective net
314 incomes of the parents in accordance with state child support
315 guidelines.
316 (9) PRIORITY FOR HEARING OR TRIAL.--An evidentiary hearing
317 or nonjury trial on a pleading seeking temporary or permanent
318 relief filed pursuant to this section shall be accorded priority
319 on the court's calendar.
320 (10) APPLICABILITY.--
321 (a) The provisions of this section apply:
322 1. Before July 1, 2006, if the existing order defining
323 custody, primary residence, and visitation or a written
324 agreement does not expressly govern the relocation of the child.

325 2. To an order, whether temporary or permanent, regarding
326 primary residence of a child or visitation with a child issued
327 after July 1, 2006.
328 3. To any relocation or proposed relocation, whether
329 permanent or temporary, of a child during any pending proceeding
330 wherein residence of or visitation with a child is an issue.
331 (b) To the extent that a provision of this section
332 conflicts with an existing order or enforceable written
333 agreement signed by both parents, this section does not apply to
334 the terms of that order or agreement that govern relocation of
335 the child or a change in the principal residence address of a
336 parent.
337 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1099 CS Court Actions Involving Families
SPONSOR(S): Planas
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2726

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary Committee	11 Y, 0 N, w/CS	Thomas	Hogge
2) Future of Florida's Families Committee		Preston	Collins
3) Judiciary Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

The bill provides additional purposes and legislative intent regarding the implementation of a unified family court program in the circuit courts. The additional purposes and legislative intent include:

- To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.
- That the courts embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system.
- To support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach.
- To focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system.

Last year, the Legislature implemented recommendations by the Florida Supreme Court related to the operation of a unified family court system. These recommendations were to:

- Allow the court system to create a unique identifier to identify all court cases related to the same family.
- Provide that specified orders entered in dependency court take precedence over court orders entered in other civil proceedings.
- Provide that final orders and evidence admitted in dependency actions are admissible in evidence in subsequent civil proceedings under certain circumstances.

The bill takes effect on July 1, 2006.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The unified family court system concept has the potential to avoid or at least reduce the number of conflicting orders relating to the same family and prevent multiple court appearances by the same family on the same issues. This may serve to reduce the number of hearings and therefore maximize judicial resources. This bill further implements that concept.

B. EFFECT OF PROPOSED CHANGES:

Background

Last year, the Legislature implemented recommendations by the Florida Supreme Court related to the operation of a unified family court system.[1] These recommendations were to:

- Allow the court system to create a unique identifier to identify all court cases related to the same family.
- Provide that specified orders entered in dependency court take precedence over court orders entered in other civil proceedings.
- Provide that final orders and evidence admitted in dependency actions are admissible in evidence in subsequent civil proceedings under certain circumstances.

Florida's initiative for a unified family court reform began as a result of increasing demands being placed on the judicial system by the large volume of cases involving children and families. As the number of family court filings significantly increases, the Supreme Court has noted that it must seek to improve productivity and conserve resources.[2] Against this background, the Court created the Family Court Steering Committee in 1994 to, among other things, advise the Court about the circuits' responses to families in litigation and make recommendations on the characteristics of a model family court.[3]

In 2002, a joint interim project was conducted by the Senate Committee on Judiciary and the Senate Committee on Children and Families. Several recommendations for statutory change were included in the report. One such change was to allow the use of a unique personal identification for people who come before the court.[4]

Under current law, legal issues involving children and families are frequently addressed by different divisions of the court, particularly in larger judicial circuits. In many cases, the parties are appearing before a different judge in each proceeding. Therefore, it is possible that a judge may be unaware of previous or pending related legal matters involving the same children or family before the court.

Effect of Proposed Changes

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[1] Chapter 2005-239, L.O.F.

[2] See *In Re Report of the Family Court Steering Committee, 794 So.2d 518 (Fla. 2001)*. The court, at p.520, reports that as of 1998 and 1999, family law cases constituted the largest percentage of all circuit court filings – over 40%. The court also reported that for this same period, these cases overwhelmingly represented the largest percentage of circuit court cases that were reopened - almost 70%.

[3] See *In Re Report of the Commission on Family Courts, 633 So.2d 14 (Fla. 1994)*.

[4] See Senate Interim Project Report 2002-141, Review of Family Courts Division and the Model Family Court: Court Services and System, and Senate Interim Project Report 2002-121, Review of Family Courts Division and the Model Family Court: Other Services and Systems for Children and Families.

The bill provides additional purposes and legislative intent regarding the implementation of a unified family court program in the circuit courts. These additional purposes are added to chapter 39, F.S., pertaining to proceedings relating to children, chapter 61, F.S., pertaining to dissolution of marriage, support, and custody, chapter 63, F.S., pertaining to adoption, section 68.07, F.S., pertaining to name change, chapter 88, F.S., pertaining to the Uniform Interstate Family Support Act, chapter 741, F.S., pertaining to marriage and domestic violence, chapter 742, F.S., pertaining to determination of parentage, chapter 743, F.S., pertaining to disability of nonage of minors removed, chapter 984, F.S., pertaining to children and families in need of services, chapter 985, F.S., pertaining to the juvenile justice system, and part II of chapter 1003, F.S., pertaining to school attendance. The additional purposes and legislative intent include:

- To provide all children and families with a fully integrated, comprehensive approach to handling all cases that involve children and families, while at the same time resolving family disputes in a fair, timely, efficient, and cost-effective manner.

- That the courts embrace methods of resolving disputes that do not cause additional emotional harm to the children and families who are required to interact with the judicial system.

- To support the development of a unified family court and to support the state courts system's efforts to improve the resolution of disputes involving children and families through a fully integrated, comprehensive approach.

- To focus on the needs of children who are involved in the litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.001, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to proceedings relating to children.

Section 2. Amends s. 61.001, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to dissolution of marriage, support, and custody.

Section 3. Amends s. 63.022, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to adoption.

Section 4. Amends s. 68.07, F.S., relating to the purposes and legislative intent of the section in Florida Statutes pertaining to name change.

Section 5. Creates s. 88.1041, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to the Uniform Interstate Family Support Act.

Section 6. Amends s. 741.2902, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to marriage and domestic violence.

Section 7. Creates s. 742.016, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to determination of parentage.

Section 8. Creates s. 743.001, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to disability of nonage of minors removed.

Section 9. Amends s. 984.01, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to children and families in need of services.

Section 10. Amends s. 985.02, F.S., relating to the purposes and legislative intent of the chapter in Florida Statutes pertaining to the juvenile justice system.

Section 11. Creates s. 1003.20, F.S., relating to the purposes and legislative intent of the part in Florida Statutes pertaining to school attendance.

Section 12. Provides that the bill becomes effective on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "D. Fiscal Comments" below.

D. FISCAL COMMENTS:

The unified family court system concept has the potential to avoid or at least reduce the number of conflicting orders relating to the same family and prevent multiple court appearances by the same family on the same issues. This may serve to reduce the number of hearings and therefore maximize judicial resources. This bill further implements that concept.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Though the provisions of the bill are non-substantive, placing identical language in multiple places in Florida Statutes may make it difficult in the future to maintain consistency should these provisions ever need to be rewritten.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 15, 2006, meeting, the Judiciary Committee approved a strike-all amendment which differs from the bill as filed by rewording the Legislative Intent language and placing it in eleven separate statutes relating to court proceedings involving children and families. The bill as filed placed the language in only three separate statutes. The eleven statutes are located in the following areas:

- Chapter 39 – Proceedings Relating to Children
- Chapter 61 – Dissolution of Marriage
- Chapter 63 – Adoption
- Section 68.07 – Name Change
- Chapter 88 – Uniform Interstate Family Support Act
- Chapter 741 – Marriage; Domestic Violence
- Chapter 742 – Determination of Parentage
- Chapter 743 – Disability of Nonage of Minors Removed
- Chapter 984 – Children and Families in Need of Services
- Chapter 985 – Delinquency; Interstate Compact on Juveniles
- Chapter 1003 – Part II – School Attendance

CHAMBER ACTION

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1 The Judiciary Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to court actions involving families;
7 amending ss. 39.001, 61.001, 63.022, 68.07, 741.2902,
8 984.01, and 985.02, F.S., and creating ss. 88.1041,
9 742.016, 743.001, and 1003.20, F.S.; providing additional
10 purposes relating to implementing a unified family court
11 program in the circuit courts; providing legislative
12 intent; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Paragraph (n) is added to subsection (1) of
17 section 39.001, Florida Statutes, to read:
18 39.001 Purposes and intent; personnel standards and
19 screening.--
20 (1) PURPOSES OF CHAPTER.--The purposes of this chapter
21 are:
22 (n) To provide all children and families with a fully
23 integrated, comprehensive approach to handling all cases that

24 involve children and families and a resolution of family
25 disputes in a fair, timely, efficient, and cost-effective
26 manner. It is the intent of the Legislature that the courts of
27 this state embrace methods of resolving disputes that do not
28 cause additional emotional harm to the children and families who
29 are required to interact with the judicial system. It is the
30 intent of the Legislature to support the development of a
31 unified family court and to support the state courts system's
32 efforts to improve the resolution of disputes involving children
33 and families through a fully integrated, comprehensive approach
34 that includes coordinated case management; the concept of "one
35 family, one judge"; collaboration with the community for
36 referral to needed services; and methods of alternative dispute
37 resolution. The Legislature supports the goal that the legal
38 system should focus on the needs of children who are involved in
39 the litigation, refer families to resources that will make
40 families' relationships stronger, coordinate families' cases to
41 provide consistent results, and strive to leave families in
42 better condition than when the families entered the system.
43 Section 2. Paragraph (d) is added to subsection (2) of
44 section 61.001, Florida Statutes, to read:
45 61.001 Purpose of chapter.--
46 (2) Its purposes are:
47 (d) To provide all children and families with a fully
48 integrated, comprehensive approach to handling all cases that
49 involve children and families and a resolution of family
50 disputes in a fair, timely, efficient, and cost-effective
51 manner. It is the intent of the Legislature that the courts of

52 this state embrace methods of resolving disputes that do not
53 cause additional emotional harm to the children and families who
54 are required to interact with the judicial system. It is the
55 intent of the Legislature to support the development of a
56 unified family court and to support the state courts system's
57 efforts to improve the resolution of disputes involving children
58 and families through a fully integrated, comprehensive approach
59 that includes coordinated case management; the concept of "one
60 family, one judge"; collaboration with the community for
61 referral to needed services; and methods of alternative dispute
62 resolution. The Legislature supports the goal that the legal
63 system should focus on the needs of children who are involved in
64 the litigation, refer families to resources that will make
65 families' relationships stronger, coordinate families' cases to
66 provide consistent results, and strive to leave families in
67 better condition than when the families entered the system.
68 Section 3. Subsection (6) is added to section 63.022,
69 Florida Statutes, to read:
70 63.022 Legislative intent.--
71 (6) It is the intent of the Legislature to provide all
72 children and families with a fully integrated, comprehensive
73 approach to handling all cases that involve children and
74 families and a resolution of family disputes in a fair, timely,
75 efficient, and cost-effective manner. It is the intent of the
76 Legislature that the courts of this state embrace methods of
77 resolving disputes that do not cause additional emotional harm
78 to the children and families who are required to interact with
79 the judicial system. It is the intent of the Legislature to

80 support the development of a unified family court and to support
81 the state courts system's efforts to improve the resolution of
82 disputes involving children and families through a fully
83 integrated, comprehensive approach that includes coordinated
84 case management; the concept of "one family, one judge";
85 collaboration with the community for referral to needed
86 services; and methods of alternative dispute resolution. The
87 Legislature supports the goal that the legal system should focus
88 on the needs of children who are involved in the litigation,
89 refer families to resources that will make families'
90 relationships stronger, coordinate families' cases to provide
91 consistent results, and strive to leave families in better
92 condition than when the families entered the system.
93 Section 4. Subsection (9) is added to section 68.07,
94 Florida Statutes, to read:
95 68.07 Change of name.--
96 (9) It is the intent of the Legislature to provide all
97 children and families with a fully integrated, comprehensive
98 approach to handling all cases that involve children and
99 families and a resolution of family disputes in a fair, timely,
100 efficient, and cost-effective manner. It is the intent of the
101 Legislature that the courts of this state embrace methods of
102 resolving disputes that do not cause additional emotional harm
103 to the children and families who are required to interact with
104 the judicial system. It is the intent of the Legislature to
105 support the development of a unified family court and to support
106 the state courts system's efforts to improve the resolution of
107 disputes involving children and families through a fully

108 integrated, comprehensive approach that includes coordinated
109 case management; the concept of "one family, one judge";
110 collaboration with the community for referral to needed
111 services; and methods of alternative dispute resolution. The
112 Legislature supports the goal that the legal system should focus
113 on the needs of children who are involved in the litigation,
114 refer families to resources that will make families'
115 relationships stronger, coordinate families' cases to provide
116 consistent results, and strive to leave families in better
117 condition than when the families entered the system.
118 Section 5. Section 88.1041, Florida Statutes, is created
119 to read:
120 88.1041 Legislative intent.--It is the intent of the
121 Legislature to provide all children and families with a fully
122 integrated, comprehensive approach to handling all cases that
123 involve children and families and a resolution of family
124 disputes in a fair, timely, efficient, and cost-effective
125 manner. It is the intent of the Legislature that the courts of
126 this state embrace methods of resolving disputes that do not
127 cause additional emotional harm to the children and families who
128 are required to interact with the judicial system. It is the
129 intent of the Legislature to support the development of a
130 unified family court and to support the state courts system's
131 efforts to improve the resolution of disputes involving children
132 and families through a fully integrated, comprehensive approach
133 that includes coordinated case management; the concept of "one
134 family, one judge"; collaboration with the community for
135 referral to needed services; and methods of alternative dispute

136 resolution. The Legislature supports the goal that the legal
137 system should focus on the needs of children who are involved in
138 the litigation, refer families to resources that will make
139 families' relationships stronger, coordinate families' cases to
140 provide consistent results, and strive to leave families in
141 better condition than when the families entered the system.
142 Section 6. Subsection (3) is added to section 741.2902,
143 Florida Statutes, to read:
144 741.2902 Domestic violence; legislative intent with
145 respect to judiciary's role.--
146 (3) It is the intent of the Legislature to provide all
147 children and families with a fully integrated, comprehensive
148 approach to handling all cases that involve children and
149 families and a resolution of family disputes in a fair, timely,
150 efficient, and cost-effective manner. It is the intent of the
151 Legislature that the courts of this state embrace methods of
152 resolving disputes that do not cause additional emotional harm
153 to the children and families who are required to interact with
154 the judicial system. It is the intent of the Legislature to
155 support the development of a unified family court and to support
156 the state courts system's efforts to improve the resolution of
157 disputes involving children and families through a fully
158 integrated, comprehensive approach that includes coordinated
159 case management; the concept of "one family, one judge";
160 collaboration with the community for referral to needed
161 services; and methods of alternative dispute resolution. The
162 Legislature supports the goal that the legal system should focus
163 on the needs of children who are involved in the litigation,

164 refer families to resources that will make families'
165 relationships stronger, coordinate families' cases to provide
166 consistent results, and strive to leave families in better
167 condition than when the families entered the system.
168 Section 7. Section 742.016, Florida Statutes, is created
169 to read:
170 742.016 Legislative intent.--It is the intent of the
171 Legislature to provide all children and families with a fully
172 integrated, comprehensive approach to handling all cases that
173 involve children and families and a resolution of family
174 disputes in a fair, timely, efficient, and cost-effective
175 manner. It is the intent of the Legislature that the courts of
176 this state embrace methods of resolving disputes that do not
177 cause additional emotional harm to the children and families who
178 are required to interact with the judicial system. It is the
179 intent of the Legislature to support the development of a
180 unified family court and to support the state courts system's
181 efforts to improve the resolution of disputes involving children
182 and families through a fully integrated, comprehensive approach
183 that includes coordinated case management; the concept of "one
184 family, one judge"; collaboration with the community for
185 referral to needed services; and methods of alternative dispute
186 resolution. The Legislature supports the goal that the legal
187 system should focus on the needs of children who are involved in
188 the litigation, refer families to resources that will make
189 families' relationships stronger, coordinate families' cases to
190 provide consistent results, and strive to leave families in
191 better condition than when the families entered the system.

192 Section 8. Section 743.001, Florida Statutes, is created
193 to read:
194 743.001 Legislative intent.--It is the intent of the
195 Legislature to provide all children and families with a fully
196 integrated, comprehensive approach to handling all cases that
197 involve children and families and a resolution of family
198 disputes in a fair, timely, efficient, and cost-effective
199 manner. It is the intent of the Legislature that the courts of
200 this state embrace methods of resolving disputes that do not
201 cause additional emotional harm to the children and families who
202 are required to interact with the judicial system. It is the
203 intent of the Legislature to support the development of a
204 unified family court and to support the state courts system's
205 efforts to improve the resolution of disputes involving children
206 and families through a fully integrated, comprehensive approach
207 that includes coordinated case management; the concept of "one
208 family, one judge"; collaboration with the community for
209 referral to needed services; and methods of alternative dispute
210 resolution. The Legislature supports the goal that the legal
211 system should focus on the needs of children who are involved in
212 the litigation, refer families to resources that will make
213 families' relationships stronger, coordinate families' cases to
214 provide consistent results, and strive to leave families in
215 better condition than when the families entered the system.
216 Section 9. Paragraph (g) is added to subsection (1) of
217 section 984.01, Florida Statutes, to read:
218 984.01 Purposes and intent; personnel standards and
219 screening.--

220 (1) The purposes of this chapter are:
221 (g) To provide all children and families with a fully
222 integrated, comprehensive approach to handling all cases that
223 involve children and families and a resolution of family
224 disputes in a fair, timely, efficient, and cost-effective
225 manner. It is the intent of the Legislature that the courts of
226 this state embrace methods of resolving disputes that do not
227 cause additional emotional harm to the children and families who
228 are required to interact with the judicial system. It is the
229 intent of the Legislature to support the development of a
230 unified family court and to support the state courts system's
231 efforts to improve the resolution of disputes involving children
232 and families through a fully integrated, comprehensive approach
233 that includes coordinated case management; the concept of "one
234 family, one judge"; collaboration with the community for
235 referral to needed services; and methods of alternative dispute
236 resolution. The Legislature supports the goal that the legal
237 system should focus on the needs of children who are involved in
238 the litigation, refer families to resources that will make
239 families' relationships stronger, coordinate families' cases to
240 provide consistent results, and strive to leave families in
241 better condition than when the families entered the system.
242 Section 10. Paragraph (j) is added to subsection (1) of
243 section 985.02, Florida Statutes, to read:
244 985.02 Legislative intent for the juvenile justice
245 system.--

246 (1) GENERAL PROTECTIONS FOR CHILDREN.--It is a purpose of
247 the Legislature that the children of this state be provided with
248 the following protections:
249 (j) A fully integrated, comprehensive approach to handling
250 all cases that involve children and families and a resolution of
251 family disputes in a fair, timely, efficient, and cost-effective
252 manner. It is the intent of the Legislature that the courts of
253 this state embrace methods of resolving disputes that do not
254 cause additional emotional harm to the children and families who
255 are required to interact with the judicial system. It is the
256 intent of the Legislature to support the development of a
257 unified family court and to support the state courts system's
258 efforts to improve the resolution of disputes involving children
259 and families through a fully integrated, comprehensive approach
260 that includes coordinated case management; the concept of "one
261 family, one judge"; collaboration with the community for
262 referral to needed services; and methods of alternative dispute
263 resolution. The Legislature supports the goal that the legal
264 system should focus on the needs of children who are involved in
265 the litigation, refer families to resources that will make
266 families' relationships stronger, coordinate families' cases to
267 provide consistent results, and strive to leave families in
268 better condition than when the families entered the system.
269 Section 11. Section 1003.20, Florida Statutes, is created
270 to read:
271 1003.20 Legislative intent.--It is the intent of the
272 Legislature to provide all children and families with a fully
273 integrated, comprehensive approach to handling all cases that

274 involve children and families and a resolution of family
275 disputes in a fair, timely, efficient, and cost-effective
276 manner. It is the intent of the Legislature that the courts of
277 this state embrace methods of resolving disputes that do not
278 cause additional emotional harm to the children and families who
279 are required to interact with the judicial system. It is the
280 intent of the Legislature to support the development of a
281 unified family court and to support the state courts system's
282 efforts to improve the resolution of disputes involving children
283 and families through a fully integrated, comprehensive approach
284 that includes coordinated case management; the concept of "one
285 family, one judge"; collaboration with the community for
286 referral to needed services; and methods of alternative dispute
287 resolution. The Legislature supports the goal that the legal
288 system should focus on the needs of children who are involved in
289 the litigation, refer families to resources that will make
290 families' relationships stronger, coordinate families' cases to
291 provide consistent results, and strive to leave families in
292 better condition than when the families entered the system.
293 Section 12. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1239 Child Abuse
SPONSOR(S): Detert
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2266

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Cunningham	Kramer
2) Future of Florida's Families Committee		Preston	Collins
3) Criminal Justice Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

Florida has two statutes that address child abuse. Chapter 39, F.S., is a civil statute, relating to dependency, that defines child abuse, and specifically defines, what constitutes excessive corporal punishment. Section 827.03, F.S., is a criminal statute that defines "child abuse" (simple child abuse) and "aggravated child abuse," but does not specifically address corporal punishment.

Courts have looked to the above statutes in an attempt to determine when corporal discipline rises to the level of criminal child abuse. The courts' analyses and opinions have resulted in an "either or" approach to classifying excessive corporal discipline. Either excessive corporal discipline is *civil* child abuse, or it's *simple* (or aggravated) criminal abuse. The case law does not appear to contemplate that the same act of excessive corporal discipline (e.g., a severe beating that causes significant bruises or welts) could qualify as both civil *and* simple child abuse.

This bill amends the definition of the term "child abuse" in s. 827.03(1), F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver. The bill then defines the term "inappropriate or excessively harsh corporal discipline" as an act of discipline that results in or could reasonably be expected to result in any of the following or other similar injuries:

- sprains, dislocations, or cartilage damage;
- bone or skull fractures;
- brain or spinal cord damage;
- intracranial hemorrhage or injury to other internal organs;
- asphyxiation, suffocation, or drowning;
- injury resulting from the use of a deadly weapon;
- burns or scalding;
- cuts, lacerations, punctures, or bites;
- disfigurement;
- loss or impairment of a body part or function;
- significant bruises or welts; or
- mental injury.

Provisions of the bill will result in courts no longer having to look to Ch. 39, F.S., to try and determine the legislature's intent with regards to when excessive corporal punishment rises to the level of criminal child abuse.

There is no fiscal impact anticipated on either local or state governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill amends the definition of child abuse contained in s. 827.03, F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver and defines the term "inappropriate or excessively harsh corporal discipline."

Promote personal responsibility – The bill amends the definition of child abuse contained in s. 827.03, F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver and defines the term "inappropriate or excessively harsh corporal discipline."

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Courts and legislative bodies have repeatedly recognized the difficulty in delineating a precise line between permissible corporal punishment and prohibited child abuse.[1] However, as stated by the Florida Supreme Court, the task of doing so is principally a legislative function.[2] Florida has two statutes that address child abuse. Chapter 39, F.S., is a civil statute that defines child abuse and specifically defines what constitutes excessive corporal punishment. Section 827.03, F.S., is a criminal statute that defines child abuse, but does not specifically address corporal punishment.

Chapter 39, F.S. – Civil Child Abuse

Chapter 39, F.S., a *civil* statute, designates certain types of excessive corporal punishment as *civil* child abuse.[3] Section 39.01, F.S., provides that "corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

- Sprains, dislocations, or cartilage damage;
- Bone or skull fractures;
- Brain or spinal cord damage;
- Intracranial hemorrhage or injury to other internal organs;
- Asphyxiation, suffocation, or drowning;
- Injury resulting from the use of a deadly weapon;
- Burns or scalding;
- Cuts, lacerations, punctures, or bites;
- Permanent or temporary disfigurement;
- Permanent or temporary loss or impairment of a body part or function; or
- Significant bruises or welts."
-

Under Chapter 39, F.S., protective investigations and dependency proceedings could result if there is a report that a child has been abused. A person who is found to have abused a child under Ch. 39, F.S., could also be charged with contributing to the dependency of a minor pursuant to s. 827.04, F.S.

Section 827.03(1), F.S. – Criminal Child Abuse

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[1] *See, e.g.*, *State v. McDonald*, 785 So.2d 640 (Fla. 2nd DCA 2001); *Corsen v. State*, 784 (So.2d 535 (Fla. 5th DCA 2001); *Moakley v. State*, 547 So.2d 1246 (Fla. 5th DCA 1989).
[2] *Raford v. State*, 828 So.2d 1012 (Fla. 2002).
[3] *Id.*

Section 827.03(1), F.S., a *criminal* statute, defines child abuse as:

(a) Intentional infliction of physical or mental injury upon a child;
(b) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

A person who knowingly or willfully abuses a child *without* causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a third degree felony.[4] This type of child abuse is often referred to as "simple" child abuse.

Section 827.03(2), F.S., defines *aggravated* child abuse, and provides, in part, that aggravated child abuse occurs when someone knowingly and willfully abuses a child and in doing so actually *causes* great bodily harm, permanent disability, or permanent disfigurement to a child.

Case law - Relationship Between Chapter 39 and Section 827.03, F.S.

It would appear from the plain language of the statutes that a person who commits excessive corporal discipline, as defined by Ch. 39, F.S., could also be charged with a crime under s. 827.03, F.S. (either simple or aggravated depending on how serious the injury was). The courts, however, have used a different analysis.

In 2002, the Florida Supreme Court held that there is no parental privilege barring prosecution for simple child abuse under s. 827.03(1), F.S.[5] In its decision, the court discussed corporal punishment and when such punishment rises to the level of simple child abuse. After reviewing the legislative histories of Ch. 39 and s. 827.03, F.S., the court stated that a parent can be charged with *simple* child abuse for excessive corporal punishment that falls between the level of abuse required to establish *civil* child abuse and that required to prove *aggravated* child abuse.[6] The court stated that if a parent commits *civil* child abuse when a spanking results in significant welts, the legislature intended more serious beatings that do not rise to the level of aggravated child abuse to be treated as simple child abuse.[7]

In *King v. State*, 908 So.2d 954 (Fla. 2nd DCA 2005), the court cited the *Raford* case and held that a school administrator's spanking that resulted in significant bruises or welts did not rise to the level of simple child abuse, but instead fell under the category of *civil* child abuse. The court noted, however, that their holding contradicted the plain language of s. 827.03(1), F.S. (defining child abuse as the intentional infliction of physical injury upon a child without causing great bodily harm, permanent disability, or permanent disfigurement). As such, the *King* court certified the following question to the Florida Supreme Court:

> "Whether a spanking administered as corporal punishment that results in significant bruises or welts may constitute felony child abuse under Section 827.03(1), Florida Statutes."

Despite the seeming incongruity in the law, the Florida Supreme Court denied review.[8]

Effect of the Case law

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[4] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082, 775.083, or s. 775.084, F.S.
[5] *Raford v. State*, 828 So.2d 1012, 1020 (Fla. 2002)
[6] *Id. See also*, *State v. McDonald*, 785 So.2d 640 (Fla. 2nd DCA 2001) (If a parent can be charged with civil child abuse when a spanking results in significant welts, the legislature intended more serious beatings that do not result in permanent disability or permanent disfigurement to be treated as simple child abuse.).
[7] *Id* at 1019.
[8] *State v. King*, 908 So.2d 1058 (Fla. 2005).

In essence, the courts appear to have created an "either or" approach to classifying excessive corporal discipline. Either excessive corporal discipline is *civil* child abuse, or it's *simple* (or aggravated) criminal abuse. The case law does not appear to contemplate that the same act of excessive corporal discipline (e.g., a severe beating that causes significant bruises or welts) could qualify as both civil *and* simple child abuse. This is especially puzzling considering that the list of injuries that constitute excessive corporal discipline contained in Ch. 39, F.S., encompasses a wide range of injuries (e.g., injuries ranging from cuts and sprains to skull fractures, spinal cord damage, and permanent loss of a body part). If an act does not rise to the level of *simple* child abuse simply because it qualifies as *civil* child abuse, it is unclear when, if ever, a court will find that excessive corporal discipline qualifies as simple child abuse.

Effect of the Bill

This bill amends the definition of the term "child abuse" in s. 827.03(1), F.S., to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver. The bill then defines the term "inappropriate or excessively harsh corporal discipline" as "an act of discipline that results in or could reasonably be expected to result in any of the following or other similar injuries:

- sprains, dislocations, or cartilage damage;
- bone or skull fractures;
- brain or spinal cord damage;
- intracranial hemorrhage or injury to other internal organs;
- asphyxiation, suffocation, or drowning;
- injury resulting from the use of a deadly weapon;
- burns or scalding;
- cuts, lacerations, punctures, or bites;
- disfigurement;
- loss or impairment of a body part or function;
- significant bruises or welts; or
- mental injury."[9]

As a result, courts will no longer have to look to Ch. 39, F.S., to try and determine the legislature's intent in regards to when excessive corporal punishment rises to the level of criminal child abuse.

The bill also reenacts ss. 775.082(9)(a), 787.04(5), and 901.15(8), F.S., to incorporate the amendments to s. 827.03, F.S., in references thereto.

C. SECTION DIRECTORY:

Section 1. Amends s. 827.03, F.S., revising the definition of the term "child abuse" to include inappropriate or excessively harsh discipline of a child by a parent, legal custodian, or caregiver; providing a penalty; and defining "inappropriate or excessively harsh corporal discipline."

Section 2. Reenacts s. 775.082(9)(a), F.S., relating to mandatory minimum sentences for certain reoffenders previously released from prison, to incorporate the amendment to s. 827.03, F.S., in references thereto.

Section 3. Reenacts s. 787.04(5), F.S., relating to removing minors from the state or concealing minors contrary to state agency order or court order, to incorporate the amendment to s. 827.03, F.S., in references thereto.

Section 4. Reenacts s. 901.15(8), F.S., relating to when an arrest by an officer without a warrant is lawful, to incorporate the amendment to s. 827.03, F.S., in references thereto.

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[9] This definition largely mirrors the language in Ch. 39, F.S.

Section 5. Provides for an effective date of July 1, 2006.

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:

None.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference predicted an insignificant impact as a result of the provisions of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution, because it is a criminal law.

2. Other:

   In *Marshall v. Reams,* 32 Fla. 499, 14 So. 95 (1893), the Florida Supreme Court recognized the "right of a parent, or one standing in loco parentis, to moderately chastise for correction a child under his or her control and authority." This bill would not remove this right from parents. As stated in *Raford*, "a parent may assert as an affirmative defense his or her parental right to administer 'reasonable' or 'nonexcessive' corporal punishment, i.e., a typical spanking, in a prosecution for simple child abuse."[10]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[10] *Raford v. State*, 828 So.2d 1012, 1020.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to child abuse; amending s. 827.03, F.S.;
3 revising the definition of the term "child abuse" to
4 include inappropriate or excessively harsh discipline of a
5 child by a parent, legal custodian, or caregiver;
6 providing a criminal penalty; defining the term
7 "inappropriate or excessively harsh corporal discipline";
8 reenacting ss. 775.082(9)(a), 787.04(5), and 901.15(8),
9 F.S., relating to mandatory minimum sentences for certain
10 reoffenders previously released from prison, removing
11 minors from the state or concealing minors contrary to
12 state agency order or court order, and when arrest by an
13 officer without a warrant is lawful, to incorporate the
14 amendment to s. 827.03, F.S., in references thereto;
15 providing an effective date.
16
17 Be It Enacted by the Legislature of the State of Florida:
18
19 Section 1. Subsection (1) of section 827.03, Florida
20 Statutes, is amended, and subsection (5) is added to that
21 section, to read:
22 827.03 Abuse, aggravated abuse, and neglect of a child;
23 penalties.--
24 (1) "Child abuse" means:
25 (a) Intentional infliction of physical or mental injury
26 upon a child;
27 (b) An intentional act that could reasonably be expected
28 to result in physical or mental injury to a child; ~~or~~

29 (c) Active encouragement of any person to commit an act
30 that results or could reasonably be expected to result in
31 physical or mental injury to a child; or~~.~~
32 (d) Inappropriate or excessively harsh corporal discipline
33 of a child by a parent, legal custodian, or caregiver.
34
35 A person who knowingly or willfully abuses a child without
36 causing great bodily harm, permanent disability, or permanent
37 disfigurement to the child commits a felony of the third degree,
38 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
39 (5) For purposes of this section, "inappropriate or
40 excessively harsh corporal discipline" means an act of
41 discipline that results or could reasonably be expected to
42 result in any of the following or other similar injuries:
43 (a) Sprains, dislocations, or cartilage damage.
44 (b) Bone or skull fractures.
45 (c) Brain or spinal cord damage.
46 (d) Intracranial hemorrhage or injury to other internal
47 organs.
48 (e) Asphyxiation, suffocation, or drowning.
49 (f) Injury resulting from the use of a deadly weapon.
50 (g) Burns or scalding.
51 (h) Cuts, lacerations, punctures, or bites.
52 (i) Disfigurement.
53 (j) Loss or impairment of a body part or function.
54 (k) Significant bruises or welts.
55 (l) Mental injury, as defined in s. 39.01.

56 Section 2. For the purpose of incorporating the amendment
57 made by this act to section 827.03, Florida Statutes, in a
58 reference thereto, paragraph (a) of subsection (9) of section
59 775.082, Florida Statutes, is reenacted to read:
60 775.082 Penalties; applicability of sentencing structures;
61 mandatory minimum sentences for certain reoffenders previously
62 released from prison.--
63 (9)(a)1. "Prison releasee reoffender" means any defendant
64 who commits, or attempts to commit:
65 a. Treason;
66 b. Murder;
67 c. Manslaughter;
68 d. Sexual battery;
69 e. Carjacking;
70 f. Home-invasion robbery;
71 g. Robbery;
72 h. Arson;
73 i. Kidnapping;
74 j. Aggravated assault with a deadly weapon;
75 k. Aggravated battery;
76 l. Aggravated stalking;
77 m. Aircraft piracy;
78 n. Unlawful throwing, placing, or discharging of a
79 destructive device or bomb;
80 o. Any felony that involves the use or threat of physical
81 force or violence against an individual;
82 p. Armed burglary;

83 q. Burglary of a dwelling or burglary of an occupied
84 structure; or
85 r. Any felony violation of s. 790.07, s. 800.04, s.
86 827.03, or s. 827.071;
87
88 within 3 years after being released from a state correctional
89 facility operated by the Department of Corrections or a private
90 vendor or within 3 years after being released from a
91 correctional institution of another state, the District of
92 Columbia, the United States, any possession or territory of the
93 United States, or any foreign jurisdiction, following
94 incarceration for an offense for which the sentence is
95 punishable by more than 1 year in this state.
96 2. "Prison releasee reoffender" also means any defendant
97 who commits or attempts to commit any offense listed in sub-
98 subparagraphs (a)1.a.-r. while the defendant was serving a
99 prison sentence or on escape status from a state correctional
100 facility operated by the Department of Corrections or a private
101 vendor or while the defendant was on escape status from a
102 correctional institution of another state, the District of
103 Columbia, the United States, any possession or territory of the
104 United States, or any foreign jurisdiction, following
105 incarceration for an offense for which the sentence is
106 punishable by more than 1 year in this state.
107 3. If the state attorney determines that a defendant is a
108 prison releasee reoffender as defined in subparagraph 1., the
109 state attorney may seek to have the court sentence the defendant
110 as a prison releasee reoffender. Upon proof from the state

111 attorney that establishes by a preponderance of the evidence
112 that a defendant is a prison releasee reoffender as defined in
113 this section, such defendant is not eligible for sentencing
114 under the sentencing guidelines and must be sentenced as
115 follows:
116 a. For a felony punishable by life, by a term of
117 imprisonment for life;
118 b. For a felony of the first degree, by a term of
119 imprisonment of 30 years;
120 c. For a felony of the second degree, by a term of
121 imprisonment of 15 years; and
122 d. For a felony of the third degree, by a term of
123 imprisonment of 5 years.
124 Section 3. For the purpose of incorporating the amendment
125 made by this act to section 827.03, Florida Statutes, in a
126 reference thereto, subsection (5) of section 787.04, Florida
127 Statutes, is reenacted to read:
128 787.04 Removing minors from state or concealing minors
129 contrary to state agency order or court order.--
130 (5) It is a defense under this section that a person who
131 leads, takes, entices, or removes a minor beyond the limits of
132 the state reasonably believes that his or her action was
133 necessary to protect the minor from child abuse as defined in s.
134 827.03.
135 Section 4. For the purpose of incorporating the amendment
136 made by this act to section 827.03, Florida Statutes, in a
137 reference thereto, subsection (8) of section 901.15, Florida
138 Statutes, is reenacted to read:

139 901.15 When arrest by officer without warrant is
140 lawful.--A law enforcement officer may arrest a person without a
141 warrant when:
142 (8) There is probable cause to believe that the person has
143 committed child abuse, as defined in s. 827.03. The decision to
144 arrest shall not require consent of the victim or consideration
145 of the relationship of the parties. It is the public policy of
146 this state to protect abused children by strongly encouraging
147 the arrest and prosecution of persons who commit child abuse. A
148 law enforcement officer who acts in good faith and exercises due
149 care in making an arrest under this subsection is immune from
150 civil liability that otherwise might result by reason of his or
151 her action.
152 Section 5. This act shall take effect July 1, 2006.

HB 1491

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1491 Children in Foster Care
SPONSOR(S): Gibson, A.
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee		Preston	Collins
2) Choice & Innovation Committee			
3) Health Care Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The bill creates a Community Advisory Panel on Foster Care Pilot Program in Duval County. It provides that the purpose of the pilot program is to identify educational needs and follow-up strategies for foster children age six through 12 years enrolled in the Duval County school system. The goal of the program is to ensure that children in foster care will be tested appropriately and placed in an educational environment that optimizes their opportunities for success.

The community-based care provider in Duval County is given responsibility for administering the pilot program and is directed to employ a full-time project coordinator and a full-time psychologist for the program.

The chief judge for the Fourth Judicial Circuit or his or her designee is directed to create the Community Advisory Panel on Foster Care. The chief judge who is responsible for dependency and adoption in the Fourth Judicial Circuit or his or her designee is directed to appoint four members of the 15-member panel, and to chair the panel. The remaining members are to be selected by the Department of Children and Family Services (DCF), the county school board, and the guardian ad litem program for Duval County.

The bill describes the duties of the panel and of the project coordinator for the pilot project. It requires the development of a research component of the program and provides that the program will expire on July 1, 2009.

The bill includes an appropriation of $300,000 from the General Revenue Fund to the Fourth Circuit Court in Duval County to be used to implement the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – the bill establishes a pilot for foster children age six through 12 years enrolled in the Duval County school system.

B. EFFECT OF PROPOSED CHANGES:

Background

According to the Department of Children and Family Services (DCF), case plans that are developed for children in foster care contain statements related to the educational needs of those children, and the service providers are expected to work with the schools to meet these needs. However, there is currently no mechanism in place to assess the educational needs of children in foster care and to facilitate meeting those needs.

Current law requires DCF to enter into interagency agreements with the Department of Education and local school boards regarding educational issues relating to children known to the department.[1] District school boards are required to identify all educational and other services provided by the school and district school boards which they believe are reasonably necessary to meet the educational requirements of children known to the department.[2] Also, the district school board is required to provide individualized student intervention or an individual educational plan when a determination has been made through legally appropriate criteria that intervention services are required.[3] DCF and the district school boards are required to cooperate in accessing the appropriate services for children known to the department who have or are suspected to have a disability. This section allows the school district to share information regarding children known to the department with DCF.[4]

In response to the requirements of s. 39.0016, F.S., DCF reports that an interagency agreement has been reached and is currently being circulated for signatures. The parties to the agreement are the Duval County Board of Education, DCF, Family Support Services of North Florida (the community-based care lead agency for Duval County), and the Agency for Workforce Innovation. In addition, the community-based care lead agency participates in the Duval County Court Improvement Project. The issue of educational needs of children known to DCF is a standing agenda item for that group, included on the action plan for follow-up as needed. The lead agency also participates in the special work group developed by Duval County Circuit Judge David Gooding, established to improve services for foster children. This group recommended the pilot project created by this bill.

The Bill

This bill creates a Community Advisory Panel on Foster Care Pilot Program in Duval County. It provides that the purpose of the pilot program is to identify educational needs and follow-up strategies for foster children age six through 12 years enrolled in the Duval County school system. The goal of the program is to ensure that children in foster care will be tested appropriately and placed in an educational environment that optimizes their opportunities for success.

The community-based care provider in Duval County is given responsibility for administering the pilot program and is directed to employ a full-time project coordinator and a full-time psychologist for the program. The chief judge for the Fourth Judicial Circuit or his or her designee is directed to create the

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[1] See s. 39.0016(3), F.S.
[2] See s. 39.0016(4)(b)2., F.S.
[3] See s. 39.0016(4)(b)4. F.S.
[4] See s. 39.0016(4)(c), F.S.

Community Advisory Panel on Foster Care.

The chief judge responsible for dependency and adoption in the Fourth Judicial Circuit or designee is directed to appoint four members of the 15-member panel, and to chair the panel. The other members are to be selected by the Department of Children and Family Services (DCF) (four members), the county school board (four members), and the guardian ad litem program for Duval County (three members).

The bill describes the duties of the panel and of the project coordinator for the pilot project. These duties include reviewing the academic progress, behavioral issues, and attendance of each student age six to 12 who are in the foster care system in Duval County. It authorizes the panel to prioritize the referral of these children for services by assessing the severity of need and recommending that the most critical needs be addressed first. It requires that students who are failing must be referred for educational testing and for additional psychological and therapeutic counseling as recommended, or both, and that the reasons for the school failure be determined as well as any remediation needed.

It requires the development of a research component of the program. This research component, or assessment tool, must be developed by the project coordinator. The research data must be set up to link systems among providers of educational services, psychological services, case management, and the court system. The tasks to be accomplished by the designer of the assessment tool are set forth as:

- **Discovery** – including meeting with information technology staff from DCF, school board staff, and caseworkers;
- **Development** – consisting of determining the best method for data entry, the best database, and the best data format;
- **Implementation** – comprising completing, testing, and delivering the tool; and
- **Maintenance** – involving developing a maintenance plan and schedule after the initiation of the assessment methodology.

The project manager is required to submit an annual report to the court, the President of the Senate, and the Speaker of the House of Representatives.

The bill provides that the pilot program will expire on July 1, 2009.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of the Florida Statutes relating to the creation of the Community Advisory Panel on Foster Care Pilot Program.

Section 2. Provides for a $300,000 appropriation from the General Revenue Fund to implement the provisions of the bill.

Section 3. Provides an effective date July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill includes an appropriation of $300,000 from the General Revenue Fund to the Fourth Circuit Court in Duval County to be used to implement the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of Children and Family Services (DCF), the $300,000 appropriation will be sufficient to implement the provisions of the bill. As the provision is currently drafted, however, the funds are directed to the Fourth Circuit Court as opposed to DCF. Staff at DCF suggest that this is problematic because the funding goes to the court without instruction to then contract with the community-based care agency to supply funding for the two full-time staff positions that would be housed under the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 29-30 of the bill, it states, "The community-based care shall administer the pilot program." The term "provider" or "lead agency" should probably be inserted after "community-based care since DCF contracts with the lead agency for foster care services in Duval County.

The Department of Children and Family Services and the Office of the State Courts Administrator are not among those listed in the bill as receiving the annual report. Because the pilot program crosses agency lines, it may be helpful to include these entities as recipients of the report.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to children in foster care; providing for
3 the creation of the Community Advisory Panel on Foster
4 Care Pilot Program in Duval County; providing purposes and
5 goals; providing for administration of the program by
6 community-based care; providing for hiring personnel;
7 creating the Community Advisory Panel on Foster Care;
8 providing for panel membership; providing for a
9 chairperson; providing duties of specified county judges,
10 the personnel, and the panel; requiring research to
11 determine the effectiveness of the program; requiring an
12 annual report to the court and to legislative leaders;
13 providing for future expiration of the pilot program;
14 providing an appropriation; providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Community Advisory Panel on Foster Care Pilot
19 Program; creation; purpose; administration; panel membership;
20 duties of court and panel; evaluation.--
21 (1) There is created the Community Advisory Panel on
22 Foster Care Pilot Program in Duval County. The purpose of the
23 program is to identify educational needs and followup strategies
24 for foster children who are 6 through 12 years of age and are
25 enrolled in the Duval County school system. The goal of the
26 program is to ensure that youth who are in foster care will be
27 tested appropriately and placed in an educational environment
28 that optimizes their opportunities for success.

29 (2) The community-based care (CBC) shall administer the
30 pilot program. The CBC shall employ a full-time project
31 coordinator who shall assist the student's case manager in
32 identifying resources for such assessment and treatment. The CBC
33 shall also employ a full-time psychologist who will provide
34 advice, research, assessments, and other services to the judges
35 and to foster children and their families.
36 (3) The chief judge for the Fourth Judicial Circuit or his
37 or her designee shall create the Community Advisory Panel on
38 Foster Care, which will consist of 15 community volunteers who
39 are community leaders that have diverse areas of expertise and
40 talent. The chief judge who is responsible for dependency and
41 adoption in the Fourth Judicial Circuit or his or her designee
42 shall appoint four members of the panel; the Department of
43 Children and Family Services shall appoint four members; the
44 county school board shall appoint four members; and the guardian
45 ad litem for Duval County shall appoint three members. The judge
46 shall chair the panel.
47 (4) The judge may issue orders and obtain educational
48 information relating to students who are 6 to 12 years of age
49 and are in the foster care system in District IV of the
50 department. The panel shall review the academic progress,
51 behavioral issues, and attendance of each student and shall
52 recommend referral of any student for whom the review
53 demonstrates a need for followup services. The panel may
54 prioritize referrals by assessing the severity of need and
55 recommending that the most critical needs be met first. A
56 student who is failing must be referred for educational testing,

57 for additional psychological and therapeutic counseling as
58 recommended, or for both, to determine why he or she is failing
59 and what accommodations and remediation are needed.
60 (5) The project coordinator shall oversee the development
61 of a research component, or assessment tool, that is designed to
62 determine the effectiveness of the pilot program.
63 (a) The research data must be set up to link systems among
64 providers of educational services, psychological services, case
65 management, and the court system.
66 (b) The entity that designs the assessment tool must,
67 during the first year of the pilot program, undertake the
68 following tasks:
69 1. Discovery. This phase includes meeting with information
70 technology staff from the department, school board staff, and
71 caseworkers.
72 2. Development. This phase consists of determining the
73 best method for data entry, the best database, and the best data
74 format.
75 3. Implementation. This phase comprises completing,
76 testing, and delivering the assessment tool.
77 4. Maintenance. This phase involves developing a
78 maintenance plan and schedule, after the initiation of the
79 assessment methodology.
80 (6) The project coordinator shall submit an annual report
81 to the court and to the President of the Senate and the Speaker
82 of the House of Representatives.
83 (7) The pilot program expires on July 1, 2009.
84 Section 2. The sum of $300,000 is appropriated from the

85 General Revenue Fund to the Fourth Circuit Court in Duval County
86 for the 2006-2007 fiscal year, to be used in implementing the
87 Community Advisory Panel on Foster Care Pilot Program created in
88 section 1 of this act.
89 Section 3. This act shall take effect July 1, 2006.

HB 7151

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7151 PCB CJ 06-02 Adoption
SPONSOR(S): Civil Justice Committee and Mahon
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Civil Justice Committee	7 Y, 0 N	Shaddock	Bond
1) Future of Florida's Families Committee		Davis	Collins
2) Justice Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill provides a mechanism for the Department of Health to receive a notification of the filing of a petition for termination of parental rights. Moreover, the bill corrects the provisions regarding who may execute an irrevocable affidavit of paternity.

The bill also modifies the statute of repose related to adoption by providing that the interest which entitles a person to notice of an adoption must be direct, financial, and immediate and the person must show that he or she will gain or lose by the direct legal operation and effect of the judgment. Absent such a showing a person with indirect interest lacks standing to set aside a judgment of adoption.

This bill does not appear to have a fiscal impact on state or local governments.

Please see Effect of Proposed Changes section and Drafting Issues or Other Comments section for Future of Florida's Families Committee's analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families: This bill strengthens families inheritance rights by clarifying that an adopted person has the same rights of inheritance as a blood descendant.

Provides Limited Government: The bill amends s. 63.182, F.S., to require that any person seeking to set aside an adoption must have a direct, financial, and immediate reason. It applies this restriction to all adoptions, including those in which a judgment of adoption has already been entered.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Future of Florida's Families Committee:

The 2003 Florida Adoption Act: The 2003 Florida Adoption Act (Chapter 2003-58, L.O.F.), substantially revised the 2001 Florida Adoption Law, with primary focus on the areas of biological fathers' rights, notice and consent, statute of repose and grounds for challenges to termination of parental rights or adoption, statutory forms, venue, adoption fees and costs, and sanctions. A major change involved the creation of a Putative Father Registry within the Department of Health, Office of Vital Statistics, which requires unmarried biological fathers to register with the Putative Registry in order to preserve any right to notice and consent regarding his parental right to a child placed for adoption. The registry replaced existing constructive notice provisions as previously applied to fathers who could not be identified or located. The category of "fathers" for whom notice and consent may be required was revised to incorporate and conform to the new definition of "unmarried biological father."

Specific changes made by the 2003 legislation included:

- Deleting the statutory duty of a mother placing a child up for adoption to identify a potential unmarried biological father.
- Allowing for pre-birth execution of an affidavit of non-paternity.
- Broadening the criteria for abandonment to include evidence of little or no communication or lack of emotional support as basis for termination of parental rights.
- Expanding placement options to permit out-of-state or out-of-the-country adoption of a child.
- Revising venue provisions to include four primary venue options and waiver of venue.
- Revising a number of statutory timeframes including:
    1. Reducing the statute of repose period from two years to one year for any challenge to an adoption or termination of parental rights;
    2. Reducing in half the time period between the date of personal or constructive service and the date of a final hearing;
    3. Extending the time period from seven to 14 days in which to make adoption disclosures to birth and prospective adoptive parents;

4. Extending from 24 hours to seven days in which to forward a judgment terminating parental rights from the clerk of the court to the Department of Children and Families (department or DCF); and
5. Changing the timeframe in which to file a final home investigation from 90 days after the petition is filed to 90 days after placement;

- Revising the statutory forms for consent to adoption, for adoption disclosure, for notice of service of process, for affidavits of non-paternity and for waiver of venue to conform to changes in the bill in those areas.

- Revising provisions relating to adoption fees for adoption entities by increasing recovery of pre-approved fees and allowing for flat fee representation and for birth mothers by expanding recovery of pre-birth and post-birth expenses.

- Deleting requirements that all proceedings for adoption be conducted by the same judge that conducted the termination of parental rights proceedings.

- Allowing private adoption entities to intervene in the adoptions of children in Department of Children and Families' custody.

Civil Justice Committee:

Florida has established a Putative Father Registry ("Registry") to attempt to preserve the rights of unmarried biological fathers in adoption cases. The Registry is established and operated through the Office of Vital Statistics of the Department of Health. If a man is concerned that he may be the father of a child born or about to be born to a woman, and that man wishes to establish parental rights, he must file as a "registrant" with the Registry.[1]

By filing with the Registry, the potential father is claiming paternity for the child and confirms his willingness to support the child. Additionally, he consents to DNA testing, and may ultimately be required to pay child support. A claim of paternity may be filed at any time prior to the child's birth, but a claim of paternity may not be filed after the date a petition is filed for termination of parental rights.[2]

The possible father may change his mind and prior to the birth of the child execute a notarized revocation of the claim of paternity.[3] Once that revocation is received, the claim of paternity is deemed null and void. Plus, if a court determines that a registrant is not the father of a minor, the court will order the man's name removed from the registry.[4]

All hearings and records in adoption proceedings are confidential.[5] Court hearings are held in closed court, and all papers and records pertaining to the adoption, whether part of the permanent record of the court or a file in the office of an adoption entity, are confidential and subject to inspection only upon court order.

Generally, identifying information regarding the birth parents, adoptive parents, and adoptee may not be disclosed unless that person has authorized in writing the release of that information. Yet, a court may, upon petition of an adult adoptee, for good cause shown, appoint an intermediary or a licensed child-placing agency to contact a birth parent who has not registered with the adoption registry and advise them of the availability of the registry.

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[1] Section 63.054 (1), F.S.
[2] *Id.*
[3] Section 63.054 (5), F.S.
[4] *Id.*
[5] Section 63.162, F.S.

The statute of repose provides that an action to set aside a judgment of adoption or a judgment terminating parental rights may not be filed more than one year after the entry of the judgment terminating parental rights.

Effect of Bill

In a proceeding to terminate parental rights, the father must provide the Office of Vital Statistics of the Department of Health ("Office") with a copy of that petition. The Office may not record a claim of paternity after the date a petition has been filed.

The bill directs that if a court determines that a registrant is not the father of a child or has no parental rights; the court must order the Department to remove the registrant's name from the registry. Moreover, the bill corrects the provisions regarding who may execute an irrevocable affidavit of paternity.

Finally, the bill makes a change regarding inheritance rights. Except for the specific persons entitled to be given notice of an adoption, the interest which entitles a person to notice of an adoption must be direct, financial, and immediate and the person must show that he or she will gain or lose by the direct legal operation and effect of the judgment. A showing of an indirect, inconsequential, or contingent interest is inadequate and a person with this indirect interest lacks standing to set aside a judgment of adoption. This applies to all adoptions, including those in which a judgment of adoption has already been entered.

C. SECTION DIRECTORY:

Section 1. Amends s. 63.054, F.S., to require notification of a filing of a petition for termination of parental rights.

Section 2. Amends s. 63.062(4), F.S., relating to an affidavit of non-paternity.

Section 3. Amends s. 63.182, F.S., relating to the statute of repose.

Section 4. Provides this bill will be effective upon becoming law.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Future of Florida's Families Committee has the following potential Constitutional concerns:

Case Law History:

The Florida Supreme Court recently interpreted language in s. 39.806(1)(d), F.S., which is identical to language currently in s. 63.089(4)(b)1, F.S. This language allows incarceration of a parent to be the basis for a finding of abandonment of a child supporting the termination of the parental rights of the incarcerated parent when "the period of time for which the parent is expected to be incarcerated will constitute a **substantial** portion of the period of time before the child will attain the age of 18 years (emphasis added)." In *B.C. vs. DCF*, 887 So.2d 1046 (Fla. 2004), the Court held that: (1) the statutes listing incarceration as a ground for termination of parental rights require the court to evaluate whether the time for which a parent is expected to be incarcerated **in the future** constitutes a substantial portion of the time before the child reaches the age of 18; (2) the father's remaining sentence of four years did not constitute a substantial portion of time before his child reached the age of 18 (the child was four years old at the time of the hearing); (3) for purposes of terminating parental rights on the ground of incarceration, a trial court should measure the time of remaining incarceration and minority from the date the termination petition is filed. The Florida Supreme Court had previously ruled, and this decision reaffirmed, that incarceration alone does not, as a matter of law, authorize termination of parental rights on the basis of abandonment. While the *B.C.* ruling was one of statutory interpretation, the Court based its interpretation on the long-established Constitutional principal that parental rights constitute a fundamental liberty interest. For this reason, at least when termination of parental rights is sought based on this ground in chapter 39, the State (petitioner) must, in order to prevail, establish that the termination is the least restrictive means of protecting the child from serious harm, *id* at 1053-1054.

The fundamental liberty interest in raising one's children has caused both the U.S. Supreme Court and the Florida Supreme Court to rule that when that when termination of parental rights is sought and the parent is indigent, the parent may be entitled to representation by appointed counsel.

In Department of Health and Rehabilitative Services vs. Privette, *617 So.2d 305, 1993,* the court found that there must be clear and compelling reason based primarily on a child's best interest to overcome a presumption of legitimacy even after the legal father is proven not to be the biological father. This is at least the equivalent of a burden of proof that would exist in proceedings to terminate a legal father's parental rights.

Privette, went on to say:

> " This conclusion is especially compelling in light of the fact that we must establish a neutral rule applicable to all cases of this type. While there may be some cases where the child has had little contact with the legal father, other cases will be quite the contrary. It is conceivable that a man who has established a loving, caring relationship of some years' duration with his legal child later will prove not to be the biological father. Where this is so, it seldom will be in the children's best interest to wrench them away from their legal fathers and judicially declare that they now must regard strangers as their fathers."

Rights of unwed fathers: The United States Supreme Court has protected a putative father's parental rights when he has established a substantial relationship with his child. A substantial relationship is the existence of a biological link, and the father's commitment to the responsibilities of fatherhood by participating in his child's upbringing.[6] The mere existence of a biological link does not merit constitutional protection.[7] The Florida Supreme Court has similarly held that the failure of an unwed father to grasp the opportunity to develop a parental relationship by accepting some measure of responsibility for the child can result in a loss of constitutional protections.[8]

The bill amends s. 63.182, F.S., to require that any person seeking to set aside an adoption must have a direct, financial, and immediate reason. A showing of an indirect, inconsequential, or contingent interest is wholly inadequate. It applies this restriction to all adoptions, including those in which a judgment of adoption has already been entered.

Case law permits certain persons to intervene in adoption proceedings. Florida Rule of Civil Procedure 1.230 governs intervention in civil actions. The rule provides that anyone with an interest in pending litigation may be permitted to intervene in the action. The Florida Supreme Court has explained when intervention should be permitted in adoption cases:

- Generally, the interest which entitles a person to intervene must be shown to be in the matter in litigation. The interest must be direct and immediate and the intervenor must show that he or she will gain or lose by the direct legal operation and effect of the judgment. A showing of indirect, inconsequential or contingent interest is wholly inadequate.[9]

- Whether intervention is allowed is determined on a case by case basis.[10]

One potential concern is whether the "test" established in this bill of direct, financial and immediate is sufficiently clear enough to establish what is in the child's best interest. Without defining what indirect, inconsequential, or contingent means, courts could inconsistently apply this standard.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Civil Justice Committee adopted one amendment to the bill. The amendment changed the following:

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[6] See Lehr v. Robertson, 463 U.S. 248 (1983). In this case, the U.S. Supreme Court held that the state's failure to give a putative father notice of pending adoption proceedings, despite the state's actual notice of his existence and whereabouts, did not deny him due process or equal protection, since he could have guaranteed that he would have received notice by mailing a postcard to the putative father registry.

[7] See Lehr at 261.

[8] See In the Matter of the Adoption of Doe, 543 So.2d 741, 748 (Fla. 1989).

[9] Stefanos v. Rivera-Berrios, 673 So. 2d 12, 13 (Fla. 1996).

[10] See Stefanos, 673 So. 2d at 13-14 (holding that a person who has had parental rights terminated may not intervene in an ongoing adoption proceeding); In re Adoption of a Minor Child, 593 So. 2d 185 (Fla. 1991)(allowing grandparents to intervene); Rickard v. McKesson, 774 So. 2d 838 (Fla. 4th DCA 2000)(allowing potential trust beneficiary to intervene).

- In a proceeding to terminate parental rights, the father must provide the Office of Vital Statistics of the Department of Health ("Office") with a copy of that petition. The Office may not record a claim of paternity after the date a petition has been filed.

- Alters the provisions regarding who may execute an irrevocable affidavit of paternity.

- Directs that if a court determines that a registrant is not the father of a child or has no parental rights; the court must order the Department to remove the registrant's name from the registry.

- Makes a change regarding inheritance rights to clarify that an adopted person has the same rights of inheritance as a blood descendant.

- Removes the provision that would authorize the Department of Health to release an original sealed birth certificate on court order only to the Department of Children and Family Services.

The bill was then reported favorably.

1 A bill to be entitled
2 An act relating to adoption; amending s. 63.054, F.S.;
3 requiring a petitioner in a proceeding for termination of
4 parental rights to provide notice to the Office of Vital
5 Statistics of the Department of Health; prohibiting the
6 office from recording a claim of paternity after the date
7 that a termination of parental rights is filed; requiring
8 the department to remove a registrant's name from the
9 Florida Putative Father Registry upon a finding that the
10 registrant has no parental rights; amending s. 63.062,
11 F.S.; modifying consent required for adoption; amending s.
12 63.182, F.S.; providing that the interest that entitles a
13 person to notice of an adoption must be direct, financial,
14 and immediate; providing an exception; providing that a
15 showing of an indirect, inconsequential, or contingent
16 interest is wholly inadequate; providing construction and
17 applicability; providing an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Subsections (1) and (5) of section 63.054,
22 Florida Statutes, are amended to read:
23 63.054 Actions required by an unmarried biological father
24 to establish parental rights; Florida Putative Father
25 Registry.--
26 (1) In order to preserve the right to notice and consent
27 to an adoption under this chapter, an unmarried biological
28 father must, as the "registrant," file a notarized claim of

29 paternity form with the Florida Putative Father Registry
30 maintained by the Office of Vital Statistics of the Department
31 of Health and shall include therein confirmation of his
32 willingness and intent to support the child for whom paternity
33 is claimed in accordance with state law. The claim of paternity
34 may be filed at any time prior to the child's birth, but a claim
35 of paternity may not be filed after the date a petition is filed
36 for termination of parental rights. In each proceeding for
37 termination of parental rights, the petitioner shall submit to
38 the Office of Vital Statistics of the Department of Health a
39 copy of the petition for termination of parental rights. The
40 Office of Vital Statistics of the Department of Health shall not
41 record a claim of paternity after the date that a petition for
42 termination of parental rights is filed.
43 (5) The registrant may, at any time prior to the birth of
44 the child for whom paternity is claimed, execute a notarized
45 written revocation of the claim of paternity previously filed
46 with the Florida Putative Father Registry, and upon receipt of
47 such revocation, the claim of paternity shall be deemed null and
48 void. If a court determines that a registrant is not the father
49 of the minor or has no parental rights, the court shall order
50 the Department of Health to remove the registrant's name from
51 the registry.
52 Section 2. Subsection (4) of section 63.062, Florida
53 Statutes, is amended to read:
54 63.062 Persons required to consent to adoption; affidavit
55 of nonpaternity; waiver of venue.--

56 (4) Any person whose consent is required under paragraph
57 (1)(b), or any other man, ~~paragraphs (1)(c)-(e)~~ may execute an
58 irrevocable affidavit of nonpaternity in lieu of a consent under
59 this section and by doing so waives notice to all court
60 proceedings after the date of execution. An affidavit of
61 nonpaternity must be executed as provided in s. 63.082. The
62 affidavit of nonpaternity may be executed prior to the birth of
63 the child. The person executing the affidavit must receive
64 disclosure under s. 63.085 prior to signing the affidavit.
65 Section 3. Section 63.182, Florida Statutes, is amended to
66 read:
67 63.182 Statute of repose.--
68 (1) Notwithstanding s. 95.031 or s. 95.11 or any other
69 statute, an action or proceeding of any kind to vacate, set
70 aside, or otherwise nullify a judgment of adoption or an
71 underlying judgment terminating parental rights on any ground
72 may not be filed more than 1 year after entry of the judgment
73 terminating parental rights.
74 (2)(a) Except for the specific persons expressly entitled
75 to be given notice of an adoption in accordance with this
76 chapter, the interest that entitles a person to notice of an
77 adoption must be direct, financial, and immediate and the person
78 must show that he or she will gain or lose by the direct legal
79 operation and effect of the judgment. A showing of an indirect,
80 inconsequential, or contingent interest is wholly inadequate and
81 a person with this indirect interest lacks standing to set aside
82 a judgment of adoption.
83 (b) This subsection is remedial and shall apply to all

84 adoptions, including those in which a judgment of adoption has
85 already been entered.
86 Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FFF 06-02 Child Support
SPONSOR(S): Future of Florida's Families Committee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee		Preston	Collins
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill amends ss. 61.13 and 61.14, Florida Statutes, to provide for the reduction and termination of a child support order as children named in the order reach the age of majority or otherwise become emancipated and to provide for temporary modification of an order under certain specified circumstances.

The bill amends s. 61.30, Florida Statutes, relating to child support guidelines. Provisions of the bill include:

- New language that reflects Florida's use of the income shares model as the basis for its child support guidelines schedule and state the purposes of the guidelines;
- Simplification of the concept of rebuttable presumption and clarification of when the court must provide a written finding when deviating from the guideline amount of an award;
- New provisions relating to the imputation of income for purposes of determining the amount of a child support award;
- Clarification that child care costs and health care costs are not built into the guideline schedule and are expenses that are added on to the basic child support obligation;
- Elimination of an automatic reduction in child care costs related to the 25% federal child care credit;
- Elimination of the 40% threshold in shared parenting time for a setoff in the amount of a child support award;
- A formula for determining the amount of a child support award reflective of all levels of shared parenting time that results in a gradual adjustment rather than the current "cliff effect";
- An explanation of the term "split parenting arrangement" and direction for calculating child support awards when those arrangements exist; and
- The transfer of responsibility for the implementation and review of the child support guidelines from the Legislature to the court.

The bill amends s. 409.2564, Florida Statutes, relating to actions for support, to reduce the arrearage threshold for denial of a passport.

The bill also amends s. 409.25641, Florida Statutes, relating to automated administrative enforcement in interstate cases, to provide states with the option of establishing a corresponding case based on another state's administrative enforcement of an interstate case request.

There is no anticipated fiscal impact on either state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill moves responsibility for the review and implementation of the child support guidelines from the Legislature to the court.

Promote personal responsibility – The bill lowers the threshold for the amount of arrearage owed by a child support obligor for purposes of passport denial.

Empower families – If child support award amounts better reflect shared parenting arrangements, collections may increase and noncustodial parents may spend more time with their children.

B. EFFECT OF PROPOSED CHANGES:

Background

In 1984, Congress recognized potential value in requiring states to implement guidelines to be used in the determination of the amount of the child support obligation. The federal Child Support Amendments of 1984 required states to establish non-binding child support guidelines either by law, or judicial or administrative action no later than October 1, 1987.[1] The Family Support Act of 1988 made state child support guidelines presumptive and required states to review their child support guidelines at least once every four years in order to ensure that their application results in child support award amounts that are appropriate. As a part of the review process, states must analyze case data related to the application of, and deviations from, the guidelines and they must also consider economic data related to the cost of raising children.[2] With the exception of these two requirements, states have broad discretion and latitude in conducting guideline reviews.

In requiring the adoption and use of presumptive guidelines, the federal government had four primary objectives:

- to enhance the adequacy of child support orders;
- to improve the equity of orders by assuring more comparable treatment for cases with similar circumstances;
- to increase compliance as a result of the perceived fairness of child support awards; and
- to improve the efficiency of adjudicating child support orders.

The Florida House of Representatives has traditionally taken the lead in completing the reviews to meet the federal mandate. In spite of timely guideline reviews and some statutory changes, the Florida Legislature has not adjusted the guidelines schedule since 1993. Since the underlying data for the current schedule enacted in 1993 is the 1972-1973 Consumer Expenditure Survey, the schedule is considerably out of date. In addition, other provisions of the guidelines may no longer adequately reflect the needs and circumstances of Florida families.

In preparation for the current review, the Legislature allocated funds for an economic review of the state's child support guidelines.[3] In February 2003, the Legislature contracted with the Department of Economics at Florida State University. The analysis undertaken by the researchers consisted of three tasks:

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[1] Child Support Enforcement Amendments of 1984, 42 U.S.C. 657-662 (1984).
[2] Family Support Act of 1988, 42 U.S.C. 654, 666-667 (1988).
[3] See SB 2000 (2001) and HB 27E (2002).

- To update the existing Florida schedule of child support obligations based on the most recent data available on expenditures on children;
- To review three special issues relating to child support guidelines and to make recommendations for changes in Florida's treatment of these issues. The three issues are the treatment of low-income parents, provisions for visitation and alternative custody arrangements, and the treatment of prior and subsequent children; and
- To review alternative models for the development of child support guidelines and possibly recommend a different model for use in Florida.

In addition, two issues that were not a part of the original scope of work but were addressed in the report: the treatment in the guidelines of the tax benefits associated with children, and the treatment of child care related expenses.[4]

The final report was delivered to the Legislature in March 2004 and presentations were made on findings and recommendations to the Future of Florida's Families Committee during the 2004 and 2005 legislative sessions. Work continued during the interims in preparation for the development of proposed legislation for possible introduction during the 2006 legislative session. Findings in the report centered around three major issues: the support schedule, the treatment of low income obligors, and the treatment of various parental sharing arrangements.

- **Updating Florida's Child Support Guidelines Schedule**

Florida's current schedule of child support guidelines is based on the income shares model. The income shares model determines the amount of child support obligations from estimated average expenditures on children in an intact family as a function of the combined income of the parents. The model was developed by Robert Williams from an analysis of expenditures on children by Thomas Espenshade.[5] Espenshade based his analysis on Ernst Engel's[6] approach to comparing living standards among families.

In the schedule proposed in the FSU report, the basic support obligations are lower at most income levels than those in the current schedule, with differences being relatively small except at the higher income levels. However, the amounts in the proposed guidelines are greater than those in the existing guidelines for families with low incomes and multiple children.

Using a representative sample of Florida child support cases, it was determined that for approximately 60% of the Title IV-D cases in the sample the average child support payment changes very little from the current schedule. Only for the 20% of cases in the IV-D sample with the highest incomes would the average payment change substantially. Similarly, in 40% of the private cases there is almost no change in the average child support payment. For the top 20% the average payment decreases substantially, and the average payment for the middle 40% decreases slightly. Applying the proposed schedule of basic child support obligations to the actual distribution of the child support cases in Florida indicates that the effect of the proposed schedule would be minimal for most cases. Only the top 20% of cases ranked by income would see a significant change in the amount of child support payments. In those cases, payments would decrease substantially.

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[4] See Updating Florida's Schedule of Child Support Obligations, Final Report to the Florida Legislature, Department of Economics, Florida State University, March 5, 2004.

[5] See Espenshade, T. J. (1973). The Cost of Children in Urban United States. Westport, Connecticut: Greenwood Press and Espenshade, T. J. (1984). Investing in Children: New Estimates of Parental Expenditures. Washington, D.C.: The Urban Institute Press.

[6] The underlying assumption of the Engel approach is that families of a different size that spend equal proportions of their incomes on food are equally well-off. The Engel approach assumes that as total spending increases, the budget share or percent devoted to food should decrease, freeing up expenditures for other goods, and that as family size increases, the food share of the budget should also increase.

- **Low-Income Parents**

Child support obligations that are derived from the income shares methodology typically include an adjustment for low-income parents to ensure that parents owing child support are not living in poverty due to the obligation to provide support. The low-income adjustment in Florida's current guidelines applies to only about one percent of cases and is therefore ineffective at preventing or mitigating poverty among low-income parents. This ineffectiveness is primarily a result of four features of the current guidelines:

- The use of combined income of both parents with the single person poverty threshold;
- The application of the low-income provisions to the basic obligation rather than to the total obligation;
- The failure to update the child support schedule on a regular basis to reflect increases in the poverty guideline; and
- The imputation of income.

In addition, Florida's current schedule of child support obligations is regressive, which penalizes noncustodial parents who earn additional income and therefore serves as a disincentive to work. By imposing a very high marginal rate on additional earnings, it also discourages compliance. In fact, the compliance rate among low-income noncustodial parents is very low, which in turn presents a barrier to the involvement of the noncustodial parent with the children.

- **Visitation and Custody**

Florida law currently provides that in shared parenting arrangements where a child spends less than 40 percent of overnights per year with the noncustodial parent, the court may use that arrangement as grounds for an adjustment in the amount of the child support obligation. A shared parenting arrangement where the number of overnights spent with the noncustodial parent exceeds 40 percent requires the court to adjust the noncustodial parent's support obligation to reflect the additional costs of maintaining two households for the child.

Failure to provide any adjustment where time spent with the noncustodial parent does not equal or exceed 40 percent may act as a disincentive for regular visitation with the noncustodial parent. Further, setting a threshold results in very large changes in the noncustodial parent's child support obligation in response to very small changes in the amount of visitation. For this reason, the existence of a threshold can be a source of excessive dispute and litigation between parents.

Currently, Florida's child support guidelines are silent regarding split custody arrangements. As a result, determination of the amount of the basic support obligation in such cases is left to the discretion of the courts without any statutory guidance on dealing with this type of living arrangement. This gives rise to disparate treatment of these cases in different judicial districts, and can also be a source of dispute and litigation over living arrangements. Failure to provide explicitly for split custody may discourage parents from adopting this arrangement even when it is in the best interests of the child.

The Bill

With regard to the three major sets of findings resulting from the FSU study, the bill retains the existing child support guidelines schedule, it continues the current treatment of low income families, it eliminates the 40% threshold for shared parenting arrangements by providing for a continuous adjustment to child support award amounts, and it defines split shared parenting arrangements and provides direction for calculating the amount of an award in such circumstances. The bill also contains the following provisions related to child support guidelines and orders:

- New language that reflects Florida's use of the income shares model as the basis for its child support guidelines schedule and states the purposes of the guidelines schedule;

- Simplification of the concept of rebuttable presumption and clarification of when the court must have a written finding when deviating from the guideline amount of an award;
- New provisions relating to the imputation of income for purposes of determining the amount of a child support award;
- Clarification that child care costs and health care costs are not built into the guideline schedule and are expenses that are added on to the basic child support obligation;
- Elimination of an automatic reduction in child care costs related to the 25% federal child care credit; and
- Direction for transferring responsibility for the implementation and review of the child support guidelines from the legislature to the court.

In addition, the bill contains two provisions related to the enforcement of child support orders:

- Reduction of the arrearage threshold for denial of a passport; and
- Giving states the option of establishing a corresponding case based on another state's administrative enforcement of an interstate case request.

C. SECTION DIRECTORY:

Section 1. Amends s. 61.13, F.S., relating to custody and support of children, visitation rights, and the powers of the court in making orders.

Section 2. Amends s. 61.14, F.S., relating to enforcement and modification of support, maintenance, or alimony agreements.

Section 3. Amends s. 61.30, F.S., relating to the child support guidelines and retroactive support.

Section 4. Amends s. 409.2564, F.S., relating to actions for support.

Section 5. Amends s. 409.25641, F.S., relating to procedures for processing automated administrative enforcement requests.

Section 6. Amends s. 409.2563, F.S., relating to administrative establishment of child support obligations, to conform cross references.

Section 7. Amends s. 742.031, F.S., relating to hearings, court orders for support, hospital expenses, and fee related to paternity actions, to conform

Section 8. Provides an effective date of October 1, 2006, unless otherwise provided.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to child support; amending s. 61.13, F.S.;
3 providing for automatic termination of support for a child
4 when the child is no longer eligible for support;
5 specifying conditions that render a child ineligible;
6 requiring either or both parents who owe support to secure
7 or object to the termination of a child support award;
8 requiring certain notice to a parent; authorizing the
9 court to retroactively terminate or modify a child support
10 award under certain circumstances; amending s. 61.14,
11 F.S.; providing for a temporary reduction in child support
12 under specified circumstances; authorizing the court to
13 grant certain forms of temporary relief; amending s.
14 61.30, F.S.; providing for use of the income shares model;
15 providing legislative findings; providing purposes of the
16 child support guidelines; providing that the amount of a
17 child support award resulting from the application of the
18 child support guidelines schedule creates a rebuttable
19 presumption of correctness; providing circumstances in
20 which specified variances in awards require a written
21 finding; providing for the determination of gross income;
22 providing for the imputation of income under certain
23 circumstances; providing for the determination of net
24 income; providing the child support guidelines schedule;
25 providing for determination of the amount of child support
26 for low-income and high-income parents; providing for
27 child care costs and health care costs to be added to the
28 minimum obligation; deleting provisions relating to
29 calculation of each parent's share of the child support

30 need; revising factors to be considered by the court in
31 adjusting child support awards; providing for shared
32 parenting arrangements; providing for calculation of child
33 support orders in cases of split parenting arrangements;
34 specifying the method for determining a child support
35 order amount; providing for modification of existing
36 orders; requiring submission of financial affidavits;
37 providing for the consideration of subsequent children;
38 providing for income information in the event of
39 noncooperation by a public assistance recipient for
40 purposes of child support; providing for review of the
41 child support guidelines; providing for retroactive child
42 support; amending s. 409.2564, F.S.; providing a threshold
43 for arrearages before passport restrictions apply;
44 amending s. 409.25641, F.S.; requiring the Department of
45 Revenue to employ automated administrative enforcement of
46 support orders in interstate cases; authorizing the
47 department to establish a corresponding case under certain
48 circumstances; amending ss. 409.2563 and 742.031, F.S.;
49 conforming cross-references; providing effective dates.
50
51 Be It Enacted by the Legislature of the State of Florida:
52
53 Section 1. Paragraphs (a) and (c) of subsection (1) of
54 section 61.13, Florida Statutes, are amended to read:
55 61.13 Custody and support of children; visitation rights;
56 power of court in making orders.--
57 (1)(a) In a proceeding under this chapter, the court may at
58 any time order either or both parents who owe a duty of support

59 to a child to pay support in accordance with the child support
60 guidelines in s. 61.30.
61 1. The order shall provide a schedule, based upon the
62 financial circumstances in existence at the time of the order,
63 setting forth the amount of child support owed for the remaining
64 minor children for whom support will be owed when each child
65 reaches majority or is no longer eligible for support. The
66 support obligation for each child shall automatically terminate
67 when that child is no longer eligible to receive support as set
68 forth in the order or in s. 743.07(2) or when the child is fully
69 emancipated, is married, or is deceased. When a child is no
70 longer eligible for support, either parent shall send a notice by
71 certified mail, return receipt requested, to the address of the
72 other parent and to the child support enforcement agency and file
73 the notice with the court along with the return receipt. The
74 other parent shall have 10 days after receipt of the notice to
75 object to the termination of support. The objection shall provide
76 the reasons for the objection, shall be sent by certified mail,
77 return receipt requested, to the address of the parent who sent
78 the original notice and to the child support enforcement agency,
79 and shall be filed with the court along with the return receipt.
80 Until the dispute is resolved and the court enters an order
81 terminating or modifying the child support obligation, the parent
82 shall continue to pay child support. If no objection is timely
83 filed with the court, the parent who sent the original notice
84 shall file a notification of termination or modification of child
85 support with the court and the clerk of the court shall forward
86 the court file to the judge who shall enter an order either
87 retroactively terminating the child support obligation, if there

88 are no other minor children, or retroactively amending the child
89 support obligation and entering a new income deduction order to
90 reflect the appropriate amount of support for the remaining minor
91 children, based upon the most recently entered support order. The
92 court shall send a copy of such orders to the obligor, obligee,
93 and child support enforcement agency. The court order terminating
94 or modifying child support deductions and the new income
95 deduction order shall be provided by certified mail, return
96 receipt requested, by the obligee to the obligor's employer
97 instructing the employer to either cease deducting the child
98 support or to modify the amount deducted from the obligor's
99 income based on the new income deduction order.
100 2. The court initially entering an order requiring one or
101 both parents to make child support payments shall have continuing
102 jurisdiction after the entry of the initial order to modify the
103 amount and terms and conditions of the child support payments
104 when the modification is found necessary by the court in the best
105 interests of the child, when the child reaches majority, or when
106 there is a substantial change in the circumstances of the
107 parties, notwithstanding the automatic termination set forth in
108 subparagraph 1. If the child support obligation does not
109 automatically terminate as set forth in subparagraph 1. and the
110 obligor is forced to file an action to terminate support for a
111 child no longer entitled to receive support, the termination
112 shall be retroactive to the date the child was no longer eligible
113 to receive support, regardless of when the action is filed. If
114 the obligee receives support for a child who is no longer
115 eligible to receive support, the obligee is required to reimburse
116 the obligor the amount of the overpayment, which may be ordered

117 to be paid in one lump sum or in installments over a period of
118 time, at the discretion of the court based on the financial
119 circumstances of the party who is responsible for the repayment.
120 3. The court initially entering a child support order shall
121 also have continuing jurisdiction to require the obligee to
122 report to the court on terms prescribed by the court regarding
123 the disposition of the child support payments.
124 (c) To the extent necessary to protect an award of child
125 support, the court may order either or both parents who owe a
126 duty of support to a child ~~the obligor~~ to purchase or maintain a
127 life insurance policy or a bond~~,~~ or to otherwise secure the child
128 support award with any other assets which may be suitable for
129 that purpose.
130 Section 2. Paragraph (a) of subsection (1) and paragraph
131 (b) of subsection (11) of section 61.14, Florida Statutes, are
132 amended to read:
133 61.14 Enforcement and modification of support, maintenance,
134 or alimony agreements or orders.--
135 (1)(a)1. When the parties enter into an agreement for
136 payments for, or instead of, support, maintenance, or alimony,
137 whether in connection with a proceeding for dissolution or
138 separate maintenance or with any voluntary property settlement,
139 or when a party is required by court order to make any payments,
140 and the circumstances or the financial ability of either party
141 changes or the child who is a beneficiary of an agreement or
142 court order as described herein reaches majority after the
143 execution of the agreement or the rendition of the order, either
144 party may apply to the circuit court of the circuit in which the
145 parties, or either of them, resided at the date of the execution

146 of the agreement or reside at the date of the application, or in
147 which the agreement was executed or in which the order was
148 rendered, by filing a supplemental petition for an order
149 decreasing or increasing the amount of support, maintenance, or
150 alimony, and the court has jurisdiction to make orders as equity
151 requires, with due regard to the changed circumstances or the
152 financial ability of the parties or the child, decreasing,
153 increasing, or confirming the amount of separate support,
154 maintenance, or alimony provided for in the agreement or order.
155 2. A finding that medical insurance is reasonably available
156 or the child support guidelines in s. 61.30 may constitute
157 changed circumstances.
158 3.a. When the involuntary change of circumstances or
159 financial ability has not yet been established as being permanent
160 in nature, or when the change in circumstances is readily
161 acknowledged as only temporary in nature, a party may file a
162 motion for temporary relief, as opposed to a supplemental
163 petition for modification as provided in subparagraph 1. This
164 motion must be served in the same manner as a supplemental
165 petition. In response to the motion, the court may grant, as
166 appropriate, the following forms of temporary relief:
167 (I) A temporary reduction, abatement, or suspension of
168 child support, with the option to enforce payment of the accrued
169 shortfall, if appropriate, between the regular child support and
170 the temporary obligation;
171 (II) An abatement or suspension of contempt or enforcement
172 proceedings; or
173 (III) Such other temporary relief that the court deems just
174 and proper.

175 b. As a condition of entitlement to temporary relief under
176 this subparagraph, the movant must demonstrate that he or she:
177 (I) Has not precipitated the change of circumstances or
178 financial ability to avoid meeting the existing court-ordered
179 child support obligation.
180 (II) Is trying diligently to attain his or her previous
181 income level.
182 c. If a subsequent modification action is filed, the court
183 may modify an order of child support retroactively to the date of
184 the filing of the motion.
185 4. Except as otherwise provided in subparagraph 3. and s.
186 61.30(11)(d)~~(e)~~, the court may modify an order of support,
187 maintenance, or alimony by increasing or decreasing the support,
188 maintenance, or alimony retroactively to the date of the filing
189 of the action or supplemental action for modification as equity
190 requires, giving due regard to the changed circumstances or the
191 financial ability of the parties or the child.
192 (11)
193 (b) The modification of the temporary support order may be
194 retroactive to the date of the initial entry of the temporary
195 support order; to the date of filing of the initial petition for
196 dissolution of marriage, initial petition for support, initial
197 petition determining paternity, or supplemental petition for
198 modification; or to a date prescribed in paragraph (1)(a) or s.
199 61.30(11)(d)~~(e)~~ or (18)~~(17)~~, as applicable.
200 Section 3. Section 61.30, Florida Statutes, is amended to
201 read:
202 61.30 Child support guidelines; guidelines schedule;
203 retroactive child support.--

204 (1) INCOME SHARES MODEL.--
205 (a) The state child support guidelines are based on the
206 income shares model, which presumes that a child should receive
207 the same proportion of parental income as he or she would have
208 received if the parents lived together.
209 (b) The Legislature finds that child support is a
210 continuous obligation of both parents, children are entitled to
211 share in the current income of both parents, and a child's
212 standard of living should not, to the degree possible, be
213 negatively affected because a child's parents are not living
214 together in the same household. The Legislature finds that
215 children of families living in two households should be afforded
216 the same opportunities that are available to children in families
217 living in one household with parents who have financial resources
218 similar to the resources of the parents who are living in two
219 households.
220 (c) The Legislature finds that child support shall provide
221 for the needs of the child. The needs of the child include, but
222 are not limited to, direct expenses for food, clothing, school,
223 and entertainment. The Legislature finds that child support shall
224 also be used to provide for housing, utilities, transportation,
225 and other indirect expenses related to the day-to-day care and
226 well-being of the child.
227 (d) The Legislature further finds that in intact families
228 the income of both parents is combined and spent for the benefit
229 of all household members, including the children. The amount each
230 parent contributes to the total income of the family represents
231 his or her relative share of household expenses. This same income
232 sharing principle is used by the income shares model to determine

233 how parents will share a child support award. The child support
234 guidelines schedule as provided in subsection (6) calculates a
235 child support award as the estimated share of each parent's
236 income that would have been spent on the child if the parents and
237 child were living in the same household. The amount calculated to
238 be spent by the custodial parent on child-rearing expenses is
239 retained by the custodial parent and is to be spent directly for
240 the benefit of the child. The amount calculated to be spent by
241 the noncustodial parent on child-rearing expenses represents the
242 amount of support that is paid to the custodial parent for the
243 benefit of the child. The amount of a child support award shall
244 be determined without regard to the gender of the custodial
245 parent.
246 (2) PURPOSES OF CHILD SUPPORT GUIDELINES.--The primary
247 purposes of the child support guidelines are:
248 (a) To provide uniform procedures for establishing an
249 adequate level of support for children, subject to the parents'
250 ability to pay.
251 (b) To make child support awards more equitable by ensuring
252 the consistent treatment of persons in similar circumstances.
253 (c) To reduce the adversarial nature of child support
254 proceedings by increasing voluntary settlements due to greater
255 predictability in the process to determine the amount of a child
256 support award.
257 (d) To increase the level of compliance with child support
258 orders as a result of the perceived fairness of the amounts of
259 child support ordered to be paid.
260 (e) To improve the efficiency of the judicial process by
261 giving courts, the child support enforcement agency, attorneys,

262 and parents guidance in determining the amount of child support
263 awards.
264 (f) To comply with federal law.
265 (3) REBUTTABLE PRESUMPTION.--
266 (a) There shall be a rebuttable presumption in any judicial
267 or administrative proceeding to establish a temporary or
268 permanent order for child support, to decide whether to approve a
269 settlement agreement for child support, or to consider requests
270 for modifications of existing orders that the amount of child
271 support that would result from the application of the guidelines
272 schedule provided in subsection (6) is the correct amount of
273 child support to be awarded. The presumption may be rebutted and
274 the minimum child support award, or either or both parents' share
275 of the minimum child support award, may be adjusted upward or
276 downward upon evidence that the application of the guidelines
277 schedule would be unjust or inappropriate in a particular case.
278 (b)~~(1)(a)~~ A ~~The child support guideline amount as~~
279 ~~determined by this section presumptively establishes the amount~~
280 ~~the trier of fact shall order as child support in an initial~~
281 ~~proceeding for such support or in a proceeding for modification~~
282 ~~of an existing order for such support, whether the proceeding~~
283 ~~arises under this or another chapter. The trier of fact may order~~
284 ~~payment of~~ child support award which varies, plus or minus 5
285 percent, from the guideline amount may be ordered without a
286 written finding~~, after considering all relevant factors,~~
287 ~~including the needs of the child or children, age, station in~~
288 ~~life, standard of living, and the financial status and ability of~~
289 ~~each parent~~. A ~~The trier of fact may order payment of~~ child
290 support award in an amount which varies more than 5 percent from

291 the ~~such~~ guideline amount may be ordered only upon a written
292 finding explaining why ordering payment of the ~~such~~ guideline
293 amount would be unjust or inappropriate. In determining whether
294 the application of the guidelines schedule would be unjust or
295 inappropriate and in determining whether to vary from the
296 presumptive child support amount in a particular case, the court
297 shall consider all of the factors provided in subsection (10)
298 ~~Notwithstanding the variance limitations of this section, the~~
299 ~~trier of fact shall order payment of child support which varies~~
300 ~~from the guideline amount as provided in paragraph (11)(b)~~
301 ~~whenever any of the children are required by court order or~~
302 ~~mediation agreement to spend a substantial amount of time with~~
303 ~~the primary and secondary residential parents. This requirement~~
304 ~~applies to any living arrangement, whether temporary or~~
305 ~~permanent~~.
306 ~~(b) The guidelines may provide the basis for proving a~~
307 ~~substantial change in circumstances upon which a modification of~~
308 ~~an existing order may be granted. However, the difference between~~
309 ~~the existing monthly obligation and the amount provided for under~~
310 ~~the guidelines shall be at least 15 percent or $50, whichever~~
311 ~~amount is greater, before the court may find that the guidelines~~
312 ~~provide a substantial change in circumstances.~~
313 ~~(c) For each support order reviewed by the department as~~
314 ~~required by s. 409.2564(11), if the amount of the child support~~
315 ~~award under the order differs by at least 10 percent but not less~~
316 ~~than $25 from the amount that would be awarded under s. 61.30,~~
317 ~~the department shall seek to have the order modified and any~~
318 ~~modification shall be made without a requirement for proof or~~
319 ~~showing of a change in circumstances.~~

320 (4) ~~(2)~~ DETERMINATION OF GROSS INCOME.--Income shall be
321 determined on a monthly basis for each parent. ~~the obligor and~~
322 ~~for the obligee as follows:~~
323 (a) Gross income shall include, but is not limited to, the
324 following ~~items~~:
325 1. Salary or wages.
326 2. Bonuses, commissions, allowances, overtime, tips, and
327 other similar payments.
328 3. Business income from sources such as self-employment,
329 partnership, close corporations, and independent contracts.
330 "Business income" means gross receipts minus ordinary and
331 necessary expenses required to produce income.
332 4. Disability benefits.
333 5. All workers' compensation benefits and settlements.
334 6. Unemployment compensation.
335 7. Pension, retirement, or annuity payments.
336 8. Social security benefits.
337 9. Spousal support received from a previous marriage or
338 court ordered in the marriage before the court.
339 10. Interest and dividends.
340 11. Rental income, which is gross receipts minus ordinary
341 and necessary expenses required to produce the income.
342 12. Income from royalties, trusts, or estates.
343 13. Reimbursed expenses or in kind payments to the extent
344 that they reduce living expenses.
345 14. Gains derived from dealings in property, unless the
346 gain is nonrecurring.
347 (b)1. Income on a monthly basis shall be imputed to an
348 unemployed or underemployed parent when such employment or

349 underemployment is found by the court to be voluntary on that
350 parent's part, absent a finding of fact by the court of physical
351 or mental incapacity or other circumstances over which the parent
352 has no control. In the event of such voluntary unemployment or
353 underemployment, the employment potential and probable earnings
354 level of the parent shall be determined based upon his or her
355 recent work history, occupational qualifications, and prevailing
356 earnings level in the community as provided in this paragraph;
357 however, the court may refuse to impute income to a primary
358 residential parent if the court finds it necessary for the parent
359 to stay home with the child who is the subject of the child
360 support calculation to care for that child.
361 2. In order for the court to impute income under
362 subparagraph 1., the court must make specific findings of fact
363 consistent with the requirements of this paragraph. The party
364 seeking to impute income has the burden to present competent,
365 substantial evidence:
366 a. That the unemployment or underemployment is voluntary.
367 b. That identifies the amount and source of the imputed
368 income, including, but not limited to, an identification of a job
369 for which the party is suitably qualified by education,
370 experience, current licensure, and geographic location, with due
371 consideration being given to the parties' current existing
372 parental responsibility and time-sharing plan and their
373 historical compliance with the plan.
374 3. A rebuttable presumption shall exist, which entitles the
375 court to impute Florida minimum wage to a parent if no other
376 evidentiary basis or mechanism for establishing a parent's gross
377 income is available, absent a finding by the court that:

378 a. The parent has a physical or mental incapacity that
379 renders the parent unemployable or underemployed;
380 b. The parent is obliged to stay home with a child who is
381 the subject of the child support calculation proceedings and care
382 for that child, thereby preventing the parent's employment or
383 rendering the parent underemployed; or
384 c. There are other circumstances over which the parent has
385 no control, except for penal incarceration, which prevents the
386 parent from earning an income.
387
388 If evidence is produced that demonstrates that the parent is a
389 resident of another state, the state minimum wage applicable to
390 the parent's state of residence shall apply if it is greater than
391 the Florida minimum wage. In the absence of a state minimum wage
392 or if the other state's minimum wage is lower than the Florida
393 minimum wage, the federal minimum wage shall apply.
394 4. Income may not be imputed beyond minimum wage
395 requirements in subparagraph 3. based upon:
396 a. Income records that are more than 5 years old at the
397 time of the hearing or trial at which imputation is sought.
398 b. Income at a level that a party has not previously ever
399 earned in the past, unless recently degreed, licensed, certified,
400 relicensed, or recertified and thus qualified for, subject to
401 geographic location, with due consideration being given to the
402 parties' current existing parental responsibility and time-
403 sharing plan and their historical compliance with the plan.
404 (c) Public assistance as defined in s. 409.2554 shall be
405 excluded from gross income.

406 (d) If recurring income is not sufficient to meet the needs
407 of the child, the court may order child support to be paid from
408 nonrecurring income or assets.
409 (5) ~~(3)~~ DETERMINATION OF NET INCOME.--
410 (a) Net income is obtained by subtracting allowable
411 deductions from gross income. Allowable deductions shall include:
412 1. ~~(a)~~ Federal, state, and local income tax deductions,
413 adjusted for actual filing status and allowable dependents and
414 income tax liabilities.
415 2. ~~(b)~~ Federal insurance contributions or self-employment
416 tax.
417 3. ~~(c)~~ Mandatory union dues.
418 4. ~~(d)~~ Mandatory retirement payments.
419 5. ~~(e)~~ Health insurance payments, excluding payments for
420 coverage of the minor child.
421 6. ~~(f)~~ Court-ordered support for other children which is
422 actually paid.
423 7. ~~(g)~~ Spousal support paid pursuant to a court order from a
424 previous marriage or the marriage before the court.
425 (b) ~~(4)~~ Net income for each parent ~~the obligor and net~~
426 ~~income for the obligee~~ shall be computed by subtracting allowable
427 deductions from gross income.
428 (c) ~~(5)~~ Net income for each parent ~~the obligor and net~~
429 ~~income for the obligee~~ shall be added together for a combined net
430 income.
431 (6) CHILD SUPPORT GUIDELINES SCHEDULE.--The following
432 schedule ~~schedules~~ shall be applied to the combined net income to
433 determine the minimum child support amount ~~need~~:
434

Combined Monthly Net ~~Available~~ Income	Child or Children					
	One	Two	Three	Four	Five	Six
650.00	74	75	75	76	77	78
700.00	119	120	121	123	124	125
750.00	164	166	167	169	171	173
800.00	190	211	213	216	218	220
850.00	202	257	259	262	265	268
900.00	213	302	305	309	312	315
950.00	224	347	351	355	359	363
1000.00	235	365	397	402	406	410
1050.00	246	382	443	448	453	458
1100.00	258	400	489	495	500	505
1150.00	269	417	522	541	547	553
1200.00	280	435	544	588	594	600

449 1250.00	290	451	565	634	641	648
450 1300.00	300	467	584	659	688	695
451 1350.00	310	482	603	681	735	743
452 1400.00	320	498	623	702	765	790
453 1450.00	330	513	642	724	789	838
454 1500.00	340	529	662	746	813	869
455 1550.00	350	544	681	768	836	895
456 1600.00	360	560	701	790	860	920
457 1650.00	370	575	720	812	884	945
458 1700.00	380	591	740	833	907	971
459 1750.00	390	606	759	855	931	996
460 1800.00	400	622	779	877	955	1022
461 1850.00	410	638	798	900	979	1048
462 1900.00	421	654	818	923	1004	1074
1950.00	431	670	839	946	1029	1101

463 2000.00 442 686 859 968 1054 1128
464 2050.00 452 702 879 991 1079 1154
465 2100.00 463 718 899 1014 1104 1181
466 2150.00 473 734 919 1037 1129 1207
467 2200.00 484 751 940 1060 1154 1234
468 2250.00 494 767 960 1082 1179 1261
469 2300.00 505 783 980 1105 1204 1287
470 2350.00 515 799 1000 1128 1229 1314
471 2400.00 526 815 1020 1151 1254 1340
472 2450.00 536 831 1041 1174 1279 1367
473 2500.00 547 847 1061 1196 1304 1394
474 2550.00 557 864 1081 1219 1329 1420
475 2600.00 568 880 1101 1242 1354 1447
476 2650.00 578 896 1121 1265 1379 1473
477

478	2700.00	588	912	1141	1287	1403	1500
479	2750.00	597	927	1160	1308	1426	1524
480	2800.00	607	941	1178	1328	1448	1549
481	2850.00	616	956	1197	1349	1471	1573
482	2900.00	626	971	1215	1370	1494	1598
483	2950.00	635	986	1234	1391	1517	1622
484	3000.00	644	1001	1252	1412	1540	1647
485	3050.00	654	1016	1271	1433	1563	1671
486	3100.00	663	1031	1289	1453	1586	1695
487	3150.00	673	1045	1308	1474	1608	1720
488	3200.00	682	1060	1327	1495	1631	1744
489	3250.00	691	1075	1345	1516	1654	1769
490	3300.00	701	1090	1364	1537	1677	1793
491	3350.00	710	1105	1382	1558	1700	1818
	3400.00	720	1120	1401	1579	1723	1842

3450.00	729	1135	1419	1599	1745	1867
3500.00	738	1149	1438	1620	1768	1891
3550.00	748	1164	1456	1641	1791	1915
3600.00	757	1179	1475	1662	1814	1940
3650.00	767	1194	1493	1683	1837	1964
3700.00	776	1208	1503	1702	1857	1987
3750.00	784	1221	1520	1721	1878	2009
3800.00	793	1234	1536	1740	1899	2031
3850.00	802	1248	1553	1759	1920	2053
3900.00	811	1261	1570	1778	1940	2075
3950.00	819	1275	1587	1797	1961	2097
4000.00	828	1288	1603	1816	1982	2119
4050.00	837	1302	1620	1835	2002	2141
4100.00	846	1315	1637	1854	2023	2163

4150.00	854	1329	1654	1873	2044	2185
4200.00	863	1342	1670	1892	2064	2207
4250.00	872	1355	1687	1911	2085	2229
4300.00	881	1369	1704	1930	2106	2251
4350.00	889	1382	1721	1949	2127	2273
4400.00	898	1396	1737	1968	2147	2295
4450.00	907	1409	1754	1987	2168	2317
4500.00	916	1423	1771	2006	2189	2339
4550.00	924	1436	1788	2024	2209	2361
4600.00	933	1450	1804	2043	2230	2384
4650.00	942	1463	1821	2062	2251	2406
4700.00	951	1477	1838	2081	2271	2428
4750.00	959	1490	1855	2100	2292	2450
4800.00	968	1503	1871	2119	2313	2472
4850.00	977	1517	1888	2138	2334	2494

521 4900.00 986 1530 1905 2157 2354 2516
522 4950.00 993 1542 1927 2174 2372 2535
523 5000.00 1000 1551 1939 2188 2387 2551
524 5050.00 1006 1561 1952 2202 2402 2567
525 5100.00 1013 1571 1964 2215 2417 2583
526 5150.00 1019 1580 1976 2229 2432 2599
527 5200.00 1025 1590 1988 2243 2447 2615
528 5250.00 1032 1599 2000 2256 2462 2631
529 5300.00 1038 1609 2012 2270 2477 2647
530 5350.00 1045 1619 2024 2283 2492 2663
531 5400.00 1051 1628 2037 2297 2507 2679
532 5450.00 1057 1638 2049 2311 2522 2695
533 5500.00 1064 1647 2061 2324 2537 2711
534 5550.00 1070 1657 2073 2338 2552 2727
535

536	5600.00	1077	1667	2085	2352	2567	2743
537	5650.00	1083	1676	2097	2365	2582	2759
538	5700.00	1089	1686	2109	2379	2597	2775
539	5750.00	1096	1695	2122	2393	2612	2791
540	5800.00	1102	1705	2134	2406	2627	2807
541	5850.00	1107	1713	2144	2418	2639	2820
542	5900.00	1111	1721	2155	2429	2651	2833
543	5950.00	1116	1729	2165	2440	2663	2847
544	6000.00	1121	1737	2175	2451	2676	2860
545	6050.00	1126	1746	2185	2462	2688	2874
546	6100.00	1131	1754	2196	2473	2700	2887
547	6150.00	1136	1762	2206	2484	2712	2900
548	6200.00	1141	1770	2216	2495	2724	2914
549	6250.00	1145	1778	2227	2506	2737	2927
	6300.00	1150	1786	2237	2517	2749	2941

550						
6350.00	1155	1795	2247	2529	2761	2954
551						
6400.00	1160	1803	2258	2540	2773	2967
552						
6450.00	1165	1811	2268	2551	2785	2981
553						
6500.00	1170	1819	2278	2562	2798	2994
554						
6550.00	1175	1827	2288	2573	2810	3008
555						
6600.00	1179	1835	2299	2584	2822	3021
556						
6650.00	1184	1843	2309	2595	2834	3034
557						
6700.00	1189	1850	2317	2604	2845	3045
558						
6750.00	1193	1856	2325	2613	2854	3055
559						
6800.00	1196	1862	2332	2621	2863	3064
560						
6850.00	1200	1868	2340	2630	2872	3074
561						
6900.00	1204	1873	2347	2639	2882	3084
562						
6950.00	1208	1879	2355	2647	2891	3094
563						
7000.00	1212	1885	2362	2656	2900	3103
564						

565	7050.00	1216	1891	2370	2664	2909	3113
566	7100.00	1220	1897	2378	2673	2919	3123
567	7150.00	1224	1903	2385	2681	2928	3133
568	7200.00	1228	1909	2393	2690	2937	3142
569	7250.00	1232	1915	2400	2698	2946	3152
570	7300.00	1235	1921	2408	2707	2956	3162
571	7350.00	1239	1927	2415	2716	2965	3172
572	7400.00	1243	1933	2423	2724	2974	3181
573	7450.00	1247	1939	2430	2733	2983	3191
574	7500.00	1251	1945	2438	2741	2993	3201
575	7550.00	1255	1951	2446	2750	3002	3211
576	7600.00	1259	1957	2453	2758	3011	3220
577	7650.00	1263	1963	2461	2767	3020	3230
578	7700.00	1267	1969	2468	2775	3030	3240
	7750.00	1271	1975	2476	2784	3039	3250

579 7800.00 1274 1981 2483 2792 3048 3259
580 7850.00 1278 1987 2491 2801 3057 3269
581 7900.00 1282 1992 2498 2810 3067 3279
582 7950.00 1286 1998 2506 2818 3076 3289
583 8000.00 1290 2004 2513 2827 3085 3298
584 8050.00 1294 2010 2521 2835 3094 3308
585 8100.00 1298 2016 2529 2844 3104 3318
586 8150.00 1302 2022 2536 2852 3113 3328
587 8200.00 1306 2028 2544 2861 3122 3337
588 8250.00 1310 2034 2551 2869 3131 3347
589 8300.00 1313 2040 2559 2878 3141 3357
590 8350.00 1317 2046 2566 2887 3150 3367
591 8400.00 1321 2052 2574 2895 3159 3376
592 8450.00 1325 2058 2581 2904 3168 3386
593

594	8500.00	1329	2064	2589	2912	3178	3396
595	8550.00	1333	2070	2597	2921	3187	3406
596	8600.00	1337	2076	2604	2929	3196	3415
597	8650.00	1341	2082	2612	2938	3205	3425
598	8700.00	1345	2088	2619	2946	3215	3435
599	8750.00	1349	2094	2627	2955	3224	3445
600	8800.00	1352	2100	2634	2963	3233	3454
601	8850.00	1356	2106	2642	2972	3242	3464
602	8900.00	1360	2111	2649	2981	3252	3474
603	8950.00	1364	2117	2657	2989	3261	3484
604	9000.00	1368	2123	2664	2998	3270	3493
605	9050.00	1372	2129	2672	3006	3279	3503
606	9100.00	1376	2135	2680	3015	3289	3513
607	9150.00	1380	2141	2687	3023	3298	3523
	9200.00	1384	2147	2695	3032	3307	3532

608 9250.00	1388	2153	2702	3040	3316	3542
609 9300.00	1391	2159	2710	3049	3326	3552
610 9350.00	1395	2165	2717	3058	3335	3562
611 9400.00	1399	2171	2725	3066	3344	3571
612 9450.00	1403	2177	2732	3075	3353	3581
613 9500.00	1407	2183	2740	3083	3363	3591
614 9550.00	1411	2189	2748	3092	3372	3601
615 9600.00	1415	2195	2755	3100	3381	3610
616 9650.00	1419	2201	2763	3109	3390	3620
617 9700.00	1422	2206	2767	3115	3396	3628
618 9750.00	1425	2210	2772	3121	3402	3634
619 9800.00	1427	2213	2776	3126	3408	3641
620 9850.00	1430	2217	2781	3132	3414	3647
621 9900.00	1432	2221	2786	3137	3420	3653
622						

9950.00	1435	2225	2791	3143	3426	3659
10000.00	1437	2228	2795	3148	3432	3666

(7) LOW-INCOME PARENTS.--For combined monthly available income less than the amount set out in the schedule provided in subsection (6) ~~on the above schedules~~, the parent should be ordered to pay a child support amount, determined on a case-by-case basis, to establish the principle of payment and lay the basis for increased orders should the parent's income increase in the future.

(8) HIGH-INCOME PARENTS.--For combined monthly available income greater than the amount set out in the schedule provided in subsection (6) ~~above schedules~~, the obligation shall be the minimum amount of support provided by the guidelines schedule plus the following percentages multiplied by the amount of income over $10,000:

Child or Children					
One	Two	Three	Four	Five	Six
5.0%	7.5%	9.5%	11.0%	12.0%	12.5%

(9) EXPENSES TO BE ADDED.--Some expenditures related to raising children represent either large expenses or expenses that may vary greatly from child to child and, for that reason, are not built into the child support guidelines schedule. However, these types of expenditures are typically incurred by most

647 children involved in child support proceedings and shall be
648 considered expenditures that are to be added to the basic child
649 support obligation, as follows:
650 (a) ~~(7)~~ Child care costs incurred on behalf of the children
651 due to employment, job search, or education calculated to result
652 in employment or to enhance income of current employment of
653 either parent shall be ~~reduced by 25 percent and then shall be~~
654 added to the basic obligation. After the ~~adjusted~~ child care
655 costs are added to the basic obligation, any moneys prepaid by
656 the noncustodial parent for child care costs for the child or
657 children of this action shall be deducted from that noncustodial
658 parent's child support obligation for that child or those
659 children. Child care costs shall not exceed the level required to
660 provide quality care from a licensed source for the children.
661 (b) ~~(8)~~ Health insurance costs resulting from coverage
662 ordered pursuant to s. 61.13(1)(b), and any noncovered medical,
663 dental, and prescription medication expenses of the child, shall
664 be added to the basic obligation unless these expenses have been
665 ordered to be separately paid on a percentage basis. After the
666 health insurance costs are added to the basic obligation, any
667 moneys prepaid by the noncustodial parent for health-related
668 costs for the child or children of this action shall be deducted
669 from that noncustodial parent's child support obligation for that
670 child or those children.
671 ~~(9) Each parent's percentage share of the child support~~
672 ~~need shall be determined by dividing each parent's net income by~~
673 ~~the combined net income.~~

674 ~~(10) Each parent's actual dollar share of the child support~~
675 ~~need shall be determined by multiplying the minimum child support~~
676 ~~need by each parent's percentage share.~~
677 (10) ~~(11)(a)~~ FACTORS TO BE CONSIDERED FOR VARIATION.--The
678 court may adjust the minimum child support award, or either or
679 both parents' share of the minimum child support award, based
680 upon the following considerations:
681 (a) ~~1.~~ Extraordinary medical, psychological, educational, or
682 dental expenses.
683 (b) ~~2.~~ Independent income of the child, not to include
684 moneys received by a child from supplemental security income.
685 (c) ~~3.~~ The payment of support for a parent which regularly
686 has been paid and for which there is a demonstrated need.
687 (d) ~~4.~~ Seasonal variations in one or both parents' incomes
688 or expenses.
689 (e) ~~5.~~ The age of the child, taking into account the greater
690 needs of older children.
691 (f) ~~6.~~ Special needs, such as costs that may be associated
692 with the disability of a child, that have traditionally been met
693 within the family budget even though the fulfilling of those
694 needs will cause the support to exceed the amount proposed in the
695 guidelines schedule.
696 (g) ~~7.~~ Total available assets of the obligee, obligor, and
697 the child.
698 (h) ~~8.~~ The impact of the Internal Revenue Service dependency
699 exemption and waiver of that exemption and the impact of any
700 federal child care tax credit. The court may order the primary
701 residential parent to execute a waiver of the Internal Revenue

702 Service dependency exemption if the noncustodial parent is
703 current in support payments.
704 (i)~~9.~~ When application of the child support guidelines
705 requires a person to pay another person more than 55 percent of
706 his or her gross income for a child support obligation for
707 current support resulting from a single support order.
708 (j)~~10.~~ The particular shared parental arrangement~~, such as~~
709 ~~where the child spends a significant amount of time, but less~~
710 ~~than 40 percent of the overnights, with the noncustodial parent,~~
711 ~~thereby reducing the financial expenditures incurred by the~~
712 ~~primary residential parent; or the refusal of the noncustodial~~
713 ~~parent to become involved in the activities of the child~~.
714 (k)~~11.~~ Any other adjustment which is needed to achieve an
715 equitable result which may include, but not be limited to, a
716 reasonable and necessary existing expense or debt. Such expense
717 or debt may include, but is not limited to, a reasonable and
718 necessary expense or debt which the parties jointly incurred
719 during the marriage.
720 ~~(b) Whenever a particular shared parental arrangement~~
721 ~~provides that each child spend a substantial amount of time with~~
722 ~~each parent, the court shall adjust any award of child support,~~
723 ~~as follows:~~
724 ~~1. In accordance with subsections (9) and (10), calculate~~
725 ~~the amount of support obligation apportioned to the noncustodial~~
726 ~~parent without including day care and health insurance costs in~~
727 ~~the calculation and multiply the amount by 1.5.~~
728 ~~2. In accordance with subsections (9) and (10), calculate~~
729 ~~the amount of support obligation apportioned to the custodial~~

730 ~~parent without including day care and health insurance costs in~~
731 ~~the calculation and multiply the amount by 1.5.~~
732 ~~3. Calculate the percentage of overnight stays the child~~
733 ~~spends with each parent.~~
734 ~~4. Multiply the noncustodial parent's support obligation as~~
735 ~~calculated in subparagraph 1. by the percentage of the custodial~~
736 ~~parent's overnight stays with the child as calculated in~~
737 ~~subparagraph 3.~~
738 ~~5. Multiply the custodial parent's support obligation as~~
739 ~~calculated in subparagraph 2. by the percentage of the~~
740 ~~noncustodial parent's overnight stays with the child as~~
741 ~~calculated in subparagraph 3.~~
742 ~~6. The difference between the amounts calculated in~~
743 ~~subparagraphs 4. and 5. shall be the monetary transfer necessary~~
744 ~~between the custodial and noncustodial parents for the care of~~
745 ~~the child, subject to an adjustment for day care and health~~
746 ~~insurance expenses.~~
747 ~~7. Pursuant to subsections (7) and (8), calculate the net~~
748 ~~amounts owed by the custodial and noncustodial parents for the~~
749 ~~expenses incurred for day care and health insurance coverage for~~
750 ~~the child. Day care shall be calculated without regard to the 25-~~
751 ~~percent reduction applied by subsection (7).~~
752 ~~8. Adjust the support obligation owed by the custodial or~~
753 ~~noncustodial parent pursuant to subparagraph 6. by crediting or~~
754 ~~debiting the amount calculated in subparagraph 7. This amount~~
755 ~~represents the child support which must be exchanged between the~~
756 ~~custodial and noncustodial parents.~~
757 ~~9. The court may deviate from the child support amount~~
758 ~~calculated pursuant to subparagraph 8. based upon the~~

759 ~~considerations set forth in paragraph (a), as well as the~~
760 ~~custodial parent's low income and ability to maintain the basic~~
761 ~~necessities of the home for the child, the likelihood that the~~
762 ~~noncustodial parent will actually exercise the visitation granted~~
763 ~~by the court, and whether all of the children are exercising the~~
764 ~~same shared parental arrangement.~~
765 ~~10. For purposes of adjusting any award of child support~~
766 ~~under this paragraph, "substantial amount of time" means that the~~
767 ~~noncustodial parent exercises visitation at least 40 percent of~~
768 ~~the overnights of the year.~~
769 (11) SHARED PARENTING AND SPLIT PARENTING ARRANGEMENTS.--
770 (a) In an intact family, the children reside in one
771 household with both parents and no visitation is needed. The
772 minimum child support amounts in the child support guidelines
773 schedule provided in subsection (6) represent spending on
774 children by intact families. Therefore, the child support amounts
775 in the guidelines schedule are appropriate only if the child
776 resides in the custodial parent's household 100 percent of the
777 time. In shared parenting situations, each parent incurs expenses
778 for the child while the child is with that parent. To accommodate
779 shared parenting situations, each parent's income share of the
780 minimum child support award may be adjusted based on expenses
781 assumed to be duplicated or shifted and the amount of time spent
782 with the child. Although these guidelines are designed to
783 accommodate shared parenting arrangements when appropriate,
784 shared parenting adjustments or awards are not presumptive but
785 are subject to the discretion of the court in accordance with the
786 factors listed in subsection (10).

787 (b) Unless the parties otherwise agree, the final child
788 support order shall not be based on a calculated shared parenting
789 award if:
790 1. The monthly net income of the custodial parent plus the
791 shared parenting child support award is less than two times the
792 then-current poverty guidelines prescribed by the United States
793 Department of Health and Human Services for the size of the
794 household; or
795 2. In any case, the court finds that the net income of the
796 custodial parent remaining after the calculation of the shared
797 parenting award is not sufficient to maintain the household for
798 the child.
799 (c) A shared parenting calculation shall be determined
800 according to the following formula:
801 1. The child support payment to be made equals (the basic
802 support obligation) multiplied by (1 plus Parent A's percentage
803 of the shared parenting time) multiplied by [(Parent A's share of
804 the combined monthly net income) minus (Parent A's percentage of
805 the shared parenting time)].
806 2. If the two parents do not have an equal amount of
807 parenting time, Parent A is the parent with the smaller
808 percentage of time.
809 3. If the two parents have an equal amount of parenting
810 time, Parent A is the parent with the larger income.
811 (d) ~~(c)~~ A noncustodial parent's failure to regularly exercise
812 court-ordered or agreed visitation not caused by the custodial
813 parent which resulted in the adjustment of the amount of child
814 support as provided in subsection (12) ~~pursuant to subparagraph~~
815 ~~(a)10. or paragraph (b)~~ shall be deemed a substantial change of

816 circumstances for purposes of modifying the child support award.
817 A modification pursuant to this paragraph shall be retroactive to
818 the date the noncustodial parent first failed to regularly
819 exercise court-ordered or agreed visitation.
820 (e) A split parenting arrangement exists when there is more
821 than one child in common and each parent provides primary
822 residential care for at least one of the children. In cases
823 involving split parenting arrangements, the court shall calculate
824 and issue a separate child support order for each parent based on
825 the number of children in that parent's custody, and the
826 difference between the two orders is the amount to be paid by the
827 parent with the higher child support order amount.
828 (12) DETERMINATION OF CHILD SUPPORT ORDER AMOUNT.--
829 (a) Calculations shall be made to determine the amount of
830 child support contained in the support order, as follows:
831 1. Gross income shall be determined on a monthly basis for
832 each parent as provided in subsection (4).
833 2. Net income for each parent shall be determined by
834 subtracting allowable deductions from gross income as provided in
835 subsection (5).
836 3. Net income for each parent shall be added together for a
837 combined net income.
838 4. The combined net income shall be applied to the
839 child support guidelines schedule as provided in subsection (6)
840 to determine the minimum child support amount.
841 5. Each parent's percentage share of the minimum child
842 support amount shall be determined by dividing each parent's net
843 income by the combined net income.

844 6. Each parent's actual dollar share of the minimum child
845 support amount shall be determined by multiplying the minimum
846 child support amount by each parent's percentage share.
847 7. Any adjustment as a result of a particular shared
848 parenting arrangement as provided in subsection (11) shall be
849 factored in.
850 8. Any child care costs related to employment or education
851 calculated pursuant to subsection (9) shall be added to the basic
852 child support obligation.
853 9. Any costs related to health insurance premiums for the
854 child determined pursuant to subsection (9) shall be added to the
855 basic child support obligation.
856 10. The amount of the child support order is determined by
857 adding the basic child support obligation, any offset for a
858 particular parenting time arrangement, net child care costs
859 related to employment or education, and health insurance costs
860 for the child.
861 (b) Calculations shall be rounded to the nearest one-tenth
862 of a percent for percentages and to the nearest dollar in all
863 instances. When the parents' combined net income falls halfway or
864 more than halfway between the two income figures on the schedule,
865 the higher figure shall be used. When the parents' combined net
866 income falls less than halfway between two income figures, the
867 lower figure shall be used.
868 (13) MODIFICATION OF EXISTING ORDERS.--
869 (a) The guidelines schedule provided in subsection (6) may
870 provide the basis for proving a substantial change in
871 circumstances upon which a modification of an existing order may
872 be granted. However, the difference between the existing monthly

873 obligation and the amount provided for under the guidelines
874 schedule shall be at least 15 percent or $50, whichever amount is
875 greater, before the court may find that the guidelines schedule
876 provides a substantial change in circumstances.
877 (b) For each child support order reviewed by the department
878 as required by s. 409.2564(11), if the amount of the child
879 support award under the order differs by at least 10 percent but
880 not less than $25 from the amount that would be awarded under
881 this section, the department shall seek to have the order
882 modified and any modification shall be made without a requirement
883 for proof or showing of a change in circumstances.
884 (14) FINANCIAL AFFIDAVIT.--Every petition for child support
885 or for modification of child support shall be accompanied by an
886 affidavit which shows the party's income, allowable deductions,
887 and net income computed in accordance with this section. The
888 affidavit shall be served at the same time that the petition is
889 served. The respondent, whether or not a stipulation is entered,
890 shall make an affidavit which shows the party's income, allowable
891 deductions, and net income computed in accordance with this
892 section. The respondent shall include his or her affidavit with
893 the answer to the petition or as soon thereafter as is
894 practicable, but in any case at least 72 hours prior to any
895 hearing on the finances of either party.
896 (15) ~~(12)~~ EXISTENCE OF SUBSEQUENT CHILDREN.--
897 (a) A parent with a support obligation may have other
898 children living with him or her who were born or adopted after
899 the support obligation arose. If such subsequent children exist,
900 the court, when considering an upward modification of an existing
901 award, may disregard the income from secondary employment

902 obtained in addition to the parent's primary employment if the
903 court determines that the employment was obtained primarily to
904 support the subsequent children.
905 (b) Except as provided in paragraph (a), the existence of
906 such subsequent children should not as a general rule be
907 considered by the court as a basis for disregarding the amount
908 provided in the guidelines schedule. The parent with a support
909 obligation for subsequent children may raise the existence of
910 such subsequent children as a justification for deviation from
911 the guidelines schedule. However, if the existence of such
912 subsequent children is raised, the income of the other parent of
913 the subsequent children shall be considered by the court in
914 determining whether or not there is a basis for deviation from
915 the guideline amount.
916 (c) The issue of subsequent children under paragraph (a) or
917 paragraph (b) may only be raised in a proceeding for an upward
918 modification of an existing award and may not be applied to
919 justify a decrease in an existing award.
920 ~~(13) If the recurring income is not sufficient to meet the~~
921 ~~needs of the child, the court may order child support to be paid~~
922 ~~from nonrecurring income or assets.~~
923 (16) ~~(15)~~ COOPERATION RELATED TO PUBLIC ASSISTANCE.--For
924 purposes of establishing an obligation for support in accordance
925 with this section, if a person who is receiving public assistance
926 is found to be noncooperative as defined in s. 409.2572, the IV-D
927 agency is authorized to submit to the court an affidavit
928 attesting to the income of the custodial parent based upon
929 information available to the IV-D agency.

930 (17) ~~(16)~~ REVIEW OF GUIDELINES.--The child support
931 guidelines shall be reviewed and revised, if necessary, at least
932 once every 4 years by a committee to be appointed by the Chief
933 Justice of the Supreme Court to ensure that the support amounts
934 are appropriate for child support awards. The Supreme Court shall
935 approve the child support guidelines upon revision by the
936 committee for use in this state and shall publish the guidelines
937 through per curiam order of the court ~~The Legislature shall~~
938 ~~review the guidelines established in this section at least every~~
939 ~~4 years beginning in 1997~~.
940 (18) ~~(17)~~ RETROACTIVE CHILD SUPPORT.--In an initial
941 determination of child support, whether in a paternity action,
942 dissolution of marriage action, or petition for support during
943 the marriage, the court has discretion to award child support
944 retroactive to the date when the parents did not reside together
945 in the same household with the child, not to exceed a period of
946 24 months preceding the filing of the petition, regardless of
947 whether that date precedes the filing of the petition. In
948 determining the retroactive award in such cases, the court shall
949 consider the following:
950 (a) The court shall apply the guidelines schedule in effect
951 at the time of the hearing subject to the obligor's demonstration
952 of his or her actual income, as defined by subsection (4) ~~(2)~~,
953 during the retroactive period. Failure of the obligor to so
954 demonstrate shall result in the court using the obligor's income
955 at the time of the hearing in computing child support for the
956 retroactive period.

957 (b) All actual payments made by the noncustodial parent to
958 the custodial parent or the child or third parties for the
959 benefit of the child throughout the proposed retroactive period.
960 (c) The court should consider an installment payment plan
961 for the payment of retroactive child support.
962 Section 4. Subsection (10) of section 409.2564, Florida
963 Statutes, is amended to read:
964 409.2564 Actions for support.--
965 (10) For the purposes of denial, revocation, or limitation
966 of an individual's United States passport, consistent with 42
967 U.S.C. s. 652(k)(1), the Title IV-D agency shall have procedures
968 to certify to the Secretary of the United States Department of
969 Health and Human Services, in the format and accompanied by such
970 supporting documentation as the secretary may require, a
971 determination that an individual owes arrearages of support in an
972 amount exceeding $2,500 ~~$5,000~~. Said procedures shall provide
973 that the individual be given notice of the determination and of
974 the consequence thereof and that the individual shall be given an
975 opportunity to contest the accuracy of the determination.
976 Section 5. Effective July 1, 2006, section 409.25641,
977 Florida Statutes, is amended to read:
978 409.25641 Procedures for processing automated
979 administrative enforcement requests.--
980 (1) The department ~~Title IV-D agency~~ shall use automated
981 administrative enforcement, as defined in Title IV-D of the
982 Social Security Act, in response to a request from another state
983 to enforce a support order and shall promptly report the results
984 of enforcement action to the requesting state.
985 (2) This request:

986 (a) May be transmitted from the other state by electronic
987 or other means.~~;~~
988 (b) Shall contain sufficient identifying information to
989 allow comparison with the databases within the state which are
990 available to the department. ~~Title IV-D agency; and~~
991 (c) Shall constitute a certification by the requesting
992 state:
993 1. Of the amount of arrearage accrued under the order; and
994 2. That the requesting state has complied with all
995 procedural due process requirements applicable to the case.
996 (3) If assistance is provided by the department ~~Title IV-D~~
997 ~~agency~~ to another state as prescribed above, the department may
998 not ~~neither state shall~~ consider the case to be transferred from
999 the caseload of the other state to the caseload of the
1000 department, but the department may establish a corresponding case
1001 based on the other state's request for assistance ~~Title IV-D~~
1002 ~~agency~~.
1003 (4) The department ~~Title IV-D agency~~ shall maintain a
1004 record of:
1005 (a) The number of requests received;
1006 (b) The number of cases for which the department ~~Title IV-D~~
1007 ~~agency~~ collected support in response to such a request; and
1008 (c) The amount of such collected support.
1009 (5) The department shall have authority to adopt rules to
1010 implement this section.
1011 Section 6. Paragraph (g) of subsection (1) and paragraph
1012 (a) of subsection (5) of section 409.2563, Florida Statutes, are
1013 amended to read:

1014 409.2563 Administrative establishment of child support
1015 obligations.--
1016 (1) DEFINITIONS.--As used in this section, the term:
1017 (g) "Retroactive support" means a child support obligation
1018 established pursuant to s. 61.30(18)~~(17)~~.
1019
1020 Other terms used in this section have the meanings ascribed in
1021 ss. 61.046 and 409.2554.
1022 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.--
1023 (a) After serving notice upon the noncustodial parent in
1024 accordance with subsection (4), the department shall calculate
1025 the noncustodial parent's child support obligation under the
1026 child support guidelines schedule as provided by s. 61.30, based
1027 on any timely financial affidavits received and other information
1028 available to the department. If either parent fails to comply
1029 with the requirement to furnish a financial affidavit, the
1030 department may proceed on the basis of information available from
1031 any source, if such information is sufficiently reliable and
1032 detailed to allow calculation of guideline amounts under s.
1033 61.30. If the custodial parent receives public assistance and
1034 fails to submit a financial affidavit, the department may submit
1035 a financial affidavit for the custodial parent pursuant to s.
1036 61.30(16)~~(15)~~. If there is a lack of sufficient reliable
1037 information concerning a parent's actual earnings for a current
1038 or past period, it shall be presumed for the purpose of
1039 establishing a support obligation that the parent had an earning
1040 capacity equal to the federal minimum wage during the applicable
1041 period.

1042 Section 7. Paragraph (b) of subsection (4) of section
1043 742.031, Florida Statutes, is amended to read:
1044 742.031 Hearings; court orders for support, hospital
1045 expenses, and attorney's fee.--
1046 (4)
1047 (b) The modification of the temporary support order may be
1048 retroactive to the date of the initial entry of the temporary
1049 support order; to the date of filing of the initial petition for
1050 dissolution of marriage, petition for support, petition
1051 determining paternity, or supplemental petition for modification;
1052 or to a date prescribed in s. 61.14(1)(a) or s. 61.30(11)(d)~~(e)~~
1053 or (18)~~(17)~~, as applicable.
1054 Section 8. Except as otherwise expressly provided in this
1055 act, this act shall take effect October 1, 2006.

PCB FFF 06-05

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FFF 06-05 Forensic Treatment and Training
SPONSOR(S): Future of Florida's Families Committee
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2010, HB 1503

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee		Davis	Collins
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of persons who have a mental illness, mental retardation, or are autistic. The bill also clarifies that the treatment and training of defendants with mental retardation or autism is no longer provided by the Department of Children and Families (DCF), but is now provided through the Agency for Persons with Disabilities (APD). In addition, the bill:

- Removes numerous outdated and obsolete provisions, and streamlines, clarifies, and reorganizes provisions;
- Updates definitions to tie term for 'forensic client' to procedures in chapter rather than recreate procedures in definitions; and creates definition for "defendant" to distinguish persons who have not yet become clients via commitment procedures;
- Requires separate housing requirements for forensic clients (conforms to current practice);
- Adds provisions relating to the use of "restraints" and "seclusion" including rule authority to establish standards and procedures for the use of restraints and seclusion in forensic facilities;
- Clarifies provisions to distinguish defendants who are currently in the custody of the Department of Corrections;
- Removes some references to Florida Rules of Criminal Procedures as these references change and applicability of rules is under jurisdiction of courts;
- Deletes requirement for APD's Inspector General to study and notify state attorney of sexual misconduct (needs to be reported and investigated immediately);
- Allows transfer of court jurisdiction for forensic clients; and
- Clarifies distinction between ch. 916, F.S., forensic procedures for involuntary commitment and ch. 393, F.S., procedures for **non**-forensic involuntary commitment (the source of much court confusion).

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: ss. 916.105, 916.106, 916.107, 916.1075, 916.1081, 916.1085, 916.1091, 916.1093, 916.111, 916.115, 916.12, 916.13, 916.145, 916.15, 916.16, 916.17, 916.301, 916.3012, 916.302, 916.3025, 916.303, 916.304, 921.137, 985.223, 287.057, 408.036, 943.0585, 942.059.

According to the Agency for Persons with Disabilities, there is no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides Limited Government: The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of defendants who have a mental illness, mental retardation, or are autistic.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Chapter 916, F.S., the "Forensic Client Services Act," applies to persons charged with a felony and found to be incompetent to proceed due to mental illness, mental retardation, or autism or who have been acquitted of felonies by reason of insanity. Persons committed under ch. 916, F.S., remain under the jurisdiction of the committing court but are committed to the custody of the department. Chapter 916, F.S., is divided into three parts: Part I, General Provisions; Part II, Forensic Services for Persons Who are Mentally Ill; and, Part III, Forensic Services for Persons Who are Retarded or Autistic. The Florida Rules of Criminal Procedure (FRCP Rules 3.210-3.219) contain court procedures for forensic clients in areas such as the appointment of experts, mental competency examination and report, competence to proceed, hearing and disposition, judgment of not guilty by reason of insanity disposition, and conditional release.

Part I provides legislative intent for DCF to "establish, locate, and maintain separate and secure facilities and programs for the treatment or training of defendants" committed under the provisions of the chapter. This part provides definitions for terminology used in the entire chapter, including definitions of "autism," "forensic client," "mental illness," and "retardation." Part I also includes the rights of forensic clients, which include the right to;

- Individual dignity,
- Treatment,
- Express and informed consent,
- Quality treatment, communication,
- Abuse reporting, and visits,
- To have personal effects and clothing,
- To vote if otherwise eligible,
- Confidentiality of the clinical record, and
- Habeas corpus.

This part also provides prohibitions and penalties for sexual misconduct by an employee with a forensic client, penalties for escape from a forensic program, and penalties for the introduction or removal of certain articles into a forensic facility. It provides general rulemaking authority for the department.

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed due to mental illness or who have been adjudicated not guilty by reason of insanity.

This part also directs DCF to provide either directly or through a contract with accredited institutions standardized criteria and procedures to be used in evaluations and to develop clinical protocol and procedures consistent with the FRCP. In addition, DCF must develop a training plan for community mental health professionals who perform forensic evaluations, provide training for professionals doing evaluations and providing reports to the court and develop a

system to evaluate the program's success. Each year DCF is required to provide the court with a list of mental health professionals approved as experts.

Part II authorizes the court to appoint no more than three nor fewer than two experts to evaluate a criminal defendant's mental condition, including competency, insanity, and the need for involuntary hospitalization or placement. The court is required to authorize reasonable fees for expert evaluations and testimony.

Pursuant to this part, an individual is incompetent to proceed if he or she "does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him."

In considering the issue of competence to proceed, the statute requires that the examining expert must report to the court regarding the defendant's capacity to appreciate the charges or allegations against him or her, appreciate the range and nature of possible penalties, understand the adversarial nature of the legal process, consult with counsel regarding the facts pertinent to the case, behave appropriately in court, and testify relevantly. The examining expert must include in the report to the court any other information deemed relevant. If the expert finds the defendant incompetent to proceed, they must also report on recommended treatment that will allow the defendant to regain competence. The expert's report to the court must also address the defendant's mental illness, recommended treatments and alternatives and their availability in the community, the likelihood of the defendant's attaining competence under the treatment recommended, an assessment of the probable duration of the treatment, and the probability that the defendant will attain competence to proceed in the foreseeable future.

A defendant may not automatically be deemed incompetent to proceed simply because his or her satisfactory mental functioning is dependent upon psychotropic medication. "Psychotropic medication" is defined for the purposes of ch. 916, F.S., as "any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs."

Part II of ch. 916, F.S., also provides the criteria for defendants who are adjudicated incompetent to proceed to be involuntarily committed for treatment. The court must find by clear and convincing evidence that the defendant is mentally ill and because of the mental illness:

- The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; and
- There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.

This part also provides that a defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed if he or she is mentally ill and, because of the mental illness, is manifestly dangerous to himself or herself or others.8 Persons committed under Part I of ch. 916, F.S., are committed to the custody of DCF and are usually treated at one of the three forensic state mental health treatment facilities at Florida State

Hospital in Chattahoochee, North Florida Evaluation and Treatment Center in Gainesville, or South Florida Evaluation and Treatment Center in Miami.

The court may also order conditional release of a defendant who has been found incompetent to proceed or not guilty by reason of insanity. Conditional release must be based on an approved plan for providing appropriate outpatient care. The court may also order conditional release in lieu of an involuntary commitment to a facility. If outpatient treatment is appropriate, a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the court.

Part III of ch. 916, F.S., relates to forensic services for persons with retardation or autism and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed due to mental retardation or autism. Similar to the provisions of Part I, this section directs that the department must provide the courts annually with a list of professionals who are qualified to perform evaluations of defendants alleged to be incompetent to proceed due to retardation or autism. The courts may use professionals from this list when ordering evaluations for defendants suspected of being retarded or autistic, but one of the experts appointed by the court must be the "developmental services program of the department," and the department is directed to "select a psychologist who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism and a social service professional with experience in working with persons with retardation or autism to evaluate the defendant."

The court must find by clear and convincing evidence that:

- The defendant is retarded or autistic,
- There is a substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm,
- There is no less restrictive treatment available, and
- There is a substantial probability that the retardation or autism causing the defendant's incompetence will respond to training and he or she will regain competency to proceed in the reasonably foreseeable future.

A defendant who is found to be incompetent to proceed and meets the above criteria is committed to the department. No later than six months after admission, at the end of any period of extended commitment, or at any time the administrator determines that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator must file a report with the court.

If a defendant remains incompetent to proceed within a reasonable time after such determination, not to exceed two years, the charges against him or her are to be dropped. The only exception is if the court specifies in its order the reasons for expecting that the defendant will become competent to proceed within the foreseeable future and specifies the time within which that is expected to occur. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future.13 The individual may then apply for services from the agency.

If the defendant requires involuntary residential services under s. 393.11, F.S., and there is a substantial likelihood that he or she will injure another person or continues to present a danger of escape, and all available less restrictive alternatives, including services in community residential facilities or other community settings are inappropriate, then the defendant's placement in a secure facility or program may be continued. An individual involuntarily placed under this provision must have an annual review of his or her status by the court at a hearing. The annual review and hearing are to determine whether the individual continues to meet the criteria for involuntary residential services and, if so, if placement in a secure facility is still required

because the court finds that the individual is likely to physically injure others. However, in no circumstance may a defendant's placement in a secure facility or program exceed the maximum sentence for the crime for which the defendant was charged.

Forensic programs for persons with developmental disabilities are the Mentally Retarded Defendant Programs, which are located at Sunland in Marianna, Florida State Hospital in Chattahoochee, and Taccachale in Gainesville.

The Agency for Persons with Disabilities (APD) was created effective October 1, 2004. The agency is housed within the Department of Children and Families (DCF) for administrative purposes only. It is not subject to the control, supervision or direction of DCF, and the director of APD is appointed by the Governor. The agency's mission is to assist people who have developmental disabilities and their families. The agency also provides assistance to identify the needs of people with developmental disabilities and funding to purchase supports and services. Although the agency's Central Office is located in Tallahassee, supports and services for people with developmental disabilities are provided through district offices throughout the state.

Developmental disabilities include mental retardation, autism, spina bifida, cerebral palsy, and Prader-Willi syndrome. The bill proposes to continue the conforming changes to statutes begun in 2004 to conform to the establishment of the new agency, plus make some needed updating and clarifications; as well as several substantive changes that will allow the agency to better serve the needs of service recipients and the public interest.

As part of those transitions, institutions housing clients with developmental disabilities were also transferred to APD. This included institutions housing forensic clients diagnosed with mental retardation or autism that had been charged with a felony offense but found incompetent to proceed to trial. Statutory provisions relating to forensic clients are found in chapter 916, F.S. However, the current chapter, which is divided into 3 parts, has not yet been modified to recognize the distinction between the DCF with respect to forensic clients with mental illness, and the APD, which is responsible for forensic clients with mental retardation or autism.

The DCF is no longer responsible for the treatment and training of defendants who have solely mental retardation or autism. The delay in modifying Chapter 916, F.S., to clearly distinguish the department's responsibility from the responsibilities of the new agency has caused confusion among the courts. Individuals with mental retardation or autism, at times, continue to be committed to the department and commitment packets are being sent to the Forensic Admissions Office within mental health. Because individuals can have both mental retardation and mental illness, it becomes very difficult at times to determine whether the court intended to commit the individual due to mental illness or mental retardation. This uncertainty requires staff time to obtain clarification from the court and may result in the court's issuing new orders and/or requiring new evaluations. The individual may have to move from the mental health waiting list to the mental retardation waiting list, which ultimately delays the individual's admission time.

Use of Restraint and Seclusion

According to the Advocacy Center for Persons with Disabilities (Advocacy Center), based on data from the federal Centers for Medicare and Medicaid Services (CMS), Florida had the highest per-capita restraint/seclusion related death rate of any state during 2004 and 2005. Of those deaths, 14 of the 16 suspicious deaths that came to the attention of the Advocacy Center involved the use of restraint and/or seclusion. The Advocacy Center learned of these deaths from a variety of sources, including the CMS, AHCA, APD, DCF, and newspaper articles, as well as from families and friends of the deceased. However, the unreliability and uncertainty of the reporting procedures in Florida make it difficult to know with complete certainty the extent of use of restraint and seclusion.

Both the agency and DCF have some statutory provisions in place regarding the use of restraint and seclusion. Section 393.13(4)(i), F.S., states, "Clients shall have the right to be free from unnecessary physical, chemical, or mechanical restraint. Restraints shall be employed only in emergencies or to

protect the client from imminent injury to himself or herself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for a rehabilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort."

Pursuant to federal law, CMS must report Florida restraint or seclusion related deaths to the Advocacy Center. Hospitals receiving federal funds must report to CMS any deaths that occur while an individual is restrained or in seclusion or where it is reasonable to assume that an individual's death is a result of restraint and seclusion. However, according to the Advocacy Center, Florida hospitals are often late sending reports to CMS, which then often fails to notify the Advocacy Center in a timely manner or sends incomplete information.

According to DCF, clearly distinguishing that the treatment and training of defendants with mental retardation or autism is the responsibility of the Agency for Persons with Disabilities will minimize the courts' confusion, lead to fewer inappropriate commitments to the department, and help to ensure that defendants with mental retardation or autism are placed on the appropriate waiting list so that admission can occur without unnecessary delays.

Mental Health Treatment Facilities

The purpose of mental health treatment facilities is to stabilize adults with mental illnesses so they can return to the community. Florida's mental health institutions, also known as mental health treatment facilities, are part of the continuum of care for the most seriously mentally ill residents of the state. In Fiscal Year 2004-05, the program served 3,950 adults in two population categories.

The "civil population category" includes adults with a serious mental illness who meet voluntary or involuntary admission criteria (are a danger to themselves or others) and for whom less restrictive treatment settings are not available or appropriate.

The "forensic population category" includes adults with a serious mental illness who are either charged with a criminal offense and found not guilty of a crime by reason of insanity or found incompetent to proceed through any phase of the judicial process.

Institutional mental health services are provided at five state mental health treatment facilities, which include two civil facilities, two forensic facilities, and one facility with both civil and forensic units.

"Civil facilities" serve the general population and provide evaluation, mental health treatment, rehabilitation and support to facilitate clients' successful return to the community. Each hospital serves a designated geographic catchment area.

"Forensic facilities" serve adults charged with a felony criminal offense (and juveniles adjudicated as adults) and provide mental health treatment and competency restoration services in a secure residential setting. The facilities serve individuals who are found incompetent to proceed to trial and individuals who are found not guilty of their crime due to reason of insanity. Forensic facilities serve individuals from all geographic areas of the state.

Florida's forensic system is a network of state facilities and community services for individuals who have a mental illness and are involved with the criminal justice system. The goal is to provide assessment, evaluation, and treatment to individuals adjudicated incompetent to proceed at any stage of a criminal proceeding or not guilty by reason of insanity.

In addition to the general psychiatric treatment approaches and milieu, specialized services include:

- Psychosocial rehabilitation

- Education
- Treatment modules such as competency, anger management, mental health awareness, medication and relapse prevention
- Sexually transmitted disease education and prevention
- Substance abuse awareness and prevention
- Vocational training
- Occupational therapies
- Full range of medical and dental services

Services include comprehensive assessment, evaluation, and treatment of psychiatric disorders for individuals involved with the criminal court system. Evaluations for competency to proceed, treatment following a finding of not guilty by reason of insanity, and services to individuals on conditional release in the community are provided. Additionally, in-jail services are provided by local county jails, often with assistance from community mental health providers.

Forensic services are provided to adults over the age of 18 and juveniles adjudicated as adults. Diagnostic categories include all major DSMIV disorder classifications (primarily schizophrenia and mood disorders). Secondary diagnoses, such as substance abuse and personality disorders, are also present for a significant number of people.

Individuals determined by the court to require treatment in a state mental health facility are typically served by one of three maximum security facilities. These facilities have a combined capacity to serve 890 people. Individuals who do not require a secure setting may be directly admitted or transferred into one of three civil mental health treatment facilities. The facilities admit over 1,000 individuals into the state treatment facilities on a yearly basis.

Community services are provided as a first level of treatment and assessment aimed at stabilization and reducing the need for admission into a state facility. Community services are also available to individuals released from state mental health treatment facilities. There are two forensic halfway houses in Florida, with a capacity to serve 35 individuals from one of the state treatment facilities. Individuals are also accepted into other community programs. Services are provided in local county jails to individuals awaiting state facility admission, to individuals returning from state facilities, and to individuals who are able to proceed with disposition of their criminal charges without requiring facility admission. Services vary by county jail, ranging from visits by a mental health professional on an as needed basis to full service inpatient mental health units located in the jail complex.

Section 916.145, F.S., states, "The charges against any defendant adjudicated incompetent to proceed due to the defendant's mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed five years after such determination, unless the court in its order specifies its reasons for believing that the defendant will become competent to proceed within the foreseeable future and specifies the time within which the defendant is expected to become competent to proceed. The charges against the defendant are dismissed without prejudice to the state to refile the charges should the defendant be declared competent to proceed in the future."

An acquittal of not guilty by reason of insanity (NGBRI) is an adjudication by the court. The individual remains NGBRI of the charge(s) indefinitely and cannot be retried on the same charge(s). However, the court may maintain jurisdiction and may commit the individual to the DCF for inpatient treatment or order treatment and supervision in the community under the terms of a conditional release.

If committed to the department for inpatient treatment, the treating facility must file a report with the court within six months of the individual's admission, prior to the end of any extended period of treatment or at any time the administrator or designee determines that the individual no longer meets the criteria for involuntary commitment. Individuals placed on conditional release may remain under court supervision until such time that the court determines they no longer require court supervision.

In Fiscal Year 2003-04, 69% of the individuals committed under the civil statute experienced symptom relief, and 53% of the forensic individuals who were Not Guilty by Reason of Insanity experienced symptom relief. In future years, the performance measurement system will shift from measuring symptom relief to measuring improvement in functioning. In Fiscal Year 2005-06, the DCF goal is to improve the level of functioning for 73% of the civil population and 63% of the forensic population.

Effect:

The bill revises various provisions of Chapter 916, F.S., related to the treatment and training of defendants who have a mental illness, mental retardation, or are autistic. The bill also clarifies that the treatment and training of defendants with mental retardation or autism is no longer provided by the Department of Children and Families (DCF), but is now provided through the Agency for Persons with Disabilities (APD). In addition, the bill:

- Removes numerous outdated and obsolete provisions, and streamlines, clarifies, and reorganizes provisions;
- Updates definitions to tie term for "forensic client" to procedures in chapter rather than recreate procedures in definitions; and creates definition for "defendant" to distinguish persons who have not yet become clients via commitment procedures;
- Requires separate housing requirements for forensic clients (conforms to current practice);
- Adds provisions relating to the use of "restraints" and "seclusion" including rule authority to establish standards and procedures for the use of restraints and seclusion in forensic facilities.
- Clarifies provisions to distinguish defendants who are currently in the custody of the Department of Corrections;
- Removes some references to Florida Rules of Criminal Procedures as these references change and applicability of rules is under jurisdiction of courts;
- Deletes requirement for APD's Inspector General to study and notify state attorney of sexual misconduct (needs to be reported and investigated immediately);
- Allows transfer of court jurisdiction for forensic clients;
- Amends statute to clarify distinction between ch. 916 forensic procedures for involuntary commitment and ch. 393 procedures for **non**-forensic involuntary commitment (the source of much court confusion).

The bill updates, clarifies, and adds reference to APD; adds language relating to the use of restraints and seclusion; revises the definition of "Forensic Clients" and their right to treatment; revises a forensic client's right to express and informed consent during emergency situations to include a review of the need for treatment review every 48 hours; adds quality of treatment language pertaining to a client's right to be free from unnecessary use of restraint and seclusion (restraints and seclusion should only be used in situations in which the client or others are at risk); and specifies that the release of confidential information comply with state and federal law.
Provisions related to the appointment of experts are updated. The department shall maintain and provide the courts annually with a list of available mental health professionals who have completed approved training as experts.

In considering the issue of competence to proceed, the examining experts shall first consider and specifically include in their report the defendant's capacity to:

(a) Appreciate the charges or allegations against the defendant;

(b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
(c) Understand the adversarial nature of the legal process;
(d) Disclose to counsel facts pertinent to the proceedings at issue;
(e) Manifest appropriate courtroom behavior; and
(f) Testify relevantly; and
(g) Any other factor deemed relevant by the experts.

C. SECTION DIRECTORY:

Section 1. Amends s. 916.105, F.S., relating to legislative intent to reduce the use of restraint and seclusion in forensic facilities serving persons with developmental disabilities.

Section 2. Amends s. 916.106, F.S., providing and revising definitions.

Section 3. Amends s. 916.107, F.S., relating to the rights of forensic clients.

Section 4. Amends s. 916.1075, F.S., relating to sexual misconduct to substitute the term "covered person" for "employee" and require APD to directly report misconduct rather than reporting through the agency's inspector general.

Section 5. Amends s. 916.1081, F.S., relating to penalties for escaping from a forensic facility to distinguish from forensic clients in the correctional system.

Section 6. Amends s. 916.1085. F.S., providing for certain prohibitions concerning contraband articles to apply to facilities under the supervision or control of the Agency for Persons with Disabilities.

Section 7. Amends s. 916.1091, F.S., relating to security personnel to add APD.

Section 8. Amends s. 916.1093, F.S., relating to administration and rules to add APD, and to specify the content of rules relating to restraint and seclusion.

Section 9. Amends s. 916.111, F.S., updating provisions relating to training of mental health experts.

Section 10. Amends s. 916.115, F.S., updating provisions relating to appointment of experts. The department shall maintain and provide the courts annually with a list of available mental health professionals who have completed approved training as experts.

Section 11. Amends s. 916.12, F.S., adding provisions relating to competency to proceed.

Section 12. Amends s. 916.13, F.S., relating to involuntary commitment to alter the burden of commitment.

Section 13. Amends s. 916.145, F.S., relating to dismissal of charges against a defendant adjudicated incompetent.

Section 14. Amends s. 916.15, F.S., relating to insanity to clarify that incompetence is determined according to Rule 3.217 of the Florida Rules of Criminal Procedure.

Section 15. Amends s. 916.16, F.S., relating to jurisdiction of courts over defendants involuntarily committed due to a determination of incompetence.

Section 16. Amends s. 916.17, F.S., relating to conditional release.

Section 17. Amends s. 916.301, F.S., relating to the appointment of experts and to update and clarify the persons to be selected as experts.

Section 18. Amends s. 916.3012, F.S., clarifying provisions governing the determination of a defendant's mental competence to proceed.

Section 19. Amends s. 916.302, F.S., relating to involuntary commitment and to require the submission of an evaluation by DCF and APD for dually diagnosed defendants.

Section 20. Amends s. 916.3025, F.S., relating to jurisdiction of committing court and to permit the court to transfer jurisdiction to a court in the circuit where the defendant resides.

Section 21. Amends s. 916.303, F.S., relating to determination of incompetency to clarify the difference between the grounds for involuntary commitments under ch. 393, F.S., and the requirement for continued secure placement under ch. 916, F.S.

Section 22. Amends s. 916.304, F.S., relating to conditional release to update and clarify the difference between involuntary placements and forensic commitments.

Section 23. Amends s. 921.137, F.S., relating to the death sentence for retarded inmates and to update the reference from DCF to APD.

Section 24. Amends s. 985.223, updating the provisions relating to juvenile delinquency cases.

Section 25. Amends. s. 287.057, F.S., to update cross-reference.

Section 26. Amends s. 408.036, F.S., to update cross-reference.

Section 27. Amends s. 943.0585, F.S., to update cross-reference.

Section 28. Amends s. 943.059, F.S., to update cross-reference.

Section 29. Provides an effective date of upon becoming law.

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:

None.

D. FISCAL COMMENTS:

According to the Agency for Persons with Disabilities and the Department and Children and Family Services, there is no fiscal impact to this bill.

The Legislature appropriated $289 million to the state mental health institutions for Fiscal Year 2005-06. Approximately 65% of the funding is used for personnel. For Fiscal Year 2005-06, the Legislature has authorized 4,270.5 staff positions for the institutions. The staff provide mental health, medical, security, administrative, housekeeping and maintenance services. The program's annual appropriation also includes funds for the department to contract with a private provider for the operation and management of South Florida Evaluation and Treatment Center.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Agency for Persons with Disabilities to adopt rules under s. 916.1093, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to forensic treatment and training;
3 amending s. 916.105, F.S.; revising legislative intent
4 with respect to the treatment or training of defendants
5 who have mental illness, mental retardation, or autism and
6 are committed to the Agency for Persons with Disabilities;
7 providing intent with respect to the use of restraint and
8 seclusion; amending s. 916.106, F.S.; providing and
9 revising definitions; amending s. 916.107, F.S., relating
10 to the rights of forensic clients; conforming provisions
11 to the transfer of duties from the Developmental
12 Disabilities Program Office within the Department of
13 Children and Family Services to the Agency for Persons
14 with Disabilities; revising provisions governing the
15 involuntary treatment of clients; requiring the
16 coordination of services between the department, the
17 agency, and the Department of Corrections; amending s.
18 916.1075, F.S.; revising certain prohibitions on sexual
19 misconduct involving covered persons of the Department of
20 Children and Family Services or the Agency for Persons
21 with Disabilities; defining the term "covered person";
22 requiring that notice of sexual misconduct be provided to
23 the inspector general of the agency or department;
24 amending s. 916.1081, F.S.; providing that an escape or an
25 attempt to escape from a civil or forensic facility
26 constitutes a second-degree felony; amending s. 916.1085,
27 F.S.; providing for certain prohibitions concerning
28 contraband articles to apply to facilities under the
29 supervision or control of the Agency for Persons with

30 Disabilities; deleting a cross-reference; amending s.
31 916.1091, F.S.; authorizing the use of chemical weapons by
32 agency personnel; amending s. 916.1093, F.S.; authorizing
33 the agency to enter into contracts and adopt rules;
34 requiring department and agency rules to address the use
35 of restraint and seclusion; providing requirements for
36 such rules; amending s. 916.111, F.S.; revising provisions
37 governing the training of mental health experts; amending
38 s. 916.115, F.S.; requiring that the court appoint experts
39 to determine the mental condition of a criminal defendant;
40 requiring that the Department of Children and Family
41 Services annually provide the courts with a list of
42 certain mental health professionals; amending s. 916.12,
43 F.S.; revising provisions governing the evaluation of a
44 defendant's competence to proceed; amending s. 916.13,
45 F.S.; revising conditions under which a defendant may be
46 involuntarily committed for treatment; amending s.
47 916.145, F.S., relating to dismissal of charges against a
48 defendant adjudicated incompetent; conforming provisions
49 to changes made by the act; amending s. 916.15, F.S.;
50 clarifying that the determination of not guilty by reason
51 of insanity is made under a specified Florida Rule of
52 Criminal Procedure; amending s. 916.16, F.S.; providing
53 for the continuing jurisdiction of the court over a
54 defendant involuntarily committed due to mental illness;
55 amending s. 916.17, F.S.; clarifying circumstances under
56 which the court may order the conditional release of a
57 defendant; amending s. 916.301, F.S.; requiring that
58 certain evaluations be conducted by certain qualified

59 experts; requiring that the Agency for Persons with
60 Disabilities provide the court with a list of certain
61 available retardation and autism professionals; conforming
62 provisions to the transfer of duties from the
63 Developmental Disabilities Program Office within the
64 Department of Children and Family Services to the agency;
65 amending s. 916.3012, F.S.; clarifying provisions
66 governing the determination of a defendant's mental
67 competence to proceed; amending s. 916.302, F.S., relating
68 to the involuntary commitment of a defendant; conforming
69 provisions to the transfer of duties from the
70 Developmental Disabilities Program Office within the
71 Department of Children and Family Services to the agency;
72 requiring that the department and agency submit an
73 evaluation to the court before the transfer of a defendant
74 from one civil or forensic facility to another; amending
75 s. 916.3025, F.S.; clarifying that the committing court
76 retains jurisdiction over a defendant placed on
77 conditional release; providing for the transfer of
78 continuing jurisdiction to another court where the
79 defendant resides; amending s. 916.303, F.S.; clarifying
80 provisions governing the dismissal of charges against a
81 defendant found to be incompetent to proceed due to
82 retardation or autism; amending s. 916.304, F.S.;
83 providing for the conditional release of a defendant to a
84 civil facility; amending ss. 921.137 and 985.223, F.S.,
85 relating to provisions governing the imposition of the
86 death sentence upon a defendant with mental retardation
87 and the determination of incompetency in cases involving

88 juvenile delinquency; conforming provisions to the
89 transfer of duties from the Developmental Disabilities
90 Program Office within the Department of Children and
91 Family Services to the Agency for Persons with
92 Disabilities; amending ss. 287.057, 408.036, 943.0585, and
93 943.059, F.S.; conforming cross-references; providing an
94 effective date.
95
96 Be It Enacted by the Legislature of the State of Florida:
97
98 Section 1. Section 916.105, Florida Statutes, is amended to
99 read:
100 916.105 Legislative intent.--
101 (1) It is the intent of the Legislature that the Department
102 of Children and Family Services and the Agency for Persons with
103 Disabilities, as appropriate, establish, locate, and maintain
104 separate and secure forensic facilities and programs for the
105 treatment or training of defendants who have been ~~are~~ charged
106 with a felony and who have been found to be incompetent to
107 proceed due to their mental illness, mental retardation, or
108 autism, or who have been acquitted of a felony ~~felonies~~ by reason
109 of insanity, and who, while still under the jurisdiction of the
110 committing court, are committed to the department or agency under
111 the provisions of this chapter. Such ~~The separate, secure~~
112 facilities shall be sufficient to accommodate the number of
113 defendants committed under the conditions noted above.~~,~~ Except
114 for those defendants found by the department or agency to be
115 appropriate for treatment or training in a civil ~~treatment~~
116 facility or program pursuant to subsection (3), forensic~~. Such~~

117 ~~secure~~ facilities shall be designed and administered so that
118 ingress and egress, together with other requirements of this
119 chapter, may be strictly controlled by staff responsible for
120 security in order to protect the defendant, facility personnel,
121 other clients, and citizens in adjacent communities.
122 (2) It is ~~further~~ the intent of the Legislature that
123 treatment or training programs for defendants who are found to
124 have mental illness, mental retardation, or autism ~~are found to~~
125 ~~be mentally ill, retarded, or autistic~~ and are involuntarily
126 committed to the department or agency, and who are still under
127 the jurisdiction of the committing court, be provided in ~~such~~ a
128 manner, subject to security requirements and other mandates of
129 this chapter, as to ensure the rights of the defendants as
130 provided in this chapter.
131 (3) It is the intent of the Legislature that evaluation and
132 services to defendants who have mental illness, mental
133 retardation, or autism ~~are mentally ill, retarded, or autistic~~ be
134 provided in community settings, in community residential
135 facilities, or in civil~~, nonforensic~~ facilities, whenever this is
136 a feasible alternative to treatment or training in a state
137 forensic facility.
138 (4) It is the intent of the Legislature to minimize and
139 achieve an ongoing reduction in the use of restraint and
140 seclusion in forensic facilities serving persons with
141 developmental disabilities.
142 Section 2. Section 916.106, Florida Statutes, is amended to
143 read:
144 916.106 Definitions.--For the purposes of this chapter, the
145 term:

146 (1) "Agency" means the Agency for Persons with
147 Disabilities. The agency is responsible for training forensic
148 clients who are developmentally disabled due to mental
149 retardation or autism and have been determined incompetent to
150 proceed.
151 (2)~~(1)~~ "Autism" has the same meaning as in s. 393.063.
152 ~~means a pervasive, neurologically based developmental disability~~
153 ~~of extended duration which causes severe learning, communication,~~
154 ~~and behavior disorders, with the age of onset of autism occurring~~
155 ~~during infancy or childhood. Individuals with autism exhibit~~
156 ~~impairment in reciprocal social interaction, impairment in verbal~~
157 ~~and nonverbal communication and imaginative ability, and a~~
158 ~~markedly restricted repertoire of activities and interests.~~
159 (3)~~(2)~~ "Chemical weapon" means any shell, cartridge, bomb,
160 gun, or other device capable of emitting chloroacetophenone (CN),
161 chlorobenzalmalononitrile (CS) or any derivatives thereof in any
162 form, or any other agent with lacrimatory properties, and shall
163 include products such as that commonly known as "mace."
164 (4)~~(3)~~ "Civil facility" means:
165 (a) A mental health facility established within the
166 department or by contract with the department to serve
167 individuals committed pursuant to chapter 394 and those
168 defendants committed pursuant to this chapter who do not require
169 the security provided in a forensic facility; or~~.~~
170 (b) An intermediate care facility for the developmentally
171 disabled, a foster care facility, a group home facility, or a
172 supported living setting, as defined in s. 393.063, designated by
173 the agency to serve those defendants who do not require the
174 security provided in a forensic facility.

175 (5) ~~(4)~~ "Court" means the circuit court.
176 (6) "Defendant" means an adult, or a juvenile who is
177 prosecuted as an adult, who has been arraigned and charged with a
178 felony offense under the laws of this state.
179 (7) ~~(5)~~ "Department" means the Department of Children and
180 Family Services. The department is responsible for the treatment
181 of forensic clients who have been determined incompetent to
182 proceed due to mental illness or who have been acquitted of a
183 felony by reason of insanity.
184 (8) ~~(6)~~ "Express and informed consent" or "consent" means
185 consent given voluntarily in writing after a conscientious and
186 sufficient explanation and disclosure of the purpose of the
187 proposed treatment, the common side effects of the treatment, if
188 any, the expected duration of the treatment, and any alternative
189 treatment available.
190 (9) ~~(7)~~ "Forensic client" or "client" means any defendant
191 who has been ~~is mentally ill, retarded, or autistic and who is~~
192 committed to the department or agency pursuant to s. 916.13, s.
193 916.15, or s. 916.302. ~~this chapter and:~~
194 ~~(a) Who has been determined to need treatment for a mental~~
195 ~~illness or training for retardation or autism;~~
196 ~~(b) Who has been found incompetent to proceed on a felony~~
197 ~~offense or has been acquitted of a felony offense by reason of~~
198 ~~insanity;~~
199 ~~(c) Who has been determined by the department to:~~
200 ~~1. Be dangerous to himself or herself or others; or~~
201 ~~2. Present a clear and present potential to escape; and~~
202 ~~(d) Who is an adult or a juvenile prosecuted as an adult.~~
203 (10) ~~(8)~~ "Forensic facility" means a separate and secure

204 facility established within the department or agency to serve
205 forensic clients. A ~~Such~~ separate and secure facility means a
206 ~~facilities shall be~~ security-grade building for the purpose of
207 separately housing persons who have mental illness from persons
208 with retardation or autism and separately housing persons who
209 have been involuntarily committed pursuant to this chapter from
210 nonforensic residents ~~buildings located on grounds distinct in~~
211 ~~location from other facilities for persons who are mentally ill~~.
212 ~~The Florida State Hospital shall not be required to maintain~~
213 ~~separate facilities for mentally ill, retarded, or autistic~~
214 ~~defendants who are found incompetent to proceed or who are~~
215 ~~acquitted of a criminal offense by reason of insanity.~~
216 (11) ~~(9)~~ "Incompetent to proceed" means unable to proceed at
217 any material stage of a criminal proceeding, which shall include
218 trial of the case, pretrial hearings involving questions of fact
219 on which the defendant might be expected to testify, entry of a
220 plea, proceedings for violation of probation or violation of
221 community control, sentencing, and hearings on issues regarding a
222 defendant's failure to comply with court orders or conditions or
223 other matters in which the mental competence of the defendant is
224 necessary for a just resolution of the issues being considered.
225 (12) ~~(10)~~ "Institutional security personnel" means the staff
226 of forensic facilities ~~members~~ who meet or exceed the
227 requirements of s. 943.13 and who are responsible for providing
228 security, protecting ~~for protection of~~ clients and personnel,
229 enforcing ~~for the enforcement of~~ rules, preventing and
230 investigating ~~for prevention and investigation of~~ unauthorized
231 activities, and ~~for~~ safeguarding the interests of citizens in the
232 surrounding communities.

233 (13) ~~(11)~~ "Mental illness" means an impairment of the
234 emotional processes that exercise conscious control of one's
235 actions, or of the ability to perceive or understand reality,
236 which impairment substantially interferes with a defendant's
237 ability to meet the ordinary demands of living. For the purposes
238 of this chapter, the term does not apply to defendants with only
239 mental retardation or autism ~~who are solely retarded or autistic,~~
240 and does not include intoxication or conditions manifested only
241 by antisocial behavior or substance abuse impairment.
242 (14) "Restraint" means a physical device, method, or drug
243 used to control dangerous behavior.
244 (a) A physical restraint is any manual method or physical
245 or mechanical device, material, or equipment attached or adjacent
246 to an individual's body so that he or she cannot easily remove
247 the restraint and that restricts freedom of movement or normal
248 access to his or her body.
249 (b) A drug used as a restraint is a medication used to
250 control a person's behavior or to restrict his or her freedom of
251 movement and is not a standard treatment for the person's medical
252 or psychiatric condition. Physically holding a person during a
253 procedure to forcibly administer psychotropic medication is a
254 physical restraint.
255 (c) Restraint does not include physical devices, such as
256 orthopedically prescribed appliances, surgical dressings and
257 bandages, supportive body bands, or other physical holding when
258 necessary for routine physical examinations and tests; for
259 purposes of orthopedic, surgical, or other similar medical
260 treatment; when used to provide support for the achievement of
261 functional body position or proper balance; or when used to

262 protect a person from falling out of bed.
263 (15) ~~(12)~~ "Retardation" has the same meaning as in s.
264 393.063. ~~means significantly subaverage general intellectual~~
265 ~~functioning existing concurrently with deficits in adaptive~~
266 ~~behavior and manifested during the period from conception to age~~
267 ~~18. "Significantly subaverage general intellectual functioning,"~~
268 ~~for the purpose of this definition, means performance which is~~
269 ~~two or more standard deviations from the mean score on a~~
270 ~~standardized intelligence test specified in the rules of the~~
271 ~~department. "Adaptive behavior," for the purpose of this~~
272 ~~definition, means the effectiveness or degree with which an~~
273 ~~individual meets the standards of personal independence and~~
274 ~~social responsibility expected of the individual's age, cultural~~
275 ~~group, and community.~~
276 (16) "Seclusion" means the physical segregation of a person
277 in any fashion or the involuntary isolation of a person in a room
278 or area from which the person is prevented from leaving. The
279 prevention may be by physical barrier or by a staff member who is
280 acting in a manner, or who is physically situated, so as to
281 prevent the person from leaving the room or area. For purposes of
282 this chapter, the term does not mean isolation due to a person's
283 medical condition or symptoms, the confinement in state mental
284 health treatment facilities to a bedroom or area during normal
285 hours of sleep when there is not an active order for seclusion,
286 or during an emergency such as a riot or hostage situation when
287 clients may be temporarily placed in their rooms for their own
288 safety.
289 (17) ~~(13)~~ "Social service professional~~,~~" ~~for the purposes of~~
290 ~~part III,~~ means a person whose minimum qualifications include a

291 bachelor's degree and at least 2 years of social work, clinical
292 practice, special education, habilitation, or equivalent
293 experience working directly with persons with retardation,
294 autism, or other developmental disabilities.
295 Section 3. Section 916.107, Florida Statutes, is amended to
296 read:
297 916.107 Rights of forensic clients.--
298 (1) RIGHT TO INDIVIDUAL DIGNITY.--
299 (a) The policy of the state is that the individual dignity
300 of the client shall be respected at all times and upon all
301 occasions, including any occasion when the forensic client is
302 detained, transported, or treated. Clients with mental illness,
303 retardation, or autism ~~Defendants who are mentally ill, retarded,~~
304 ~~or autistic~~ and who are charged with committing felonies shall
305 receive appropriate treatment or training. In a criminal case
306 involving a client ~~defendant~~ who has been adjudicated incompetent
307 to proceed or not guilty by reason of insanity, a jail may be
308 used as an emergency facility for up to 15 days following ~~from~~
309 the date the department or agency receives a completed copy of
310 the court commitment order containing all ~~the~~ documentation
311 required by the applicable ~~Rules 3.212 and 3.217,~~ Florida Rules
312 of Criminal Procedure. For a forensic client ~~defendant who is~~
313 ~~mentally ill, retarded, or autistic,~~ who is held in a jail
314 awaiting admission to a facility of the department or agency~~, and~~
315 ~~who has been adjudicated incompetent to proceed or not guilty by~~
316 ~~reason of insanity~~, evaluation and treatment or training may
317 ~~shall~~ be provided in the jail by the local community mental
318 health provider ~~public receiving facility~~ for mental health
319 services, ~~or~~ by the developmental disabilities ~~services~~ program

320 for persons with retardation or autism, the client's physician or
321 psychologist, or any other appropriate program until the client
322 is transferred to a civil or forensic facility ~~the custody of the~~
323 ~~department~~.
324 (b) Forensic clients ~~Mentally ill, retarded, or autistic~~
325 ~~defendants who are committed to the department pursuant to this~~
326 ~~chapter and~~ who are initially placed in, or subsequently
327 transferred to, a civil facility as described in part I of
328 chapter 394 or to a residential facility as described in chapter
329 393 shall have the same rights as other persons committed to
330 these facilities for as long as they remain there.
331 (2) RIGHT TO TREATMENT.--
332 (a) The policy of the state is that neither the department
333 nor the agency shall ~~not~~ deny treatment or training to any client
334 and that no services shall be delayed ~~at a facility~~ because the
335 forensic client is indigent pursuant to s. 27.52 and presently
336 unable to pay. However, every reasonable effort to collect
337 appropriate reimbursement for the cost of providing services to
338 clients able to pay for the services, including reimbursement
339 from insurance or other third-party payments, shall be made by
340 facilities providing services pursuant to this chapter and in
341 accordance with the provisions of s. 402.33.
342 (b) Each forensic client shall be given, at the time of
343 admission and at regular intervals thereafter, a physical
344 examination, which shall include screening for communicable
345 disease by a health practitioner authorized by law to give such
346 screenings and examinations.
347 (c) Every forensic client ~~committed pursuant to this act~~
348 shall be afforded the opportunity to participate in activities

349 designed to enhance self-image and the beneficial effects of
350 other treatments or training, as determined by the facility.
351 (d) Not more than 30 days after admission, each client
352 shall have and receive, in writing, an individualized treatment
353 or training plan which the client has had an opportunity to
354 assist in preparing.
355 (3) RIGHT TO EXPRESS AND INFORMED CONSENT.--
356 (a) A forensic client ~~committed to the department pursuant~~
357 ~~to this act~~ shall be asked to give express and informed written
358 consent for treatment. If a client ~~in a forensic facility~~ refuses
359 such treatment as is deemed necessary and essential by the
360 client's multidisciplinary treatment team ~~at the forensic~~
361 ~~facility~~ for the appropriate care of the client ~~and the safety of~~
362 ~~the client or others~~, such treatment may be provided under the
363 following circumstances:
364 1. In an emergency situation in which there is immediate
365 danger to the safety of the client or others, such treatment may
366 be provided upon the written order of a physician for a period
367 not to exceed 48 hours, excluding weekends and legal holidays.
368 If, after the 48-hour period, the client has not given express
369 and informed consent to the treatment initially refused, the
370 administrator or designee of the civil or forensic facility
371 shall, within 48 hours, excluding weekends and legal holidays,
372 petition the committing court or the circuit court serving the
373 county in which the facility is located, at the option of the
374 facility administrator or designee, for an order authorizing the
375 continued treatment of the client. In the interim, the need for
376 treatment shall be reviewed every 48 hours and may be continued
377 without the consent of the client upon the continued written

378 order of a physician who has determined that the emergency
379 situation continues to present a danger to the safety of the
380 client or others.
381 2. In a situation other than an emergency situation, the
382 administrator or designee of the ~~forensic~~ facility shall petition
383 the court for an order authorizing necessary and essential ~~the~~
384 treatment for ~~to~~ the client. The order shall allow such treatment
385 for a period not to exceed 90 days following ~~from~~ the date of the
386 entry of the order. Unless the court is notified in writing that
387 the client has provided express and informed consent in writing
388 or that the client has been discharged by the committing court,
389 the administrator or designee shall, prior to the expiration of
390 the initial 90-day order, petition the court for an order
391 authorizing the continuation of treatment for another 90-day
392 period. This procedure shall be repeated until the client
393 provides consent or is discharged by the committing court.
394 3. At the hearing on the issue of whether the court should
395 enter an order authorizing treatment for which a client was
396 unable to or ~~has~~ refused to give express and informed consent,
397 the court shall determine by clear and convincing evidence that
398 the client has mental illness, retardation, or autism ~~is mentally~~
399 ~~ill, retarded, or autistic as defined in this chapter~~, that the
400 treatment not consented to is essential to the care of the
401 client, and that the treatment not consented to is not
402 experimental and does not present an unreasonable risk of
403 serious, hazardous, or irreversible side effects. In arriving at
404 the substitute judgment decision, the court must consider at
405 least the following factors:
406 a. The client's expressed preference regarding treatment;

407 b. The probability of adverse side effects;
408 c. The prognosis without treatment; and
409 d. The prognosis with treatment.
410
411 The hearing shall be as convenient to the client as may be
412 consistent with orderly procedure and shall be conducted in
413 physical settings not likely to be injurious to the client's
414 condition. The court may appoint a general or special magistrate
415 to preside at the hearing. The client or the client's guardian,
416 and the representative, shall be provided with a copy of the
417 petition and the date, time, and location of the hearing. The
418 client has the right to have an attorney represent him or her at
419 the hearing, and, if the client is indigent, the court shall
420 appoint the office of the public defender to represent the client
421 at the hearing. The client may testify or not, as he or she
422 chooses, and has the right to cross-examine witnesses and may
423 present his or her own witnesses.
424 (b) In addition to the provisions of paragraph (a), in the
425 case of surgical procedures requiring the use of a general
426 anesthetic or electroconvulsive treatment or nonpsychiatric
427 medical procedures, and prior to performing the procedure,
428 written permission shall be obtained from the client, if the
429 client is legally competent, from the parent or guardian of a
430 minor client, or from the guardian of an incompetent client. The
431 administrator or designee of the forensic facility or a
432 designated representative may, with the concurrence of the
433 client's attending physician, authorize emergency surgical or
434 nonpsychiatric medical treatment if such treatment is deemed
435 lifesaving or for a situation threatening serious bodily harm to

436 the client and permission of the client or the client's guardian
437 could not ~~cannot~~ be obtained before provision of the needed
438 treatment.
439 (4) QUALITY OF TREATMENT.--Each forensic client ~~committed~~
440 ~~pursuant to this chapter~~ shall receive treatment or training
441 suited to the client's needs, which shall be administered
442 skillfully, safely, and humanely with full respect for the
443 client's dignity and personal integrity. Each client shall
444 receive such medical, vocational, social, educational, and
445 rehabilitative services as the client's condition requires to
446 bring about a return to court for disposition of charges or a
447 return to the community. In order to achieve this goal, the
448 department and the agency shall coordinate their services with
449 each other, the Department of Corrections, ~~is directed to~~
450 ~~coordinate the services of the Mental Health Program Office and~~
451 ~~the Developmental Disabilities Program Office with all other~~
452 ~~programs of the department~~ and other appropriate state agencies.
453 (5) COMMUNICATION, ABUSE REPORTING, AND VISITS.--
454 ~~(a)~~ Each forensic client ~~committed pursuant to the~~
455 ~~provisions of this chapter~~ has the right to communicate freely
456 and privately with persons outside the facility unless it is
457 determined that such communication is likely to be harmful to the
458 client or others. Clients shall have the right to contact and to
459 receive communication from their attorneys at any reasonable
460 time.
461 (a) ~~(b)~~ Each forensic client ~~committed under the provisions~~
462 ~~of this chapter~~ shall be allowed to receive, send, and mail
463 sealed, unopened correspondence; and no client's incoming or
464 outgoing correspondence shall be opened, delayed, held, or

465 censored by the facility unless there is reason to believe that
466 it contains items or substances that ~~which~~ may be harmful to the
467 client or others, in which case the administrator or designee may
468 direct reasonable examination of such mail and may regulate the
469 disposition of such items or substances. For purposes of this
470 paragraph, the term "correspondence" does ~~shall~~ not include
471 parcels or packages. Forensic facilities may ~~are authorized to~~
472 promulgate reasonable institutional policies to provide for the
473 inspection of parcels or packages and for the removal of
474 contraband items for health or security reasons prior to the
475 contents being given to a client.
476 (b) ~~(c)~~ If a client's right to communicate is restricted by
477 the administrator, written notice of such restriction and the
478 duration of the restriction shall be served on the client or his
479 or her legal guardian or representatives, and such restriction
480 shall be recorded on the client's clinical record with the
481 reasons therefor. The restriction of a client's right to
482 communicate shall be reviewed at least every 7 days.
483 (c) ~~(d)~~ Each forensic facility shall establish reasonable
484 institutional policies governing visitors, visiting hours, and
485 the use of telephones by clients in the least restrictive manner
486 possible.
487 (d) ~~(e)~~ Each forensic client ~~committed pursuant to this~~
488 ~~chapter~~ shall have ready access to a telephone in order to report
489 an alleged abuse. The facility or program staff shall orally and
490 in writing inform each client of the procedure for reporting
491 abuse and shall present the information in a language the client
492 understands. A written copy of that procedure, including the
493 telephone number of the central abuse hotline and reporting

494 forms, shall be posted in plain view.
495 (e) ~~(f)~~ The department's or agency's forensic facilities
496 shall develop policies providing a procedure for reporting abuse.
497 Facility staff shall be required, as a condition of employment,
498 to become familiar with the procedures for the reporting of
499 abuse.
500 (6) CARE AND CUSTODY OF PERSONAL EFFECTS OF CLIENTS.--A
501 forensic client's right to possession of clothing and personal
502 effects shall be respected. The department or agency by rule, or
503 the administrator of any forensic facility by written
504 institutional policy, may declare certain items to be hazardous
505 to the health or welfare of clients or others or to the operation
506 of the facility. Such items may be restricted from introduction
507 into the facility or may be restricted from being in a client's
508 possession. The administrator or designee may take temporary
509 custody of such effects when required for medical and safety
510 reasons. Custody of such personal effects shall be recorded in
511 the client's clinical record.
512 (7) VOTING IN PUBLIC ELECTIONS.--A forensic client
513 ~~committed pursuant to this chapter~~ who is eligible to vote
514 according to the laws of the state has the right to vote in the
515 primary and general elections. The department and agency shall
516 establish rules to enable clients to obtain voter registration
517 forms, applications for absentee ballots, and absentee ballots.
518 (8) CLINICAL RECORD; CONFIDENTIALITY.--A clinical record
519 for each forensic client shall be maintained. The record shall
520 include data pertaining to admission and such other information
521 as may be required under rules of the department or the agency.
522 Unless waived by express and informed consent of the client or

523 the client's legal guardian or, if the client is deceased, by the
524 client's personal representative or by that family member who
525 stands next in line of intestate succession or except as
526 otherwise provided in this subsection, the clinical record is
527 confidential and exempt from the provisions of s. 119.07(1) and
528 s. 24(a), Art. I of the State Constitution.
529 (a) Such clinical record may be released:
530 1. To such persons and agencies as are designated by the
531 client or the client's legal guardian.
532 2. To persons authorized by order of court and to the
533 client's counsel when the records are needed by the counsel for
534 adequate representation.
535 3. To a qualified researcher, as defined by rule; a staff
536 member of the facility; or an employee of the department or
537 agency when the administrator of the facility, or secretary or
538 director of the department or agency, deems it necessary for
539 treatment of the client, maintenance of adequate records,
540 compilation of treatment data, or evaluation of programs.
541 4. For statistical and research purposes if the information
542 is abstracted in such a way as to protect the identity of
543 individuals.
544 5. If a client receiving services ~~pursuant to this chapter~~
545 has declared an intention to harm other persons~~. When such a~~
546 ~~declaration has been made~~, the administrator shall authorize the
547 release of sufficient information to provide adequate warning to
548 the person threatened with harm by the client, and to the
549 committing court, the state attorney, and the attorney
550 representing the client.
551 6. To the parent or next of kin of a client ~~mentally ill,~~

552 ~~retarded, or autistic person~~ who is committed to, or is being
553 served by, a facility or program when such information is limited
554 to that person's service plan and current physical and mental
555 condition. Release of such information shall be in accordance
556 with the code of ethics of the profession involved and must
557 comply with all state and federal laws and regulations pertaining
558 to the release of personal health information.
559 (b) Notwithstanding other provisions of this subsection,
560 the department or agency may request or receive from or provide
561 to any of the following entities client information to facilitate
562 treatment, habilitation, rehabilitation, and continuity of care
563 of any forensic client:
564 1. The Social Security Administration and the United States
565 Department of Veterans Affairs;
566 2. Law enforcement agencies, state attorneys, defense
567 attorneys, and judges in regard to the client's status;
568 3. Jail personnel in the jail in ~~to~~ which a client may be
569 housed ~~returned~~; and
570 4. Community agencies and others expected to provide
571 followup care to the client upon the client's return to the
572 community.
573 (c) The department or agency may provide notice to any
574 client's next of kin or first representative regarding any
575 serious medical illness or the death of the client.
576 (d)1. Any law enforcement agency, facility, or other
577 governmental agency that receives information pursuant to this
578 subsection shall maintain the confidentiality of such information
579 except as otherwise provided herein.
580 2. Any agency or private practitioner who acts in good

581 faith in releasing information pursuant to this subsection is not
582 subject to civil or criminal liability for such release.
583 (9) HABEAS CORPUS.--
584 (a) At any time, and without notice, a forensic client
585 detained by a facility, or a relative, friend, guardian,
586 representative, or attorney on behalf of such client, may
587 petition for a writ of habeas corpus to question the cause and
588 legality of such detention and request that the committing court
589 issue a writ for release. Each client ~~committed pursuant to this~~
590 ~~chapter~~ shall receive a written notice of the right to petition
591 for a writ of habeas corpus.
592 (b) A client or his or her legal guardian or
593 representatives or attorney may file a petition in the circuit
594 court in the county where the client is committed alleging that
595 the client is being unjustly denied a right or privilege granted
596 herein or that a procedure authorized herein is being abused.
597 Upon the filing of such a petition, the circuit court shall have
598 the authority to conduct a judicial inquiry and to issue any
599 appropriate order to correct an abuse of the provisions of this
600 chapter.
601 (10) TRANSPORTATION.--
602 (a) The sheriff shall consult with the governing board of
603 the county as to the most appropriate and cost-effective means of
604 transportation for forensic clients who have been committed for
605 treatment or training. Such consultation shall include, but is
606 not limited to, consideration of the cost to the county of
607 transportation performed by sheriff's ~~department~~ personnel as
608 opposed to transportation performed by other means and, if
609 sheriff's ~~department~~ personnel are to be used for transportation,

610 the effect such use will have, if any, on service delivery levels
611 of the sheriff's road patrol. After such consultation with the
612 governing board of the county, the sheriff shall determine the
613 most appropriate and cost-effective means of transportation for
614 forensic clients committed for treatment or training.
615 (b) The governing board of each county is authorized to
616 contract with private transport companies for the transportation
617 of such clients to and from a facility.
618 (c) Any company that transports a client pursuant to this
619 section is considered an independent contractor and is solely
620 liable for the safe and dignified transportation of the client.
621 Any transport company that contracts with the governing board of
622 a county for the transport of clients as provided for in this
623 section shall be insured and provide no less than $100,000 in
624 liability insurance with respect to the transportation of the
625 clients.
626 (d) Any company that contracts with a governing board of a
627 county to transport clients shall comply with the applicable
628 rules of the department or agency to ensure the safety and
629 dignity of the clients.
630 (11) LIABILITY FOR VIOLATIONS.--Any person who violates or
631 abuses any rights or privileges of a forensic client in the
632 custody of the department or agency that are provided under this
633 chapter shall be ~~by this act is~~ liable for damages as determined
634 by law. Any person who acts in good faith in complying with the
635 provisions of this chapter ~~act~~ is immune from civil or criminal
636 liability for his or her actions in connection with the
637 admission, diagnosis, treatment, training, or discharge of a
638 client to or from a facility. However, this subsection does not

639 relieve any person from liability if he or she is negligent.
640 Section 4. Subsections (1), (2), (3), (4), and (5) of
641 section 916.1075, Florida Statutes, are amended to read:
642 916.1075 Sexual misconduct prohibited; reporting required;
643 penalties.--
644 (1) As used in this section, the term:
645 (a) "Covered person" means an employee,~~"~~ ~~includes any paid~~
646 ~~staff member,~~ volunteer, or intern of the department or agency;
647 any person under contract with the department or agency; and any
648 person providing care or support to a forensic client on behalf
649 of the department, the agency, or their ~~its~~ providers.
650 (b) "Sexual activity" means:
651 1. Fondling the genital area, groin, inner thighs,
652 buttocks, or breasts of a person.
653 2. The oral, anal, or vaginal penetration by or union with
654 the sexual organ of another or the anal or vaginal penetration of
655 another by any other object.
656 3. Intentionally touching in a lewd or lascivious manner
657 the breasts, genitals, the genital area, or buttocks, or the
658 clothing covering them, of a person, or forcing or enticing a
659 person to touch the perpetrator.
660 4. Intentionally masturbating in the presence of another
661 person.
662 5. Intentionally exposing the genitals in a lewd or
663 lascivious manner in the presence of another person.
664 6. Intentionally committing any other sexual act that does
665 not involve actual physical or sexual contact with the victim,
666 including, but not limited to, sadomasochistic abuse, sexual
667 bestiality, or the simulation of any act involving sexual

668 activity in the presence of a victim.
669 (c) "Sexual misconduct" means any sexual activity between a
670 covered person ~~an employee~~ and a forensic client in the custody
671 of the department or agency, regardless of the consent of the
672 client. The term does not include an act done for a bona fide
673 medical purpose or an internal search conducted in the lawful
674 performance of duty by a covered person ~~an employee~~.
675 (2) A covered person ~~An employee~~ who engages in sexual
676 misconduct with a forensic client who resides in a civil or
677 forensic facility commits a felony of the second degree,
678 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
679 Such person ~~An employee~~ may be found guilty of violating this
680 subsection without having committed the crime of sexual battery.
681 (3) The consent of a forensic ~~the~~ client to sexual activity
682 is not a defense to prosecution under this section.
683 (4) This section does not apply to a covered person ~~an~~
684 ~~employee~~ who:
685 (a) Is legally married to the client; or
686 (b) Has no reason to believe that the person with whom the
687 covered person ~~employee~~ engaged in sexual misconduct is a client
688 receiving services as described in subsection (2).
689 (5) A covered person ~~An employee~~ who witnesses sexual
690 misconduct, or who otherwise knows or has reasonable cause to
691 suspect that a person has engaged in sexual misconduct, shall
692 immediately report the incident to the department's central abuse
693 hotline and to the appropriate local law enforcement agency. The
694 covered person ~~Such employee~~ shall also prepare, date, and sign
695 an independent report that specifically describes the nature of
696 the sexual misconduct, the location and time of the incident, and

697 the persons involved. For an allegation pertaining to a forensic
698 client committed to the agency, the covered person ~~employee~~ shall
699 deliver the report to the supervisor or program director, who
700 shall provide copies to the agency's ~~is responsible for providing~~
701 ~~copies to the department's~~ inspector general. For an allegation
702 pertaining to a forensic client committed to the department, the
703 covered person shall deliver the report to the supervisor or
704 program director, who shall provide copies to the department's
705 inspector general. The inspector general shall immediately
706 conduct an appropriate administrative investigation, and, if
707 there is probable cause to believe that sexual misconduct has
708 occurred, the inspector general shall notify the state attorney
709 in the circuit in which the incident occurred.
710 Section 5. Section 916.1081, Florida Statutes, is amended
711 to read:
712 916.1081 Escape from program; penalty.--
713 (1) A forensic client who is ~~A defendant~~ involuntarily
714 committed to the department or agency, who is in the custody of
715 the department or agency, and ~~under the provisions of this~~
716 ~~chapter~~ who escapes or attempts to escape from a civil or
717 forensic facility ~~or program~~ commits a felony of the second
718 degree, punishable as provided in s. 775.082, s. 775.083, or s.
719 775.084.
720 (2) A person who is involuntarily committed to the
721 department or the agency, who is in the custody of the Department
722 of Corrections, and who escapes or attempts to escape from a
723 facility or program commits a felony of the second degree,
724 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
725 Any punishment of imprisonment imposed under this subsection

726 shall run consecutive to any former sentence imposed upon the
727 person.
728 Section 6. Subsection (1) and paragraph (b) of subsection
729 (2) of section 916.1085, Florida Statutes, are amended to read:
730 916.1085 Introduction or removal of certain articles
731 unlawful; penalty.--
732 (1)(a) Except as authorized by law or as specifically
733 authorized by the person in charge of a facility, it is unlawful
734 to introduce into or upon the grounds of any facility under the
735 supervision or control of the department or agency, or to take or
736 attempt to take or send therefrom, any of the following articles,
737 which are ~~hereby~~ declared to be contraband for the purposes of
738 this section:
739 1. Any intoxicating beverage or beverage which causes or
740 may cause an intoxicating effect;
741 2. Any controlled substance as defined in chapter 893;
742 3. Any firearm or deadly weapon; or
743 4. Any other item as determined by the department or the
744 agency, and as designated by ~~departmental~~ rule or ~~by the~~
745 ~~administrator of any facility, and designated~~ by written
746 institutional policies, to be hazardous to the welfare of clients
747 ~~patients~~ or the operation of the facility.
748 (b) It is unlawful to transmit to, attempt to transmit to,
749 or cause or attempt to cause to be transmitted to or received by
750 any client of any facility under the supervision or control of
751 the department or agency any article or thing declared by this
752 section to be contraband, at any place that ~~which~~ is outside of
753 the grounds of such facility, except as authorized by law or as
754 specifically authorized by the person in charge of such facility.

755 (2)
756 (b) These provisions shall be enforced by institutional
757 security personnel ~~as defined in s. 916.106(10)~~ or by a law
758 enforcement officer as defined in s. 943.10.
759 Section 7. Section 916.1091, Florida Statutes, is amended
760 to read:
761 916.1091 Duties, functions, and powers of institutional
762 security personnel.--In case of emergency, and when necessary to
763 provide protection and security to any client, to the personnel,
764 equipment, buildings, or grounds of a department or agency
765 facility, or to citizens in the surrounding community,
766 institutional security personnel may, when authorized by the
767 administrator of the facility or her or his designee when the
768 administrator is not present, use a chemical weapon against a
769 patient housed in a forensic facility. However, such weapon shall
770 be used only to the extent necessary to provide ~~such~~ protection
771 and security. Under no circumstances shall any ~~such~~ officer carry
772 a chemical weapon on her or his person except during the period
773 of the emergency for which its use was authorized. All chemical
774 weapons shall be placed in secure storage when their use is not
775 authorized as provided in this section.
776 Section 8. Section 916.1093, Florida Statutes, is amended
777 to read:
778 916.1093 Operation and administration; rules.--
779 (1) The department or agency may ~~is authorized to~~ enter
780 into contracts and do such things as may be necessary and
781 incidental to assure compliance with and to carry out the
782 provisions of this chapter in accordance with the stated
783 legislative intent.

784 (2) The department or agency may ~~has authority to~~ adopt
785 rules pursuant to ss. 120.536(1) and 120.54 to implement the
786 provisions of this chapter. Such rules must address the use of
787 restraint and seclusion in forensic facilities and must be
788 consistent with recognized best practices; prohibit inherently
789 dangerous restraint or seclusion procedures; establish
790 limitations on the use and duration of restraint and seclusion;
791 establish measures to ensure the safety of clients and staff
792 during an incident of restraint or seclusion; establish
793 procedures for staff to follow before, during, and after
794 incidents of restraint or seclusion; establish professional
795 qualifications of and training for staff who may order or be
796 engaged in the use of restraint or seclusion; and establish
797 mandatory reporting, data collection, and data-dissemination
798 procedures and requirements relating to the use of restraint and
799 seclusion, including a requirement that each instance of the use
800 of restraint or seclusion be documented in the facility's client
801 record.
802 Section 9. Subsection (1) of section 916.111, Florida
803 Statutes, is amended to read:
804 916.111 Training of mental health experts.--The evaluation
805 of defendants for competency to proceed or for sanity at the time
806 of the commission of the offense shall be conducted in such a way
807 as to ensure uniform application of the criteria enumerated in
808 Rules 3.210 and 3.216, Florida Rules of Criminal Procedure. The
809 department shall develop, and may contract with accredited
810 institutions:
811 (1) To provide:
812 (a) A plan for training ~~community~~ mental health

813 professionals to perform forensic evaluations and to standardize
814 the criteria and procedures to be used in these evaluations;
815 (b) Clinical protocols and procedures based upon the
816 criteria of Rules 3.210 and 3.216, Florida Rules of Criminal
817 Procedure; and
818 (c) Training for ~~community~~ mental health professionals in
819 the application of these protocols and procedures in performing
820 forensic evaluations and providing reports to the courts; and
821 Section 10. Section 916.115, Florida Statutes, is amended
822 to read:
823 916.115 Appointment of experts.--
824 (1)~~(a) Annually, the department shall provide the courts~~
825 ~~with a list of mental health professionals who have completed~~
826 ~~approved training as experts.~~
827 ~~(b)~~ The court shall ~~may~~ appoint no more than three experts
828 to determine ~~issues of~~ the mental condition of a defendant in a
829 criminal case, including ~~the issues of~~ competency to proceed,
830 insanity, ~~and~~ involuntary ~~hospitalization or~~ placement, and
831 treatment. The panel of experts ~~An expert~~ may evaluate the
832 defendant in jail or in another appropriate local facility or in
833 a facility of the Department of Corrections.
834 (a)~~(c)~~ To the extent possible, the ~~an~~ appointed experts
835 ~~expert~~ shall have completed forensic evaluator training approved
836 by the department and each shall be ~~either~~ a psychiatrist,
837 licensed psychologist, or physician.
838 (b) The department shall maintain and annually provide the
839 courts with a list of available mental health professionals who
840 have completed the approved training as experts.
841 (2) ~~Expert witnesses appointed by the court to evaluate the~~

842 ~~mental condition of a defendant in a criminal case shall be~~
843 ~~allowed reasonable fees for services rendered as evaluators of~~
844 ~~competence or sanity and as witnesses.~~
845 ~~(a)1.~~ The court shall pay for any expert that it appoints
846 by court order, upon motion of counsel for the defendant or the
847 state or upon its own motion. If the defense or the state retains
848 an expert and waives the confidentiality of the expert's report,
849 the court may pay for no more than two additional experts
850 appointed by court order. If an expert appointed by the court
851 upon motion of counsel for the defendant specifically to evaluate
852 the competence of the defendant to proceed also addresses ~~in his~~
853 ~~or her evaluation~~ issues related to sanity as an affirmative
854 defense, the court shall pay only for that portion of the
855 expert's fees relating to the evaluation on competency to
856 proceed, and the balance of the fees shall be chargeable to the
857 defense.
858 (a)~~2.~~ Pursuant to s. 29.006, the office of the public
859 defender shall pay for any expert retained by the office.
860 (b)~~3.~~ Pursuant to s. 29.005, the office of the state
861 attorney shall pay for any expert retained by the office and~~.~~
862 ~~Notwithstanding subparagraph 1., the office of the state attorney~~
863 ~~shall pay~~ for any expert whom the office retains and whom the
864 office moves the court to appoint in order to ensure that the
865 expert has access to the defendant.
866 (c)~~4.~~ An expert retained by the defendant who is
867 represented by private counsel appointed under s. 27.5303 shall
868 be paid by the Justice Administrative Commission.
869 (d)~~5.~~ An expert retained by a defendant who is indigent for
870 costs as determined by the court and who is represented by

871 private counsel, other than private counsel appointed under s.
872 27.5303, on a fee or pro bono basis, or who is representing
873 himself or herself, shall be paid by the Justice Administrative
874 Commission from funds specifically appropriated for these
875 expenses.
876 (e)~~(b)~~ State employees shall be reimbursed for ~~paid~~
877 expenses pursuant to s. 112.061.
878 (f)~~(c)~~ The fees shall be taxed as costs in the case.
879 (g)~~(d)~~ In order for an expert to be paid for the services
880 rendered, the expert's report and testimony must explicitly
881 address each of the factors and follow the procedures set out in
882 this chapter and in the Florida Rules of Criminal Procedure.
883 Section 11. Subsections (1), (2), and (3) of section
884 916.12, Florida Statutes, are amended to read:
885 916.12 Mental competence to proceed.--
886 (1) A defendant is incompetent to proceed within the
887 meaning of this chapter if the defendant does not have sufficient
888 present ability to consult with her or his lawyer with a
889 reasonable degree of rational understanding or if the defendant
890 has no rational, as well as factual, understanding of the
891 proceedings against her or him.
892 (2) Mental health experts appointed pursuant to s. 916.115
893 ~~An expert~~ shall first determine whether the defendant has a
894 mental illness ~~person is mentally ill~~ and, if so, consider the
895 factors related to the issue of whether the defendant meets the
896 criteria for competence to proceed as described in subsection
897 (1)~~; that is, whether the defendant has sufficient present~~
898 ~~ability to consult with counsel with a reasonable degree of~~
899 ~~rational understanding and whether the defendant has a rational,~~

900 ~~as well as factual, understanding of the pending proceedings~~. A
901 defendant must be evaluated by no fewer than two experts before
902 the court commits the defendant or takes other action authorized
903 by this chapter or the Florida Rules of Criminal Procedure,
904 except if one expert finds that the defendant is incompetent to
905 proceed and the parties stipulate to that finding, the court may
906 commit the defendant or take other action authorized by this
907 chapter or the rules without further evaluation or hearing, or
908 the court may appoint no more than two additional experts to
909 evaluate the defendant. Notwithstanding any stipulation by the
910 state and the defendant, the court may require a hearing with
911 testimony from the expert or experts before ordering the
912 commitment of a defendant.
913 (3) In considering the issue of competence to proceed, an
914 examining expert shall first consider and specifically include in
915 his or her report the defendant's capacity to:
916 (a) Appreciate the charges or allegations against the
917 defendant.~~;~~
918 (b) Appreciate the range and nature of possible penalties,
919 if applicable, that may be imposed in the proceedings against the
920 defendant.~~;~~
921 (c) Understand the adversarial nature of the legal
922 process.~~;~~
923 (d) Disclose to counsel facts pertinent to the proceedings
924 at issue.~~;~~
925 (e) Manifest appropriate courtroom behavior.~~; and~~
926 (f) Testify relevantly.~~;~~
927 (g) ~~and include in his or her report~~ Any other factor
928 deemed relevant by the expert.

929 Section 12. Section 916.13, Florida Statutes, is amended to
930 read:
931 916.13 Involuntary commitment of defendant adjudicated
932 incompetent.--
933 (1) Every defendant who is charged with a felony and who is
934 adjudicated incompetent to proceed~~, pursuant to the applicable~~
935 ~~Florida Rules of Criminal Procedure,~~ may be involuntarily
936 committed for treatment upon a finding by the court of clear and
937 convincing evidence that:
938 (a) The defendant has a mental illness ~~is mentally ill~~ and
939 because of the mental illness:
940 1. The defendant is manifestly incapable of surviving alone
941 or with the help of willing and responsible family or friends,
942 including available alternative services, and, without treatment,
943 the defendant is likely to suffer from neglect or refuse to care
944 for herself or himself and such neglect or refusal poses a real
945 and present threat of substantial harm to the defendant's well-
946 being; or ~~and~~
947 2. There is a substantial likelihood that in the near
948 future the defendant will inflict serious bodily harm on herself
949 or himself or another person, as evidenced by recent behavior
950 causing, attempting, or threatening such harm;
951 (b) All available, less restrictive treatment alternatives,
952 including treatment in community residential facilities or
953 community inpatient or outpatient settings, which would offer an
954 opportunity for improvement of the defendant's condition have
955 been judged to be inappropriate; and
956 (c) There is a substantial probability that the mental
957 illness causing the defendant's incompetence will respond to

958 treatment and the defendant will regain competency to proceed in
959 the reasonably foreseeable future.
960 (2) A defendant who has been charged with a felony and who
961 has been adjudicated incompetent to proceed due to mental
962 illness, and who meets the criteria for involuntary commitment to
963 the department under the provisions of this chapter, may be
964 committed to the department, and the department shall retain and
965 treat the defendant. No later than 6 months after the date of
966 admission and ~~or~~ at the end of any period of extended commitment,
967 or at any time the administrator or designee shall have
968 determined that the defendant has regained competency to proceed
969 or no longer meets the criteria for continued commitment, the
970 administrator or designee shall file a report with the court
971 pursuant to the applicable Florida Rules of Criminal Procedure.
972 Section 13. Section 916.145, Florida Statutes, is amended
973 to read:
974 916.145 ~~Adjudication of incompetency due to mental illness;~~
975 Dismissal of charges.--The charges against any defendant
976 adjudicated incompetent to proceed due to the defendant's mental
977 illness shall be dismissed without prejudice to the state if the
978 defendant remains incompetent to proceed 5 years after such
979 determination, unless the court in its order specifies its
980 reasons for believing that the defendant will become competent to
981 proceed within the foreseeable future and specifies the time
982 within which the defendant is expected to become competent to
983 proceed. The charges against the defendant are dismissed without
984 prejudice to the state to refile the charges should the defendant
985 be declared competent to proceed in the future.
986 Section 14. Section 916.15, Florida Statutes, is amended to

987 read:
988 916.15 Involuntary commitment of defendant adjudicated not
989 guilty by reason of insanity.--
990 (1) The determination of whether a defendant is not guilty
991 by reason of insanity shall be determined in accordance with Rule
992 3.217, Florida Rules of Criminal Procedure.
993 (2) ~~(1)~~ A defendant who is acquitted of criminal charges
994 because of a finding of not guilty by reason of insanity may be
995 involuntarily committed pursuant to such finding if the defendant
996 has a mental illness ~~is mentally ill~~ and, because of the illness,
997 is manifestly dangerous to himself or herself or others.
998 (3) ~~(2)~~ Every defendant acquitted of criminal charges by
999 reason of insanity and found to meet the criteria for involuntary
1000 commitment may be committed and treated in accordance with the
1001 provisions of this section and the applicable Florida Rules of
1002 Criminal Procedure. The department shall admit a defendant so
1003 adjudicated to an appropriate facility or program for treatment
1004 and shall retain and treat such defendant. No later than 6 months
1005 after the date of admission, prior to the end of any period of
1006 extended commitment, or at any time the administrator or designee
1007 shall have determined that the defendant no longer meets the
1008 criteria for continued commitment placement, the administrator or
1009 designee shall file a report with the court pursuant to the
1010 applicable Florida Rules of Criminal Procedure.
1011 (4) ~~(3)~~ In all proceedings under this section ~~subsection~~,
1012 both the defendant and the state shall have the right to a
1013 hearing before the committing court. Evidence at such hearing may
1014 be presented by the hospital administrator or the administrator's
1015 designee as well as by the state and the defendant. The defendant

1016 shall have the right to counsel at any such hearing. In the event
1017 that a defendant is determined to be indigent pursuant to s.
1018 27.52, the public defender shall represent the defendant. The
1019 parties shall have access to the defendant's records at the
1020 treating facilities and may interview or depose personnel who
1021 have had contact with the defendant at the treating facilities.
1022 Section 15. Section 916.16, Florida Statutes, is amended to
1023 read:
1024 916.16 Jurisdiction of committing court.--
1025 (1) The committing court shall retain jurisdiction over ~~in~~
1026 ~~the case of~~ any defendant involuntarily committed due to a
1027 determination of incompetency ~~hospitalized as incompetent~~ to
1028 proceed due to mental illness or ~~because of~~ a finding of not
1029 guilty by reason of insanity pursuant to this chapter. The ~~No~~
1030 ~~such~~ defendant may not be released except by order of the
1031 committing court. An ~~The~~ administrative hearing examiner does not
1032 ~~shall~~ have ~~no~~ jurisdiction to determine issues of continuing
1033 commitment ~~hospitalization~~ or release of any defendant
1034 involuntarily committed ~~admitted~~ pursuant to this chapter.
1035 (2) The committing court shall retain jurisdiction in the
1036 case of any defendant placed on conditional release pursuant to
1037 s. 916.17. ~~No~~ Such defendant may not be released from the
1038 conditions of release except by order of the committing court.
1039 Section 16. Section 916.17, Florida Statutes, is amended to
1040 read:
1041 916.17 Conditional release.--
1042 (1) Except for an inmate currently serving a prison
1043 sentence, ~~The committing court may order a conditional release of~~
1044 ~~any defendant who has been found to be incompetent to proceed or~~

1045 ~~not guilty by reason of insanity, based on an approved plan for~~
1046 ~~providing appropriate outpatient care and treatment.~~ the
1047 committing court may order a conditional release of any defendant
1048 in lieu of an involuntary commitment to a facility pursuant to s.
1049 916.13 or s. 916.15 based upon an approved plan for providing
1050 appropriate outpatient care and treatment. Upon a recommendation
1051 that outpatient treatment of the defendant is appropriate, a
1052 written plan for outpatient treatment, including recommendations
1053 from qualified professionals, must be filed with the court, with
1054 copies to all parties. Such a plan may also be submitted by the
1055 defendant and filed with the court with copies to all parties.
1056 The plan shall include:
1057 (a) Special provisions for residential care or adequate
1058 supervision of the defendant.
1059 (b) Provisions for outpatient mental health services.
1060 (c) If appropriate, recommendations for auxiliary services
1061 such as vocational training, educational services, or special
1062 medical care.
1063
1064 In its order of conditional release, the court shall specify the
1065 conditions of release based upon the release plan and shall
1066 direct the appropriate agencies or persons to submit periodic
1067 reports to the court regarding the defendant's compliance with
1068 the conditions of the release and progress in treatment, with
1069 copies to all parties.
1070 (2) Upon the filing of an affidavit or statement under oath
1071 by any person that the defendant has failed to comply with the
1072 conditions of release, that the defendant's condition has
1073 deteriorated to the point that inpatient care is required, or

1074 that the release conditions should be modified, the court shall
1075 hold a hearing within 7 days after receipt of the affidavit or
1076 statement under oath. After the hearing, the court may modify the
1077 release conditions. The court may also order that the defendant
1078 be returned to the department if it is found, after the
1079 appointment and report of experts, that the person meets the
1080 criteria for involuntary commitment under s. 916.13 or s. 916.15
1081 ~~treatment~~.
1082 (3) If at any time it is determined after a hearing that
1083 the defendant who has been conditionally released under
1084 subsection (1) no longer requires court-supervised followup care,
1085 the court shall terminate its jurisdiction in the cause and
1086 discharge the defendant.
1087 Section 17. Section 916.301, Florida Statutes, is amended
1088 to read:
1089 916.301 Appointment of experts.--
1090 (1) All evaluations ordered by the court under this part
1091 must be conducted by qualified experts who have expertise in
1092 evaluating persons with retardation or autism. The agency
1093 ~~department~~ shall maintain and provide the courts annually with a
1094 list of available retardation and autism professionals who are
1095 appropriately licensed and qualified to perform evaluations of
1096 defendants alleged to be incompetent to proceed due to
1097 retardation or autism. The courts may use professionals from this
1098 list when appointing experts and ordering evaluations under this
1099 part ~~for defendants suspected of being retarded or autistic~~.
1100 (2) If a defendant's suspected mental condition is
1101 retardation or autism, the court shall appoint a panel of experts
1102 consisting of: ~~two experts, one of whom must be the developmental~~

1103 ~~services program of the department, each of whom will evaluate~~
1104 ~~whether the defendant meets the definition of retardation or~~
1105 ~~autism and, if so, whether the defendant is competent to proceed.~~
1106 (a) ~~(3)~~ At least one, or at the request of any party, two
1107 experts ~~the court may appoint one additional expert~~ to evaluate
1108 ~~the defendant. The expert appointed by the court will evaluate~~
1109 whether the defendant meets the definition of retardation or
1110 autism and, if so, whether the defendant is competent to proceed.
1111 (b) ~~(4)~~ ~~The developmental services program shall select~~ A
1112 psychologist selected by the agency who is licensed or authorized
1113 by law to practice in this state, with experience in evaluating
1114 persons suspected of having retardation or autism, and a social
1115 service professional, with experience in working with persons
1116 with retardation or autism ~~to evaluate the defendant~~.
1117 1. ~~(a)~~ The psychologist shall evaluate whether the defendant
1118 meets the definition of retardation or autism and, if so, whether
1119 the defendant is incompetent to proceed due to retardation or
1120 autism.
1121 2. ~~(b)~~ The social service professional shall provide a
1122 social and developmental history of the defendant.
1123 ~~(5) All evaluations ordered by the court must be from~~
1124 ~~qualified experts with experience in evaluating persons with~~
1125 ~~retardation or autism.~~
1126 (3) ~~(6)~~ The panel of experts may examine the defendant in
1127 jail, in another appropriate local facility, in a facility of the
1128 Department of Corrections, or on an outpatient basis.
1129 (4) ~~(7)~~ Experts ~~Expert witnesses~~ appointed by the court to
1130 evaluate the mental condition of a defendant in a criminal case
1131 shall be allowed reasonable fees for services rendered as

1132 evaluators and as witnesses, which shall be paid by the court.
1133 State employees shall be paid expenses pursuant to s. 112.061.
1134 The fees shall be taxed as costs in the case. In order for the
1135 experts to be paid for the services rendered, the reports and
1136 testimony must explicitly address each of the factors and follow
1137 the procedures set out in this chapter and in the Florida Rules
1138 of Criminal Procedure.
1139 Section 18. Subsections (1), (2), and (3) of section
1140 916.3012, Florida Statutes, are amended to read:
1141 916.3012 Mental competence to proceed.--
1142 (1) A defendant whose suspected mental condition is
1143 retardation or autism is incompetent to proceed within the
1144 meaning of this chapter if the defendant does not have sufficient
1145 present ability to consult with the defendant's lawyer with a
1146 reasonable degree of rational understanding or if the defendant
1147 has no rational, as well as factual, understanding of the
1148 proceedings against the defendant.
1149 (2) ~~The~~ Experts in retardation or autism appointed pursuant
1150 to s. 916.301 shall first consider whether the defendant meets
1151 the definition of retardation or autism and, if so, consider the
1152 factors related to the issue of whether the defendant meets the
1153 criteria for competence to proceed as described in subsection
1154 (1)~~; that is, whether the defendant has sufficient present~~
1155 ~~ability to consult with counsel with a reasonable degree of~~
1156 ~~rational understanding and whether the defendant has a rational,~~
1157 ~~as well as factual, understanding of the pending proceedings~~.
1158 (3) In considering the issue of competence to proceed, the
1159 examining experts shall first consider and specifically include
1160 in their report the defendant's capacity to:

1161 (a) Appreciate the charges or allegations against the
1162 defendant.~~;~~
1163 (b) Appreciate the range and nature of possible penalties,
1164 if applicable, that may be imposed in the proceedings against the
1165 defendant.~~;~~
1166 (c) Understand the adversarial nature of the legal
1167 process.~~;~~
1168 (d) Disclose to counsel facts pertinent to the proceedings
1169 at issue.~~;~~
1170 (e) Manifest appropriate courtroom behavior.~~; and~~
1171 (f) Testify relevantly.~~;~~
1172 (g) ~~and include in their report~~ Any other factor deemed
1173 relevant by the experts.
1174 Section 19. Section 916.302, Florida Statutes, is amended
1175 to read:
1176 916.302 Involuntary commitment of defendant determined to
1177 be incompetent to proceed ~~due to retardation or autism~~.--
1178 (1) CRITERIA.--Every defendant who is charged with a felony
1179 and who is adjudicated ~~found to be~~ incompetent to proceed due to
1180 retardation or autism~~, pursuant to this chapter and the~~
1181 ~~applicable Florida Rules of Criminal Procedure,~~ may be
1182 involuntarily committed for training upon a finding by the court
1183 of clear and convincing evidence that:
1184 (a) The defendant has retardation or autism ~~is retarded or~~
1185 ~~autistic~~;
1186 (b) There is a substantial likelihood that in the near
1187 future the defendant will inflict serious bodily harm on himself
1188 or herself or another person, as evidenced by recent behavior
1189 causing, attempting, or threatening such harm;

1190 (c) All available, less restrictive alternatives, including
1191 services provided in community residential facilities or other
1192 community settings, which would offer an opportunity for
1193 improvement of the condition have been judged to be
1194 inappropriate; and
1195 (d) There is a substantial probability that the retardation
1196 or autism causing the defendant's incompetence will respond to
1197 training and the defendant will regain competency to proceed in
1198 the reasonably foreseeable future.
1199 (2) ADMISSION TO A FACILITY.--
1200 (a) A defendant who has been charged with a felony and who
1201 is found to be incompetent to proceed due to retardation or
1202 autism, and who meets the criteria for involuntary commitment to
1203 the agency ~~department~~ under the provisions of this chapter, shall
1204 be committed to the agency ~~department~~, and the agency ~~department~~
1205 shall retain and provide appropriate training for ~~serve~~ the
1206 defendant. No later than 6 months after the date of admission or
1207 at the end of any period of extended commitment or at any time
1208 the administrator or designee shall have determined that the
1209 defendant has regained competency to proceed or no longer meets
1210 the criteria for continued commitment, the administrator or
1211 designee shall file a report with the court pursuant to this
1212 chapter and the applicable Florida Rules of Criminal Procedure.
1213 (b) A defendant determined to be incompetent to proceed due
1214 to retardation or autism may be ordered by a circuit court into a
1215 forensic ~~secure~~ facility designated by the agency ~~department~~ for
1216 ~~retarded or autistic~~ defendants who have mental retardation or
1217 autism.
1218 (c) The agency ~~department~~ may transfer a defendant from a

1219 designated forensic ~~secure~~ facility to another designated
1220 forensic ~~secure~~ facility and must notify the court of the
1221 transfer within 30 days after the transfer is completed.
1222 (d) The agency ~~department~~ may not transfer a defendant from
1223 a designated forensic ~~secure~~ facility to a civil ~~nonsecure~~
1224 facility without first notifying the court, and all parties, 30
1225 days before the proposed transfer. If the court objects to the
1226 proposed transfer ~~to a nonsecure facility~~, it must send its
1227 written objection to the agency ~~department~~. The agency ~~department~~
1228 may transfer the defendant unless it receives the written
1229 objection from the court within 30 days after the court's receipt
1230 of the notice of the proposed transfer.
1231 (3) PLACEMENT OF DUALLY DIAGNOSED DEFENDANTS.--
1232 (a) If a defendant has ~~is~~ both mental retardation or autism
1233 ~~retarded or autistic~~ and has a mental illness ~~mentally ill~~,
1234 evaluations must address which condition is primarily affecting
1235 the defendant's competency to proceed. Referral of the defendant
1236 should be made to a civil or forensic ~~the~~ facility ~~or program~~
1237 most appropriate to address the symptoms that ~~which~~ are the cause
1238 of the defendant's incompetence.
1239 (b) Transfer from one civil or forensic facility ~~or program~~
1240 to another civil or forensic facility ~~or program~~ may occur when,
1241 in the department's and agency's judgment, it is in the
1242 defendant's best treatment or training interests. The department
1243 and agency shall submit an evaluation and justification for the
1244 transfer to the court. The court may consult with an outside
1245 expert if necessary. Transfer will require an amended order from
1246 the committing court.
1247 Section 20. Section 916.3025, Florida Statutes, is amended

1248 to read:
1249 916.3025 Jurisdiction of committing court.--
1250 (1) The committing court shall retain jurisdiction in the
1251 case of any defendant found to be incompetent to proceed due to
1252 retardation or autism and ordered into a forensic ~~secure~~ facility
1253 designated by the agency ~~department~~ for ~~retarded or autistic~~
1254 defendants who have mental retardation or autism. A ~~No~~ defendant
1255 may not be released except by the order of the committing court.
1256 An administrative hearing examiner does not have jurisdiction to
1257 determine issues of continuing commitment or release of any
1258 defendant involuntarily committed pursuant to this chapter.
1259 (2) The committing court shall retain jurisdiction in the
1260 case of any defendant placed on conditional release pursuant to
1261 s. 916.304. ~~No~~ Such defendant may not be released from the
1262 conditions of release except by order of the committing court.
1263 (3) The committing court shall consider a ~~the~~ petition to
1264 involuntarily admit a defendant whose charges have been dismissed
1265 to residential services provided by the agency ~~department's~~
1266 ~~developmental services program a person whose charges have been~~
1267 ~~dismissed,~~ and, when applicable, to continue secure placement of
1268 such person as provided in s. 916.303. The committing court shall
1269 retain jurisdiction over such person so long as he or she remains
1270 in secure placement or is on conditional release as provided in
1271 s. 916.304. However, upon request the court may transfer
1272 continuing jurisdiction to the court in the circuit where the
1273 defendant resides. The defendant may not be released from an
1274 order for secure placement except by order of the court.
1275 Section 21. Section 916.303, Florida Statutes, is amended
1276 to read:

1277 916.303 Determination of incompetency due to retardation or
1278 autism; dismissal of charges.--
1279 (1) The charges against any defendant found to be
1280 incompetent to proceed due to retardation or autism shall be
1281 dismissed without prejudice to the state if the defendant remains
1282 incompetent to proceed within a reasonable time after such
1283 determination, not to exceed 2 years, unless the court in its
1284 order specifies its reasons for believing that the defendant will
1285 become competent to proceed within the foreseeable future and
1286 specifies the time within which the defendant is expected to
1287 become competent to proceed. The charges may be refiled by the
1288 state if ~~against the defendant are dismissed without prejudice to~~
1289 ~~the state to refile the charges should~~ the defendant is ~~be~~
1290 declared competent to proceed in the future.
1291 (2)~~(a)~~ If the charges are dismissed and if the defendant is
1292 considered to lack sufficient capacity to give express and
1293 informed consent to a voluntary application for services and
1294 lacks the basic survival and self-care skills to provide for his
1295 or her well-being or is likely to physically injure himself or
1296 herself or others if allowed to remain at liberty, the agency
1297 ~~department~~, the state attorney, or the defendant's attorney shall
1298 ~~may~~ apply to the committing court to involuntarily admit the
1299 defendant to residential services pursuant to s. 393.11.
1300 (3)~~(b)~~ If the defendant is considered to need involuntary
1301 residential services for reasons described in subsection (2)
1302 ~~under s. 393.11~~ and, further, there is a substantial likelihood
1303 that the defendant will injure another person or continues to
1304 present a danger of escape, and all available less restrictive
1305 alternatives, including services in community residential

1306 facilities or other community settings, which would offer an
1307 opportunity for improvement of the condition have been judged to
1308 be inappropriate, ~~then~~ the agency ~~person or entity filing the~~
1309 ~~petition under s. 393.11~~, the state attorney, or the defendant's
1310 counsel may request~~, the petitioning commission, or the~~
1311 ~~department may also petition~~ the committing court to continue the
1312 defendant's placement in a secure facility ~~or program~~ pursuant to
1313 this part ~~section~~. Any placement so continued under this
1314 subsection must be ~~defendant involuntarily admitted under this~~
1315 ~~paragraph shall have his or her status~~ reviewed by the court at
1316 least annually at a hearing. The annual review and hearing shall
1317 determine whether the defendant continues to meet the criteria
1318 described in this subsection ~~for involuntary residential services~~
1319 and, if so, whether the defendant still requires involuntary
1320 placement in a secure facility ~~or program because the court finds~~
1321 ~~that the defendant is likely to physically injure others as~~
1322 ~~specified in s. 393.11~~ and whether the defendant is receiving
1323 adequate care, treatment, habilitation, and rehabilitation,
1324 including psychotropic medication and behavioral programming.
1325 Notice of the annual review and review hearing shall be given to
1326 the state attorney and ~~to~~ the defendant's attorney. In no
1327 instance may a defendant's placement in a secure facility ~~or~~
1328 ~~program~~ exceed the maximum sentence for the crime for which the
1329 defendant was charged.
1330 Section 22. Section 916.304, Florida Statutes, is amended
1331 to read:
1332 916.304 Conditional release.--
1333 (1) Except for an inmate currently serving a prison
1334 sentence, the committing court may order a conditional release of

1335 any defendant who has been found to be incompetent to proceed due
1336 to retardation or autism, based on an approved plan for providing
1337 ~~continuing~~ community-based training. The committing criminal
1338 court may order a conditional release of any defendant to a civil
1339 facility in lieu of an involuntary commitment to a forensic
1340 facility pursuant to s. 916.302. Upon a recommendation that
1341 community-based training for the defendant is appropriate, a
1342 written plan for community-based training, including
1343 recommendations from qualified professionals, may be filed with
1344 the court, with copies to all parties. Such a plan may also be
1345 submitted by the defendant and filed with the court, with copies
1346 to all parties. The plan must ~~shall~~ include:
1347 (a) Special provisions for residential care and adequate
1348 supervision of the defendant, including recommended location of
1349 placement.
1350 (b) Recommendations for auxiliary services such as
1351 vocational training, psychological training, educational
1352 services, leisure services, and special medical care.
1353
1354 In its order of conditional release, the court shall specify the
1355 conditions of release based upon the release plan and shall
1356 direct the appropriate agencies or persons to submit periodic
1357 reports to the courts regarding the defendant's compliance with
1358 the conditions of the release and progress in training, with
1359 copies to all parties.
1360 (2) Upon the filing of an affidavit or statement under oath
1361 by any person that the defendant has failed to comply with the
1362 conditions of release, that the defendant's condition has
1363 deteriorated, or that the release conditions should be modified,

1364 the court shall hold a hearing within 7 days after receipt of the
1365 affidavit or statement under oath. With notice to the court, the
1366 agency may detain a defendant in a forensic facility until the
1367 hearing occurs. After the hearing, the court may modify the
1368 release conditions. The court may also order that the defendant
1369 be placed into more appropriate programs for further training or
1370 may order the defendant to be committed ~~returned~~ to a forensic
1371 facility ~~involuntary residential services of the department~~ if it
1372 is found, after the appointment and report of experts, that the
1373 defendant meets the criteria for placement in a forensic facility
1374 ~~involuntary residential services~~.
1375 (3) If at any time it is determined after a hearing that
1376 the defendant conditionally released under subsection (1) no
1377 longer requires court-supervised followup care, the court shall
1378 terminate its jurisdiction in the cause and discharge the
1379 defendant.
1380 Section 23. Subsection (1) of section 921.137, Florida
1381 Statutes, is amended to read:
1382 921.137 Imposition of the death sentence upon a ~~mentally~~
1383 ~~retarded~~ defendant with mental retardation prohibited.--
1384 (1) As used in this section, the term "mental retardation"
1385 means significantly subaverage general intellectual functioning
1386 existing concurrently with deficits in adaptive behavior and
1387 manifested during the period from conception to age 18. The term
1388 "significantly subaverage general intellectual functioning," for
1389 the purpose of this section, means performance that is two or
1390 more standard deviations from the mean score on a standardized
1391 intelligence test specified in the rules of the Agency for
1392 Persons with Disabilities ~~Department of Children and Family~~

1393 ~~Services~~. The term "adaptive behavior," for the purpose of this
1394 definition, means the effectiveness or degree with which an
1395 individual meets the standards of personal independence and
1396 social responsibility expected of his or her age, cultural group,
1397 and community. The Agency for Persons with Disabilities
1398 ~~Department of Children and Family Services~~ shall adopt rules to
1399 specify the standardized intelligence tests as provided in this
1400 subsection.
1401 Section 24. Paragraphs (d), (e), (g), and (h) of subsection
1402 (1), subsections (2), (3), and (4), paragraph (b) of subsection
1403 (5), and paragraph (a) of subsection (6) of section 985.223,
1404 Florida Statutes, are amended to read:
1405 985.223 Incompetency in juvenile delinquency cases.--
1406 (1) If, at any time prior to or during a delinquency case,
1407 the court has reason to believe that the child named in the
1408 petition may be incompetent to proceed with the hearing, the
1409 court on its own motion may, or on the motion of the child's
1410 attorney or state attorney must, stay all proceedings and order
1411 an evaluation of the child's mental condition.
1412 (d) For incompetency evaluations related to mental illness,
1413 the Department of Children and Family Services shall maintain and
1414 annually provide the courts with a list of available mental
1415 health professionals who have completed a training program
1416 approved by the Department of Children and Family Services to
1417 perform the evaluations.
1418 (e) For incompetency evaluations related to mental
1419 retardation or autism, the court shall order the Agency for
1420 Persons with Disabilities ~~Developmental Disabilities Program~~
1421 ~~Office within the Department of Children and Family Services~~ to

1422 examine the child to determine if the child meets the definition
1423 of "retardation" or "autism" in s. 393.063 and, if so, whether
1424 the child is competent to proceed with delinquency proceedings.
1425 (g) Immediately upon the filing of the court order finding
1426 a child incompetent to proceed, the clerk of the court shall
1427 notify the Department of Children and Family Services and the
1428 Agency for Persons with Disabilities and fax or hand deliver to
1429 the department and to the agency ~~of Children and Family Services~~
1430 a referral packet that ~~which~~ includes, at a minimum, the court
1431 order, the charging documents, the petition, and the court-
1432 appointed evaluator's reports.
1433 (h) After placement of the child in the appropriate
1434 setting, the Department of Children and Family Services in
1435 consultation with the Agency for Persons with Disabilities, as
1436 appropriate, must, within 30 days after placement of ~~the~~
1437 ~~Department of Children and Family Services places~~ the child,
1438 prepare and submit to the court a treatment or training plan for
1439 the child's restoration of competency. A copy of the ~~treatment~~
1440 plan must be served upon the child's attorney, the state
1441 attorney, and the attorneys representing the Department of
1442 Juvenile Justice.
1443 (2) A child ~~who is mentally ill or retarded,~~ who is
1444 adjudicated incompetent to proceed, and who has committed a
1445 delinquent act or violation of law, either of which would be a
1446 felony if committed by an adult, must be committed to the
1447 Department of Children and Family Services for treatment or
1448 training. A child who has been adjudicated incompetent to proceed
1449 because of age or immaturity, or for any reason other than for
1450 mental illness or retardation or autism, must not be committed to

1451 the department or to the Department of Children and Family
1452 Services for restoration-of-competency treatment or training
1453 services. For purposes of this section, a child who has committed
1454 a delinquent act or violation of law, either of which would be a
1455 misdemeanor if committed by an adult, may not be committed to the
1456 department or to the Department of Children and Family Services
1457 for restoration-of-competency treatment or training services.
1458 (3) If the court finds that a child has mental illness,
1459 mental retardation, or autism ~~is mentally ill or retarded~~ and
1460 adjudicates the child incompetent to proceed, the court must also
1461 determine whether the child meets the criteria for secure
1462 placement. A child may be placed in a secure facility or program
1463 if the court makes a finding by clear and convincing evidence
1464 that:
1465 (a) The child has mental illness, mental retardation, or
1466 autism ~~is mentally ill~~ and because of the mental illness, mental
1467 retardation, or autism~~; or the child is mentally retarded and~~
1468 ~~because of the mental retardation~~:
1469 1. The child is manifestly incapable of surviving with the
1470 help of willing and responsible family or friends, including
1471 available alternative services, and without treatment or training
1472 the child is likely to either suffer from neglect or refuse to
1473 care for self, and such neglect or refusal poses a real and
1474 present threat of substantial harm to the child's well-being; or
1475 2. There is a substantial likelihood that in the near
1476 future the child will inflict serious bodily harm on self or
1477 others, as evidenced by recent behavior causing, attempting, or
1478 threatening such harm; and
1479 (b) All available less restrictive alternatives, including

1480 treatment or training in community residential facilities or
1481 community settings which would offer an opportunity for
1482 improvement of the child's condition, are inappropriate.
1483 (4) A child who is determined to have mental retardation or
1484 autism ~~be mentally ill or retarded~~, who has been adjudicated
1485 incompetent to proceed, and who meets the criteria set forth in
1486 subsection (3), must be committed to the Department of Children
1487 and Family Services~~,~~ and receive treatment or training ~~the~~
1488 ~~Department of Children and Family Services must treat or train~~
1489 ~~the child~~ in a secure facility or program that ~~which~~ is the least
1490 restrictive alternative consistent with public safety. Any
1491 placement of a child to a secure residential program must be
1492 separate from adult forensic programs. If the child attains
1493 competency, then custody, case management, and supervision of the
1494 child will be transferred to the department in order to continue
1495 delinquency proceedings; however, the court retains authority to
1496 order the Department of Children and Family Services to provide
1497 continued treatment or training to maintain competency.
1498 (a) A child adjudicated incompetent due to mental
1499 retardation or autism may be ordered into a secure program or
1500 facility designated by the Department of Children and Family
1501 Services for ~~retarded~~ children with mental retardation or autism.
1502 (b) A child adjudicated incompetent due to mental illness
1503 may be ordered into a secure program or facility designated by
1504 the Department of Children and Family Services for ~~mentally ill~~
1505 children have mental illnesses.
1506 (c) Whenever a child is placed in a secure residential
1507 facility, the department will provide transportation to the
1508 secure residential facility for admission and from the secure

1509 residential facility upon discharge.
1510 (d) The purpose of the treatment or training is the
1511 restoration of the child's competency to proceed.
1512 (e) The service provider must file a written report with
1513 the court pursuant to the applicable Florida Rules of Juvenile
1514 Procedure not later than 6 months after the date of commitment,
1515 or at the end of any period of extended treatment or training,
1516 and at any time the Department of Children and Family Services,
1517 through its service provider determines the child has attained
1518 competency or no longer meets the criteria for secure placement,
1519 or at such shorter intervals as ordered by the court. A copy of a
1520 written report evaluating the child's competency must be filed by
1521 the provider with the court and with the state attorney, the
1522 child's attorney, the department, and the Department of Children
1523 and Family Services.
1524 (5)
1525 (b) Whenever the provider files a report with the court
1526 informing the court that the child will never become competent to
1527 proceed, the Department of Children and Family Services will
1528 develop a discharge plan for the child prior to any hearing
1529 determining whether the child will ever become competent to
1530 proceed and send the~~. The Department of Children and Family~~
1531 ~~Services must send the proposed discharge~~ plan to the court, the
1532 state attorney, the child's attorney, and the attorneys
1533 representing the Department of Juvenile Justice. The provider
1534 will continue to provide services to the child until the court
1535 issues the order finding the child will never become competent to
1536 proceed.
1537 (6)(a) If a child is determined to have mental illness,

1538 mental retardation, or autism ~~be mentally ill or retarded~~ and is
1539 found to be incompetent to proceed but does not meet the criteria
1540 set forth in subsection (3), the court shall commit the child to
1541 the Department of Children and Family Services and shall order
1542 the Department of Children and Family Services to provide
1543 appropriate treatment and training in the community. The purpose
1544 of the treatment or training is the restoration of the child's
1545 competency to proceed.
1546 Section 25. Paragraph (b) of subsection (14) of section
1547 287.057, Florida Statutes, is amended to read:
1548 287.057 Procurement of commodities or contractual
1549 services.--
1550 (14)
1551 (b) Notwithstanding paragraph (a), the Department of
1552 Children and Family Services may enter into agreements, not to
1553 exceed 20 years, with a private provider to finance, design, and
1554 construct a forensic treatment facility, as defined in s.
1555 916.106(10)~~(8)~~, of at least 200 beds and to operate all aspects
1556 of daily operations within the forensic treatment facility. The
1557 selected contractor is authorized to sponsor the issuance of tax-
1558 exempt certificates of participation or other securities to
1559 finance the project, and the state is authorized to enter into a
1560 lease-purchase agreement for the forensic treatment facility.
1561 This paragraph expires July 1, 2006.
1562 Section 26. Paragraph (r) of subsection (3) of section
1563 408.036, Florida Statutes, is amended to read:
1564 408.036 Projects subject to review; exemptions.--
1565 (3) EXEMPTIONS.--Upon request, the following projects are
1566 subject to exemption from the provisions of subsection (1):

1567 (r) For beds in state mental health treatment facilities
1568 operated under s. 394.455(30) and state mental health forensic
1569 facilities operated under chapter 916 ~~s. 916.106(8)~~.
1570 Section 27. Paragraph (a) of subsection (4) of section
1571 943.0585, Florida Statutes, is amended to read:
1572 943.0585 Court-ordered expunction of criminal history
1573 records.--The courts of this state have jurisdiction over their
1574 own procedures, including the maintenance, expunction, and
1575 correction of judicial records containing criminal history
1576 information to the extent such procedures are not inconsistent
1577 with the conditions, responsibilities, and duties established by
1578 this section. Any court of competent jurisdiction may order a
1579 criminal justice agency to expunge the criminal history record of
1580 a minor or an adult who complies with the requirements of this
1581 section. The court shall not order a criminal justice agency to
1582 expunge a criminal history record until the person seeking to
1583 expunge a criminal history record has applied for and received a
1584 certificate of eligibility for expunction pursuant to subsection
1585 (2). A criminal history record that relates to a violation of s.
1586 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
1587 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
1588 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a
1589 violation enumerated in s. 907.041 may not be expunged, without
1590 regard to whether adjudication was withheld, if the defendant was
1591 found guilty of or pled guilty or nolo contendere to the offense,
1592 or if the defendant, as a minor, was found to have committed, or
1593 pled guilty or nolo contendere to committing, the offense as a
1594 delinquent act. The court may only order expunction of a criminal
1595 history record pertaining to one arrest or one incident of

1596 alleged criminal activity, except as provided in this section.
1597 The court may, at its sole discretion, order the expunction of a
1598 criminal history record pertaining to more than one arrest if the
1599 additional arrests directly relate to the original arrest. If the
1600 court intends to order the expunction of records pertaining to
1601 such additional arrests, such intent must be specified in the
1602 order. A criminal justice agency may not expunge any record
1603 pertaining to such additional arrests if the order to expunge
1604 does not articulate the intention of the court to expunge a
1605 record pertaining to more than one arrest. This section does not
1606 prevent the court from ordering the expunction of only a portion
1607 of a criminal history record pertaining to one arrest or one
1608 incident of alleged criminal activity. Notwithstanding any law to
1609 the contrary, a criminal justice agency may comply with laws,
1610 court orders, and official requests of other jurisdictions
1611 relating to expunction, correction, or confidential handling of
1612 criminal history records or information derived therefrom. This
1613 section does not confer any right to the expunction of any
1614 criminal history record, and any request for expunction of a
1615 criminal history record may be denied at the sole discretion of
1616 the court.
1617 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
1618 criminal history record of a minor or an adult which is ordered
1619 expunged by a court of competent jurisdiction pursuant to this
1620 section must be physically destroyed or obliterated by any
1621 criminal justice agency having custody of such record; except
1622 that any criminal history record in the custody of the department
1623 must be retained in all cases. A criminal history record ordered
1624 expunged that is retained by the department is confidential and

1625 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
1626 of the State Constitution and not available to any person or
1627 entity except upon order of a court of competent jurisdiction. A
1628 criminal justice agency may retain a notation indicating
1629 compliance with an order to expunge.
1630 (a) The person who is the subject of a criminal history
1631 record that is expunged under this section or under other
1632 provisions of law, including former s. 893.14, former s. 901.33,
1633 and former s. 943.058, may lawfully deny or fail to acknowledge
1634 the arrests covered by the expunged record, except when the
1635 subject of the record:
1636 1. Is a candidate for employment with a criminal justice
1637 agency;
1638 2. Is a defendant in a criminal prosecution;
1639 3. Concurrently or subsequently petitions for relief under
1640 this section or s. 943.059;
1641 4. Is a candidate for admission to The Florida Bar;
1642 5. Is seeking to be employed or licensed by or to contract
1643 with the Department of Children and Family Services or the
1644 Department of Juvenile Justice or to be employed or used by such
1645 contractor or licensee in a sensitive position having direct
1646 contact with children, the developmentally disabled, the aged, or
1647 the elderly as provided in s. 110.1127(3), s. 393.063, s.
1648 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
1649 409.175(2)(i), s. 415.102(4), chapter 916 ~~s. 916.106(10) and~~
1650 ~~(13)~~, s. 985.407, or chapter 400; or
1651 6. Is seeking to be employed or licensed by the Department
1652 of Education, any district school board, any university
1653 laboratory school, any charter school, any private or parochial

1654 school, or any local governmental entity that licenses child care
1655 facilities.
1656 Section 28. Paragraph (a) of subsection (4) of section
1657 943.059, Florida Statutes, is amended to read:
1658 943.059 Court-ordered sealing of criminal history
1659 records.--The courts of this state shall continue to have
1660 jurisdiction over their own procedures, including the
1661 maintenance, sealing, and correction of judicial records
1662 containing criminal history information to the extent such
1663 procedures are not inconsistent with the conditions,
1664 responsibilities, and duties established by this section. Any
1665 court of competent jurisdiction may order a criminal justice
1666 agency to seal the criminal history record of a minor or an adult
1667 who complies with the requirements of this section. The court
1668 shall not order a criminal justice agency to seal a criminal
1669 history record until the person seeking to seal a criminal
1670 history record has applied for and received a certificate of
1671 eligibility for sealing pursuant to subsection (2). A criminal
1672 history record that relates to a violation of s. 393.135, s.
1673 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
1674 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.
1675 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation
1676 enumerated in s. 907.041 may not be sealed, without regard to
1677 whether adjudication was withheld, if the defendant was found
1678 guilty of or pled guilty or nolo contendere to the offense, or if
1679 the defendant, as a minor, was found to have committed or pled
1680 guilty or nolo contendere to committing the offense as a
1681 delinquent act. The court may only order sealing of a criminal
1682 history record pertaining to one arrest or one incident of

1683 alleged criminal activity, except as provided in this section.
1684 The court may, at its sole discretion, order the sealing of a
1685 criminal history record pertaining to more than one arrest if the
1686 additional arrests directly relate to the original arrest. If the
1687 court intends to order the sealing of records pertaining to such
1688 additional arrests, such intent must be specified in the order. A
1689 criminal justice agency may not seal any record pertaining to
1690 such additional arrests if the order to seal does not articulate
1691 the intention of the court to seal records pertaining to more
1692 than one arrest. This section does not prevent the court from
1693 ordering the sealing of only a portion of a criminal history
1694 record pertaining to one arrest or one incident of alleged
1695 criminal activity. Notwithstanding any law to the contrary, a
1696 criminal justice agency may comply with laws, court orders, and
1697 official requests of other jurisdictions relating to sealing,
1698 correction, or confidential handling of criminal history records
1699 or information derived therefrom. This section does not confer
1700 any right to the sealing of any criminal history record, and any
1701 request for sealing a criminal history record may be denied at
1702 the sole discretion of the court.
1703 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
1704 history record of a minor or an adult which is ordered sealed by
1705 a court of competent jurisdiction pursuant to this section is
1706 confidential and exempt from the provisions of s. 119.07(1) and
1707 s. 24(a), Art. I of the State Constitution and is available only
1708 to the person who is the subject of the record, to the subject's
1709 attorney, to criminal justice agencies for their respective
1710 criminal justice purposes, or to those entities set forth in
1711 subparagraphs (a)1., 4., 5., and 6. for their respective

1712 licensing and employment purposes.
1713 (a) The subject of a criminal history record sealed under
1714 this section or under other provisions of law, including former
1715 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
1716 deny or fail to acknowledge the arrests covered by the sealed
1717 record, except when the subject of the record:
1718 1. Is a candidate for employment with a criminal justice
1719 agency;
1720 2. Is a defendant in a criminal prosecution;
1721 3. Concurrently or subsequently petitions for relief under
1722 this section or s. 943.0585;
1723 4. Is a candidate for admission to The Florida Bar;
1724 5. Is seeking to be employed or licensed by or to contract
1725 with the Department of Children and Family Services or the
1726 Department of Juvenile Justice or to be employed or used by such
1727 contractor or licensee in a sensitive position having direct
1728 contact with children, the developmentally disabled, the aged, or
1729 the elderly as provided in s. 110.1127(3), s. 393.063, s.
1730 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
1731 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916 ~~s.~~
1732 ~~916.106(10) and (13)~~, s. 985.407, or chapter 400; or
1733 6. Is seeking to be employed or licensed by the Department
1734 of Education, any district school board, any university
1735 laboratory school, any charter school, any private or parochial
1736 school, or any local governmental entity that licenses child care
1737 facilities.
1738 Section 29. This act shall take effect upon becoming a law.

Future of Florida's Families Committee

Wednesday, March 28, 2006
10:30 AM – NOON
12 House Office Building

AMENDMENT PACKET

Bill Galvano
Chair

Aaron Bean
Vice Chair

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Future of Florida's Families
2 Committee
3 Representative(s) Sands offered the following:
4
5 **Amendment**
6 Remove line(s) 242 - 244 and insert:
7 Section 2. Subsections (3) and (10) of section 744.1083,
8 Florida Statutes, are amended to read:
9 744.1083 Professional guardian registration.--
10 (3) Registration must include the following:
11 (a) Sufficient information to identify the professional
12 guardian.
13 1. If the professional guardian is a natural person, the
14 name, address, date of birth, and employer identification or
15 social security number of the professional guardian shall be
16 required to identify the guardian.
17 2. ~~(b)~~ If the professional guardian is a partnership, or
18 association, or corporation, the name, address, and ~~date of~~
19 ~~birth of every member, and the~~ employer identification number of
20 the entity shall be required to identify the guardian
21 ~~partnership or association~~.

22 ~~(c) If the professional guardian is a corporation, the~~
23 ~~name, address, and employer identification number of the~~
24 ~~corporation; the name, address, and date of birth of each of its~~
25 ~~directors and officers; the name of its resident agent; and the~~
26 ~~name, address, and date of birth of each person having at least~~
27 ~~a 10-percent interest in the corporation.~~
28 ~~(d) The name, address, date of birth, and employer~~
29 ~~identification number, if applicable, of each person providing~~
30 ~~guardian-delegated financial or personal guardianship services~~
31 ~~for wards.~~
32 (b) ~~(e)~~ Documentation that the bonding and educational
33 requirements of s. 744.1085 have been met.
34 (c) ~~(f)~~ Sufficient information to distinguish a guardian
35 providing guardianship services as a public guardian,
36 individually, through partnership, corporation, or any other
37 business organization.

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Future of Florida's Families
2 Committee
3 Representative(s) Sands offered the following:
4
5 **Amendment**
6 Remove line(s) 1116-1131 and insert:
7 Section 27. Subsections (5), (6), (7), and (8) of section
8 744.708, Florida Statutes, are amended to read:
9 744.708 Reports and standards.--
10 (5)(a) Each office of public guardian shall undergo an
11 independent audit by a qualified certified public accountant
12 ~~shall be performed~~ at least once every 2 years. ~~The audit should~~
13 ~~include an investigation into the practices of the office for~~
14 ~~managing the person and property of the wards.~~ A copy of the
15 audit report shall be submitted to the Statewide Public
16 Guardianship Office.
17 (b) In addition to regular monitoring activities, the
18 Statewide Public Guardianship Office shall conduct an
19 investigation into the practices of each office of public
20 guardian related to the managing of each ward's personal affairs
21 and property. When feasible, the investigation required under

22 this paragraph should be conducted in conjunction with the
23 financial audit of each office.
24 (c) In addition, each ~~the~~ office of public guardian shall
25 be subject to audits or examinations by the Auditor General and
26 the Office of Program Policy Analysis and Government
27 Accountability pursuant to law.
28 (6) A ~~The~~ public guardian shall ensure that each of the
29 guardian's wards is personally visited ~~ward is seen~~ by the
30 public guardian or by one of the guardian's ~~a~~ professional staff
31 ~~person~~ at least once each calendar quarter ~~four times a year~~.
32 During this personal visit, the public guardian or the
33 professional staff person shall assess:
34 (a) The ward's physical appearance and condition.
35 (b) The appropriateness of the ward's current living
36 situation.
37 (c) The need for any additional services and the necessity
38 for continuation of existing services, taking into consideration
39 all aspects of social, psychological, educational, direct
40 service, health, and personal care needs.
41 (7) The ratio for professional staff to wards shall be 1
42 professional to 40 wards. The Statewide Public Guardianship
43 Office may increase or decrease the ratio after consultation
44 with the local public guardian and the chief judge of the
45 circuit court. The basis of the decision to increase or decrease
46 the prescribed ratio shall be reported in the annual report to
47 the Secretary of the Department of Elderly Affairs ~~Governor, the~~
48 ~~President of the Senate, the Speaker of the House of~~
49 ~~Representatives, and the Chief Justice of the Supreme Court~~.
50 ~~(8) The term "professional," for purposes of this part,~~
51 ~~shall not include the public guardian nor the executive director~~

52 ~~of the Statewide Public Guardianship Office. The term~~
53 ~~"professional" shall be limited to those persons who exercise~~
54 ~~direct supervision of individual wards under the direction of~~
55 ~~the public guardian.~~

Bill No. **HB 457**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Future of Florida's Families
2 Committee
3 Representative(s) Sands offered the following:
4
5 **Amendment**
6 Remove line(s) 793 - 798 and insert:
7 guardianship is terminated. A copy of the notice must be
8 served on all

Bill No. **HB 1491**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Future of Florida's Families
2 Committee
3 Representative(s) A. Gibson offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Community Advisory Panel on Foster Care Pilot
8 Program; creation; purpose; panel membership; court and panel
9 duties; administration; evaluation.--
10 (1) There is created the Community Advisory Panel on
11 Foster Care Pilot Program in Duval County. The purpose of the
12 program is to identify educational needs and follow-up
13 strategies for foster children who are 6 through 12 years of age
14 and are enrolled in the Duval County school system. The goal of
15 the program is to ensure that youth who are in foster care will
16 be tested appropriately and placed in an educational environment
17 that optimizes their opportunities for success.
18 (2) The pilot program shall consist of the cooperative
19 efforts of:
20 (a) The Community Advisory Panel on Foster Care, as
21 created under this section;

22 (b) The community-based care lead agency for foster care
23 and adoption in Duval County;
24 (c) The case managers assigned to children in foster
25 care;
26 (d) The Duval County School Board;
27 (e) Nova Southeastern University;
28 (f) The foster care parents of children currently in the
29 foster care system;
30 (g) When possible, the natural parents of children
31 currently in the foster care system; and
32 (h) The circuit court judge hearing a foster care case.
33 (3)(a) The Community Advisory Panel on Foster Care is
34 created in the Fourth Judicial Circuit and shall consist of the
35 chief judge for the circuit, or another judge from the circuit
36 designated by the chief judge who is the lead judge in the area
37 of dependency and adoption, and 15 community volunteers who are
38 community leaders with diverse areas of abilities and expertise.
39 The chief judge, or the judge designated by the chief judge,
40 shall serve as the chair of the panel. The 15 volunteers shall
41 be comprised of:
42 1. Four members appointed by the chief judge, or by the
43 judge designated by the chief judge;
44 2. Four members appointed by the Secretary of the
45 Department of Children and Family Services, or his or her
46 designee;
47 3. Four members appointed by the Duval County School
48 Board; and
49 4. Three members appointed by the guardian ad litem for
50 Duval County.
51 (b) The chief judge, or the judge from the circuit
52 designated by the chief judge, may issue orders and obtain

53 educational information relating to the students who are 6 to 12
54 years of age and are in the foster care system in District IV of
55 the department. Pursuant to the order the panel shall review the
56 academic progress, behavioral issues, and attendance of each
57 student and shall recommend referral of any student for whom the
58 review demonstrates a need for follow-up services. The panel may
59 prioritize referrals by assessing the severity of need and
60 recommending that the most critical needs be met first. A
61 student who is failing may be referred for educational testing,
62 for additional psychological and therapeutic counseling as
63 recommended, or for both, to determine why he or she is failing
64 and what accommodations and remediation are needed.
65 (4) The community-based care lead agency shall provide
66 administrative support for the Community Advisory Panel on
67 Foster Care and for the operation of the pilot program. To help
68 facilitate the duties of the panel, the agency shall employ:
69 (a) A full-time project coordinator who shall assist the
70 student's case manager in identifying resources for educational
71 testing and psychological and therapeutic counseling. In
72 addition, the project coordinator shall oversee the development
73 of an assessment tool that is designed to determine the
74 effectiveness of the pilot program.
75 1. The purpose of the assessment tool is to link systems
76 among providers of educational services, psychological services,
77 and case management services and the court system.
78 2. The entity that designs the assessment tool must,
79 during the first year of the pilot program, undertake the
80 following tasks:
81 a. Discovery. This phase includes meeting with
82 information technology staff from the department, school board
83 staff, and case managers.

84 b. Development. This phase consists of determining the
85 best method for data entry, the best database, and the best data
86 format.
87 c. Implementation. This phase comprises completing,
88 testing, and delivering the assessment tool.
89 d. Maintenance. This phase involves developing a
90 maintenance plan and schedule, after the initiation of the
91 assessment tool.
92 (b) A full-time psychologist who shall provide
93 educational testing and psychological and therapeutic counseling
94 to foster care children and provide advice, research,
95 assessments, and other services to the judges.
96 (5) The project coordinator shall submit an annual report
97 on the pilot program to the chief judge of the Fourth Judicial
98 Circuit, the President of the Senate, the Speaker of the House
99 of Representatives, the State Courts Administrator, and the
100 Secretary of the Department of Children and Family Services.
101 (6) The pilot program expires on July 1, 2009.
102 Section 2. The sum of $300,000 is appropriated from the
103 General Revenue Fund to the Fourth Judicial Circuit Court in
104 Duval County for the 2006-2007 fiscal year, to be used in
105 implementing the Community Advisory Panel on Foster Care Pilot
106 Program created by this act. The chief judge of the Fourth
107 Judicial Circuit shall contract with the community-based care
108 lead agency for foster care and adoption in Duval County for
109 services associated with the administration of the pilot program
110 as provided in this act.
111 Section 3. This act shall take effect July 1, 2006.
112
113 ========== T I T L E A M E N D M E N T ==========
114

Amendment No. 1

115 Delete everything before the enacting clause
116 and insert:
117 A bill to be entitled
118 An act relating to children in foster care; providing for the
119 creation of the Community Advisory Panel on Foster Care Pilot
120 Program in Duval County; providing purposes and goals; providing
121 for cooperative participation by specified entities and
122 individuals; creating the Community Advisory Panel on Foster
123 Care; providing for panel membership; providing for a
124 chairperson; providing duties of specified judges and panel
125 members; providing for administration by a community-based care
126 lead agency; providing for hiring specified personnel; requiring
127 development of an assessment tool to determine the effectiveness
128 of the program; requiring an annual report; providing for future
129 expiration of the pilot program; providing an appropriation;
130 requiring a contract with the community-based care lead agency;
131 providing an effective date.

PCB FFF 06-02

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

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1 Council/Committee hearing bill: Future of Florida's Families
2 Committee and Representative Galvano offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6
7 Section 1. Paragraphs (a) and (c) of subsection (1) of
8 section 61.13, Florida Statutes, are amended to read:
9 61.13 Custody and support of children; visitation rights;
10 power of court in making orders.--
11 (1)(a) In a proceeding under this chapter, the court may
12 at any time order either or both parents who owe a duty of
13 support to a child to pay support in accordance with the child
14 support guidelines in s. 61.30. The court initially entering an
15 order requiring one or both parents to make child support
16 payments shall have continuing jurisdiction after the entry of
17 the initial order to modify the amount and terms and conditions
18 of the child support payments when the modification is found
19 necessary by the court in the best interests of the child, when
20 the child reaches majority, or when there is a substantial
21 change in the circumstances of the parties. The court initially
22 entering a child support order shall also have continuing

23 jurisdiction to require the obligee to report to the court on
24 terms prescribed by the court regarding the disposition of the
25 child support payments.
26 (c) To the extent necessary to protect an award of child
27 support, the court may order either or both parents who owe a
28 duty of support to a child ~~the obligor~~ to purchase or maintain a
29 life insurance policy or a bond~~,~~ or to otherwise secure the
30 child support award with any other assets which may be suitable
31 for that purpose, depending upon the equities of the cause.
32 Section 2. Section 61.30, Florida Statutes, is amended to
33 read:
34 61.30 Child support guidelines; guidelines schedule;
35 retroactive child support.--
36 (1)(a) The child support guideline amount as determined
37 by this section presumptively establishes the amount the trier
38 of fact shall order as child support in an initial proceeding
39 for such support or in a proceeding for modification of an
40 existing order for such support, whether the proceeding arises
41 under this or another chapter. The trier of fact may order
42 payment of child support which varies, plus or minus 5 percent,
43 from the guideline amount, after considering all relevant
44 factors, including the needs of the child or children, age,
45 station in life, standard of living, and the financial status
46 and ability of each parent. The trier of fact may order payment
47 of child support in an amount which varies more than 5 percent
48 from such guideline amount only upon a written finding
49 explaining why ordering payment of such guideline amount would
50 be unjust or inappropriate. Notwithstanding the variance
51 limitations of this section, the trier of fact shall order
52 payment of child support which varies from the guideline amount
53 as provided in paragraph (11)(b) whenever any of the children

54 are required by court order or mediation agreement to spend a
55 substantial amount of time with the primary and secondary
56 residential parents. This requirement applies to any living
57 arrangement, whether temporary or permanent.
58 (b) The guidelines may provide the basis for proving a
59 substantial change in circumstances upon which a modification of
60 an existing order may be granted. However, the difference
61 between the existing monthly obligation and the amount provided
62 for under the guidelines shall be at least 15 percent or $50,
63 whichever amount is greater, before the court may find that the
64 guidelines provide a substantial change in circumstances.
65 (c) For each support order reviewed by the department as
66 required by s. 409.2564(11), if the amount of the child support
67 award under the order differs by at least 10 percent but not
68 less than $25 from the amount that would be awarded under s.
69 61.30, the department shall seek to have the order modified and
70 any modification shall be made without a requirement for proof
71 or showing of a change in circumstances.
72 (2) Income shall be determined on a monthly basis for <u>each</u>
73 <u>parent</u> ~~the obligor and for the obligee~~ as follows:
74 (a) Gross income shall include, but is not limited to, the
75 following ~~items~~:
76 1. Salary or wages.
77 2. Bonuses, commissions, allowances, overtime, tips, and
78 other similar payments.
79 3. Business income from sources such as self-employment,
80 partnership, close corporations, and independent contracts.
81 "Business income" means gross receipts minus ordinary and
82 necessary expenses required to produce income.
83 4. Disability benefits.
84 5. All workers' compensation benefits and settlements.

85 6. Unemployment compensation.
86 7. Pension, retirement, or annuity payments.
87 8. Social security benefits.
88 9. Spousal support received from a previous marriage or
89 court ordered in the marriage before the court.
90 10. Interest and dividends.
91 11. Rental income, which is gross receipts minus ordinary
92 and necessary expenses required to produce the income.
93 12. Income from royalties, trusts, or estates.
94 13. Reimbursed expenses or in kind payments to the extent
95 that they reduce living expenses.
96 14. Gains derived from dealings in property, unless the
97 gain is nonrecurring.
98 (b)1. Income on a monthly basis shall be imputed to an
99 unemployed or underemployed parent when such employment or
100 underemployment is found by the court to be voluntary on that
101 parent's part, absent a finding of fact by the court of physical
102 or mental incapacity or other circumstances over which the
103 parent has no control. In the event of such voluntary
104 unemployment or underemployment, the employment potential and
105 probable earnings level of the parent shall be determined based
106 upon his or her recent work history, occupational
107 qualifications, and prevailing earnings level in the community
108 as provided in this paragraph; however, the court may refuse to
109 impute income to a primary residential parent if the court finds
110 it necessary for the parent to stay home with the child who is
111 the subject of the child support calculation to care for that
112 child.
113 2. In order for the court to impute income under
114 subparagraph 1., the court must make specific findings of fact
115 consistent with the requirements of this paragraph. The party

116 seeking to impute income has the burden to present competent,
117 substantial evidence:
118 a. That the unemployment or underemployment is voluntary;
119 and
120 b. That identifies the amount and source of the imputed
121 income, through evidence of available income from employment for
122 which the party is suitably qualified by education, experience,
123 current licensure, or geographic location, with due
124 consideration being given to the parties' current existing
125 parental obligations and time-sharing plan and their historical
126 compliance with the plan.
127 3. A rebuttable presumption shall exist, which entitles
128 the court to impute Florida minimum wage to a parent if no other
129 evidentiary basis or mechanism for establishing a parent's gross
130 income is available, absent a finding by the court that:
131 a. The parent has a physical or mental incapacity that
132 renders the parent unemployable or underemployed;
133 b. The parent needs to stay home with a child who is the
134 subject of the child support calculation proceedings and care
135 for that child, thereby preventing the parent's employment or
136 rendering the parent underemployed; or
137 c. There are other circumstances over which the parent has
138 no control, except for penal incarceration, which prevents the
139 parent from earning an income.
140
141 If evidence is produced that demonstrates that the parent is a
142 resident of another state, the state minimum wage applicable to
143 the parent's state of residence shall apply if it is greater
144 than the Florida minimum wage. In the absence of a state minimum
145 wage or if the other state's minimum wage is lower than the

146 Florida minimum wage, the federal minimum wage as determined by
147 the United States Department of Labor shall apply.
148 4. Income may not be imputed beyond minimum wage
149 requirements in subparagraph 3. based upon:
150 a. Income records that are more than 5 years old at the
151 time of the hearing or trial at which imputation is sought.
152 b. Income at a level that a party has not previously ever
153 earned in the past, unless recently degreed, licensed,
154 certified, relicensed, or recertified and thus qualified for,
155 subject to geographic location, with due consideration being
156 given to the parties' current existing parental obligations and
157 time-sharing plan and their historical compliance with the plan.
158 (c) Public assistance as defined in s. 409.2554 shall be
159 excluded from gross income.
160 (3)(a) Net income is obtained by subtracting allowable
161 deductions from gross income. Allowable deductions shall
162 include:
163 (a) Federal, state, and local income tax deductions,
164 adjusted for actual filing status and allowable dependents and
165 income tax liabilities.
166 (b) Federal insurance contributions or self-employment
167 tax.
168 (c) Mandatory union dues.
169 (d) Mandatory retirement payments.
170 (e) Health insurance payments, excluding payments for
171 coverage of the minor child.
172 (f) Court-ordered support for other children which is
173 actually paid.
174 (g) Spousal support paid pursuant to a court order from a
175 previous marriage or the marriage before the court.

176 (4) Net income for each parent ~~the obligor and net income~~
177 ~~for the obligee~~ shall be computed by subtracting allowable
178 deductions from gross income.
179 (5) Net income for each parent ~~the obligor and net income~~
180 ~~for the obligee~~ shall be added together for a combined net
181 income.
182 (6) The following schedules shall be applied to the
183 combined net income to determine the minimum child support need:
184

Combined Monthly Net Available Income	Child or Children					
	One	Two	Three	Four	Five	Six
650.00	74	75	75	76	77	78
700.00	119	120	121	123	124	125
750.00	164	166	167	169	171	173
800.00	190	211	213	216	218	220
850.00	202	257	259	262	265	268
900.00	213	302	305	309	312	315
950.00	224	347	351	355	359	363
1000.00	235	365	397	402	406	410
1050.00	246	382	443	448	453	458

1100.00	258	400	489	495	500	505
1150.00	269	417	522	541	547	553
1200.00	280	435	544	588	594	600
1250.00	290	451	565	634	641	648
1300.00	300	467	584	659	688	695
1350.00	310	482	603	681	735	743
1400.00	320	498	623	702	765	790
1450.00	330	513	642	724	789	838
1500.00	340	529	662	746	813	869
1550.00	350	544	681	768	836	895
1600.00	360	560	701	790	860	920
1650.00	370	575	720	812	884	945
1700.00	380	591	740	833	907	971
1750.00	390	606	759	855	931	996
1800.00	400	622	779	877	955	1022

211	1850.00	410	638	798	900	979	1048
212	1900.00	421	654	818	923	1004	1074
213	1950.00	431	670	839	946	1029	1101
214	2000.00	442	686	859	968	1054	1128
215	2050.00	452	702	879	991	1079	1154
216	2100.00	463	718	899	1014	1104	1181
217	2150.00	473	734	919	1037	1129	1207
218	2200.00	484	751	940	1060	1154	1234
219	2250.00	494	767	960	1082	1179	1261
220	2300.00	505	783	980	1105	1204	1287
221	2350.00	515	799	1000	1128	1229	1314
222	2400.00	526	815	1020	1151	1254	1340
223	2450.00	536	831	1041	1174	1279	1367
224	2500.00	547	847	1061	1196	1304	1394
225	2550.00	557	864	1081	1219	1329	1420
	2600.00	568	880	1101	1242	1354	1447

2650.00	578	896	1121	1265	1379	1473
2700.00	588	912	1141	1287	1403	1500
2750.00	597	927	1160	1308	1426	1524
2800.00	607	941	1178	1328	1448	1549
2850.00	616	956	1197	1349	1471	1573
2900.00	626	971	1215	1370	1494	1598
2950.00	635	986	1234	1391	1517	1622
3000.00	644	1001	1252	1412	1540	1647
3050.00	654	1016	1271	1433	1563	1671
3100.00	663	1031	1289	1453	1586	1695
3150.00	673	1045	1308	1474	1608	1720
3200.00	682	1060	1327	1495	1631	1744
3250.00	691	1075	1345	1516	1654	1769
3300.00	701	1090	1364	1537	1677	1793
3350.00	710	1105	1382	1558	1700	1818

242	3400.00	720	1120	1401	1579	1723	1842
243	3450.00	729	1135	1419	1599	1745	1867
244	3500.00	738	1149	1438	1620	1768	1891
245	3550.00	748	1164	1456	1641	1791	1915
246	3600.00	757	1179	1475	1662	1814	1940
247	3650.00	767	1194	1493	1683	1837	1964
248	3700.00	776	1208	1503	1702	1857	1987
249	3750.00	784	1221	1520	1721	1878	2009
250	3800.00	793	1234	1536	1740	1899	2031
251	3850.00	802	1248	1553	1759	1920	2053
252	3900.00	811	1261	1570	1778	1940	2075
253	3950.00	819	1275	1587	1797	1961	2097
254	4000.00	828	1288	1603	1816	1982	2119
255	4050.00	837	1302	1620	1835	2002	2141
256	4100.00	846	1315	1637	1854	2023	2163
	4150.00	854	1329	1654	1873	2044	2185

4200.00	863	1342	1670	1892	2064	2207
4250.00	872	1355	1687	1911	2085	2229
4300.00	881	1369	1704	1930	2106	2251
4350.00	889	1382	1721	1949	2127	2273
4400.00	898	1396	1737	1968	2147	2295
4450.00	907	1409	1754	1987	2168	2317
4500.00	916	1423	1771	2006	2189	2339
4550.00	924	1436	1788	2024	2209	2361
4600.00	933	1450	1804	2043	2230	2384
4650.00	942	1463	1821	2062	2251	2406
4700.00	951	1477	1838	2081	2271	2428
4750.00	959	1490	1855	2100	2292	2450
4800.00	968	1503	1871	2119	2313	2472
4850.00	977	1517	1888	2138	2334	2494
4900.00	986	1530	1905	2157	2354	2516

	4950.00	993	1542	1927	2174	2372	2535
273							
	5000.00	1000	1551	1939	2188	2387	2551
274							
	5050.00	1006	1561	1952	2202	2402	2567
275							
	5100.00	1013	1571	1964	2215	2417	2583
276							
	5150.00	1019	1580	1976	2229	2432	2599
277							
	5200.00	1025	1590	1988	2243	2447	2615
278							
	5250.00	1032	1599	2000	2256	2462	2631
279							
	5300.00	1038	1609	2012	2270	2477	2647
280							
	5350.00	1045	1619	2024	2283	2492	2663
281							
	5400.00	1051	1628	2037	2297	2507	2679
282							
	5450.00	1057	1638	2049	2311	2522	2695
283							
	5500.00	1064	1647	2061	2324	2537	2711
284							
	5550.00	1070	1657	2073	2338	2552	2727
285							
	5600.00	1077	1667	2085	2352	2567	2743
286							
	5650.00	1083	1676	2097	2365	2582	2759
287							
	5700.00	1089	1686	2109	2379	2597	2775

5750.00	1096	1695	2122	2393	2612	2791
5800.00	1102	1705	2134	2406	2627	2807
5850.00	1107	1713	2144	2418	2639	2820
5900.00	1111	1721	2155	2429	2651	2833
5950.00	1116	1729	2165	2440	2663	2847
6000.00	1121	1737	2175	2451	2676	2860
6050.00	1126	1746	2185	2462	2688	2874
6100.00	1131	1754	2196	2473	2700	2887
6150.00	1136	1762	2206	2484	2712	2900
6200.00	1141	1770	2216	2495	2724	2914
6250.00	1145	1778	2227	2506	2737	2927
6300.00	1150	1786	2237	2517	2749	2941
6350.00	1155	1795	2247	2529	2761	2954
6400.00	1160	1803	2258	2540	2773	2967
6450.00	1165	1811	2268	2551	2785	2981

304	6500.00	1170	1819	2278	2562	2798	2994
305	6550.00	1175	1827	2288	2573	2810	3008
306	6600.00	1179	1835	2299	2584	2822	3021
307	6650.00	1184	1843	2309	2595	2834	3034
308	6700.00	1189	1850	2317	2604	2845	3045
309	6750.00	1193	1856	2325	2613	2854	3055
310	6800.00	1196	1862	2332	2621	2863	3064
311	6850.00	1200	1868	2340	2630	2872	3074
312	6900.00	1204	1873	2347	2639	2882	3084
313	6950.00	1208	1879	2355	2647	2891	3094
314	7000.00	1212	1885	2362	2656	2900	3103
315	7050.00	1216	1891	2370	2664	2909	3113
316	7100.00	1220	1897	2378	2673	2919	3123
317	7150.00	1224	1903	2385	2681	2928	3133
318	7200.00	1228	1909	2393	2690	2937	3142
	7250.00	1232	1915	2400	2698	2946	3152

7300.00	1235	1921	2408	2707	2956	3162
7350.00	1239	1927	2415	2716	2965	3172
7400.00	1243	1933	2423	2724	2974	3181
7450.00	1247	1939	2430	2733	2983	3191
7500.00	1251	1945	2438	2741	2993	3201
7550.00	1255	1951	2446	2750	3002	3211
7600.00	1259	1957	2453	2758	3011	3220
7650.00	1263	1963	2461	2767	3020	3230
7700.00	1267	1969	2468	2775	3030	3240
7750.00	1271	1975	2476	2784	3039	3250
7800.00	1274	1981	2483	2792	3048	3259
7850.00	1278	1987	2491	2801	3057	3269
7900.00	1282	1992	2498	2810	3067	3279
7950.00	1286	1998	2506	2818	3076	3289
8000.00	1290	2004	2513	2827	3085	3298

	8050.00	1294	2010	2521	2835	3094	3308
335							
	8100.00	1298	2016	2529	2844	3104	3318
336							
	8150.00	1302	2022	2536	2852	3113	3328
337							
	8200.00	1306	2028	2544	2861	3122	3337
338							
	8250.00	1310	2034	2551	2869	3131	3347
339							
	8300.00	1313	2040	2559	2878	3141	3357
340							
	8350.00	1317	2046	2566	2887	3150	3367
341							
	8400.00	1321	2052	2574	2895	3159	3376
342							
	8450.00	1325	2058	2581	2904	3168	3386
343							
	8500.00	1329	2064	2589	2912	3178	3396
344							
	8550.00	1333	2070	2597	2921	3187	3406
345							
	8600.00	1337	2076	2604	2929	3196	3415
346							
	8650.00	1341	2082	2612	2938	3205	3425
347							
	8700.00	1345	2088	2619	2946	3215	3435
348							
	8750.00	1349	2094	2627	2955	3224	3445
349							
	8800.00	1352	2100	2634	2963	3233	3454

8850.00	1356	2106	2642	2972	3242	3464
8900.00	1360	2111	2649	2981	3252	3474
8950.00	1364	2117	2657	2989	3261	3484
9000.00	1368	2123	2664	2998	3270	3493
9050.00	1372	2129	2672	3006	3279	3503
9100.00	1376	2135	2680	3015	3289	3513
9150.00	1380	2141	2687	3023	3298	3523
9200.00	1384	2147	2695	3032	3307	3532
9250.00	1388	2153	2702	3040	3316	3542
9300.00	1391	2159	2710	3049	3326	3552
9350.00	1395	2165	2717	3058	3335	3562
9400.00	1399	2171	2725	3066	3344	3571
9450.00	1403	2177	2732	3075	3353	3581
9500.00	1407	2183	2740	3083	3363	3591
9550.00	1411	2189	2748	3092	3372	3601

9600.00	1415	2195	2755	3100	3381	3610
9650.00	1419	2201	2763	3109	3390	3620
9700.00	1422	2206	2767	3115	3396	3628
9750.00	1425	2210	2772	3121	3402	3634
9800.00	1427	2213	2776	3126	3408	3641
9850.00	1430	2217	2781	3132	3414	3647
9900.00	1432	2221	2786	3137	3420	3653
9950.00	1435	2225	2791	3143	3426	3659
10000.00	1437	2228	2795	3148	3432	3666

For combined monthly available income less than the amount set out on the above schedules, the parent should be ordered to pay a child support amount, determined on a case-by-case basis, to establish the principle of payment and lay the basis for increased orders should the parent's income increase in the future. For combined monthly available income greater than the amount set out in the above schedules, the obligation shall be the minimum amount of support provided by the guidelines schedule plus the following percentages multiplied by the amount of income over $10,000:

Child or Children

One	Two	Three	Four	Five	Six
5.0%	7.5%	9.5%	11.0%	12.0%	12.5%

(7) Child care costs incurred on behalf of the children due to employment, job search, or education calculated to result in employment or to enhance income of current employment of either parent shall be ~~reduced by 25 percent and then shall be~~ added to the basic obligation. After the ~~adjusted~~ child care costs are added to the basic obligation, any moneys prepaid by the noncustodial parent for child care costs for the child or children of this action shall be deducted from that noncustodial parent's child support obligation for that child or those children. Child care costs shall not exceed the level required to provide quality care from a licensed source for the children.

(8) Health insurance costs resulting from coverage ordered pursuant to s. 61.13(1)(b), and any noncovered medical, dental, and prescription medication expenses of the child, shall be added to the basic obligation unless these expenses have been ordered to be separately paid on a percentage basis. After the health insurance costs are added to the basic obligation, any moneys prepaid by the noncustodial parent for health-related costs for the child or children of this action shall be deducted from that noncustodial parent's child support obligation for that child or those children.

(9) Each parent's percentage share of the child support need shall be determined by dividing each parent's net <u>monthly</u> income by the combined net <u>monthly</u> income.

(10) <u>The total minimum child support need shall be determined by adding child care costs and health insurance costs to the minimum child support need.</u> Each parent's actual dollar

416 share of the total minimum child support need shall be
417 determined by multiplying the minimum child support need by each
418 parent's percentage share of the combined monthly net income.
419 11)(a) The court may adjust the total minimum child support
420 award, or either or both parents' share of the minimum child
421 support award, based upon the following deviation factors
422 ~~considerations~~:
423 1. Extraordinary medical, psychological, educational, or
424 dental expenses.
425 2. Independent income of the child, not to include moneys
426 received by a child from supplemental security income.
427 3. The payment of support for a parent which regularly has
428 been paid and for which there is a demonstrated need.
429 4. Seasonal variations in one or both parents' incomes or
430 expenses.
431 5. The age of the child, taking into account the greater
432 needs of older children.
433 6. Special needs, such as costs that may be associated
434 with the disability of a child, that have traditionally been met
435 within the family budget even though the fulfilling of those
436 needs will cause the support to exceed the presumptive amount
437 established by the ~~proposed~~ guidelines.
438 7. Total available assets of the obligee, obligor, and the
439 child.
440 8. The impact of the Internal Revenue Service dependency
441 exemption and waiver of that exemption and the impact of any
442 federal child care tax credit. The court may order the primary
443 residential parent to execute a waiver of the Internal Revenue
444 Service dependency exemption if the noncustodial parent is
445 current in support payments.

446 9. When application of the child support guidelines
447 requires a person to pay another person more than 55 percent of
448 his or her gross income for a child support obligation for
449 current support resulting from a single support order.
450 10. The particular parenting ~~shared parental~~ arrangement,
451 such as where the child spends a significant amount of time, but
452 less than 20 ~~40~~ percent of the overnights, with the noncustodial
453 parent, thereby reducing the financial expenditures incurred by
454 the primary residential parent; or the refusal of the
455 noncustodial parent to become involved in the activities of the
456 child.
457 11. Any other adjustment which is needed to achieve an
458 equitable result which may include, but not be limited to, a
459 reasonable and necessary existing expense or debt. Such expense
460 or debt may include, but is not limited to, a reasonable and
461 necessary expense or debt which the parties jointly incurred
462 during the marriage.
463 (b) Whenever a particular parenting ~~shared parental~~
464 arrangement provides that each child spend a substantial amount
465 of time with each parent, the court shall adjust any award of
466 child support, as follows:
467 1. In accordance with subsections (9) and (10), calculate
468 the amount of support obligation apportioned to the noncustodial
469 parent without including day care and health insurance costs in
470 the calculation and multiply the amount by 1.5.
471 2. In accordance with subsections (9) and (10), calculate
472 the amount of support obligation apportioned to the custodial
473 parent without including day care and health insurance costs in
474 the calculation and multiply the amount by 1.5.
475 3. Calculate the percentage of overnight stays the child
476 spends with each parent.

477 4. Multiply the noncustodial parent's support obligation
478 as calculated in subparagraph 1. by the percentage of the
479 custodial parent's overnight stays with the child as calculated
480 in subparagraph 3.
481 5. Multiply the custodial parent's support obligation as
482 calculated in subparagraph 2. by the percentage of the
483 noncustodial parent's overnight stays with the child as
484 calculated in subparagraph 3.
485 6. The difference between the amounts calculated in
486 subparagraphs 4. and 5. shall be the monetary transfer necessary
487 between the custodial and noncustodial parents for the care of
488 the child, subject to an adjustment for day care and health
489 insurance expenses.
490 7. Pursuant to subsections (7) and (8), calculate the net
491 amounts owed by the custodial and noncustodial parents for the
492 expenses incurred for day care and health insurance coverage for
493 the child. ~~Day care shall be calculated without regard to the~~
494 ~~25 percent reduction applied by subsection (7).~~
495 8. Adjust the support obligation owed by the custodial or
496 noncustodial parent pursuant to subparagraph 6. by crediting or
497 debiting the amount calculated in subparagraph 7. This amount
498 represents the child support which must be exchanged between the
499 custodial and noncustodial parents.
500 9. The court may deviate from the child support amount
501 calculated pursuant to subparagraph 8. based upon the
502 considerations set forth in paragraph (a), as well as the
503 ~~custodial parent's~~ low income <u>of either parent or the inability</u>
504 <u>of either parent</u> ~~and ability~~ to maintain the basic necessities
505 of the home for the child, the likelihood that the noncustodial
506 parent will actually exercise the visitation granted by the

507 court, and whether all of the children are exercising the same
508 parenting ~~shared parental~~ arrangement.
509 10. For purposes of adjusting any award of child support
510 under this paragraph, "substantial amount of time" means that
511 the noncustodial parent exercises visitation at least 20 ~~40~~
512 percent of the overnights of the year.
513 (c) A noncustodial parent's failure to exercise court-
514 ordered or agreed visitation not caused by the custodial parent
515 which resulted in the adjustment of the amount of child support
516 pursuant to subparagraph (a)10. or paragraph (b) shall be deemed
517 a substantial change of circumstances for purposes of modifying
518 the child support award. A modification pursuant to this
519 paragraph shall be retroactive to the date the noncustodial
520 parent first failed to regularly exercise court-ordered or
521 agreed visitation.
522 (d) A split parenting arrangement exists when there is more
523 than one child in common and each parent has the majority of the
524 overnight timesharing for at least one of the children. In cases
525 involving split parenting arrangements, the court shall
526 calculate and issue a separate child support order for each
527 parent based on the number of children for which that parent has
528 the majority of the overnight timesharing, and the difference
529 between the two calculations is the amount to be paid by the
530 parent with the higher child support order amount.
531 (12)(a) A parent with a support obligation may have other
532 children living with him or her who were born or adopted after
533 the support obligation arose. If such subsequent children exist,
534 the court, when considering an upward modification of an
535 existing award, may disregard the income from secondary
536 employment obtained in addition to the parent's primary

537 employment if the court determines that the employment was
538 obtained primarily to support the subsequent children.
539 (b) Except as provided in paragraph (a), the existence of
540 such subsequent children should not as a general rule be
541 considered by the court as a basis for disregarding the amount
542 provided in the guidelines schedule. The parent with a support
543 obligation for subsequent children may raise the existence of
544 such subsequent children as a justification for deviation from
545 the guidelines schedule. However, if the existence of such
546 subsequent children is raised, the income of the other parent of
547 the subsequent children shall be considered by the court in
548 determining whether or not there is a basis for deviation from
549 the guideline amount.
550 (c) The issue of subsequent children under paragraph (a)
551 or paragraph (b) may only be raised in a proceeding for an
552 upward modification of an existing award and may not be applied
553 to justify a decrease in an existing award.
554 (13) If the recurring income is not sufficient to meet the
555 needs of the child, the court may order child support to be paid
556 from nonrecurring income or assets.
557 (14) Every petition for child support or for modification
558 of child support shall be accompanied by an affidavit which
559 shows the party's income, allowable deductions, and net income
560 computed in accordance with this section. The affidavit shall be
561 served at the same time that the petition is served. The
562 respondent, whether or not a stipulation is entered, shall make
563 an affidavit which shows the party's income, allowable
564 deductions, and net income computed in accordance with this
565 section. The respondent shall include his or her affidavit with
566 the answer to the petition or as soon thereafter as is

567 practicable, but in any case at least 72 hours prior to any
568 hearing on the finances of either party.
569 (15) For purposes of establishing an obligation for support
570 in accordance with this section, if a person who is receiving
571 public assistance is found to be noncooperative as defined in s.
572 409.2572, the IV-D agency is authorized to submit to the court
573 an affidavit attesting to the income of the custodial parent
574 based upon information available to the IV-D agency.
575 (16) The Legislature shall review the guidelines
576 established in this section at least every 4 years beginning in
577 1997.
578 (17) In an initial determination of child support, whether
579 in a paternity action, dissolution of marriage action, or
580 petition for support during the marriage, the court has
581 discretion to award child support retroactive to the date when
582 the parents did not reside together in the same household with
583 the child, not to exceed a period of 24 months preceding the
584 filing of the petition, regardless of whether that date precedes
585 the filing of the petition. In determining the retroactive award
586 in such cases, the court shall consider the following:
587 (a) The court shall apply the guidelines schedule in
588 effect at the time of the hearing subject to the obligor's
589 demonstration of his or her actual income, as defined by
590 subsection (2), during the retroactive period. Failure of the
591 obligor to so demonstrate shall result in the court using the
592 obligor's income at the time of the hearing in computing child
593 support for the retroactive period.
594 (b) All actual payments made by the noncustodial parent to
595 the custodial parent or the child or third parties for the
596 benefit of the child throughout the proposed retroactive period.

597 (c) The court should consider an installment payment plan
598 for the payment of retroactive child support.
599 Section 3. Subsection (10) of section 409.2564, Florida
600 Statutes, is amended to read:
601 409.2564 Actions for support.--
602 (10) For the purposes of denial, revocation, or limitation
603 of an individual's United States passport, consistent with 42
604 U.S.C. s. 652(k)(1), the Title IV-D agency shall have procedures
605 to certify to the Secretary of the United States Department of
606 Health and Human Services, in the format and accompanied by such
607 supporting documentation as the secretary may require, a
608 determination that an individual owes arrearages of support in
609 an amount exceeding $2,500 ~~$5,000~~. Said procedures shall provide
610 that the individual be given notice of the determination and of
611 the consequence thereof and that the individual shall be given
612 an opportunity to contest the accuracy of the determination.
613 Section 4. Section 409.25641, Florida Statutes, is amended
614 to read:
615 409.25641 Procedures for processing automated
616 administrative enforcement requests.--
617 (1) The department ~~Title IV-D agency~~ shall use automated
618 administrative enforcement, as defined in Title IV-D of the
619 Social Security Act, in response to a request from another state
620 to enforce a support order and shall promptly report the results
621 of enforcement action to the requesting state.
622 (2) This request:
623 (a) May be transmitted from the other state by electronic
624 or other means.~~;~~
625 (b) Shall contain sufficient identifying information to
626 allow comparison with the databases within the state which are
627 available to the department. ~~Title IV-D agency; and~~

628 (c) Shall constitute a certification by the requesting
629 state:
630 1. Of the amount of arrearage accrued under the order; and
631 2. That the requesting state has complied with all
632 procedural due process requirements applicable to the case.
633 (3) If assistance is provided by the department ~~Title IV-D~~
634 ~~agency~~ to another state as prescribed above, the department may
635 not ~~neither state shall~~ consider the case to be transferred from
636 the caseload of the other state to the caseload of the
637 department, but the department may establish a corresponding
638 case based on the other state's request for assistance ~~Title IV-~~
639 ~~D agency~~.
640 (4) The department ~~Title IV-D agency~~ shall maintain a
641 record of:
642 (a) The number of requests received;
643 (b) The number of cases for which the department ~~Title IV-~~
644 ~~D agency~~ collected support in response to such a request; and
645 (c) The amount of such collected support.
646 (5) The department shall have authority to adopt rules to
647 implement this section.
648 Section 5. The Office of Programs Policy Analysis and
649 Government Accountability shall evaluate the effectiveness of
650 the system currently used for complying with the federally
651 required review of Florida's child support guidelines every 4
652 years. The evaluation shall include a comparison of all
653 available methodologies being utilized by other states in
654 conducting their reviews of their child support guidelines and
655 include recommendations for either maintaining the current
656 review process with the Legislature or transferring the
657 responsibility to another entity. A report shall be submitted

658 to the Governor, the President of the Senate, and the Speaker of
659 the House of Representatives by January 31. 2007.
660 Section 6. This act shall take effect July 1, 2006.
661
662 ========== T I T L E A M E N D M E N T ==========
663 Remove the entire title and insert:
664
665 An act relating to child support; amending s. 61.13, F.S.;
666 requiring either or both parents who owe support to secure
667 a child support award; amending s. 61.30, F.S.; providing
668 that the amount of a child support award resulting from
669 the application of the child support guidelines schedule
670 creates a rebuttable presumption of correctness; providing
671 circumstances in which specified variances in awards
672 require a written finding; providing for modification of
673 existing orders; providing for the determination of gross
674 income; providing for the imputation of income under
675 certain circumstances; providing for the determination of
676 net income; providing the child support guidelines
677 schedule; providing for determination of the amount of
678 child support for low-income and high-income parents;
679 providing for child care costs and health care costs to be
680 added to the minimum obligation; revising factors to be
681 considered by the court in adjusting child support awards;
682 providing for shared parenting arrangements; providing for
683 calculation of child support orders in cases of split
684 parenting arrangements; specifying the method for
685 determining a child support order amount; requiring
686 submission of financial affidavits; providing for the
687 consideration of subsequent children; providing for income
688 information in the event of noncooperation by a public

689 assistance recipient for purposes of child support;
690 providing for review of the child support guidelines;
691 providing for retroactive child support; amending s.
692 409.2564, F.S.; providing a threshold for arrearages
693 before passport restrictions apply; amending s. 409.25641,
694 F.S.; requiring the Department of Revenue to employ
695 automated administrative enforcement of support orders in
696 interstate cases; authorizing the department to establish
697 a corresponding case under certain circumstances;
698 providing for a review; providing an effective date.
699