# Civil Justice Committee Meeting

**April 4th, 2006**
**10:15 AM - 11:00 AM**
**24 House Office Building**

Allan G. Bense
Speaker

Mark Mahon
Chair

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

**Speaker Allan G. Bense**

## Civil Justice Committee

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|---|---|
| **Start Date and Time:** | Tuesday, April 04, 2006 10:15 am |
| **End Date and Time:** | Tuesday, April 04, 2006 11:00 am |
| **Location:** | 24 HOB |
| **Duration:** | 0.75 hrs |

**Consideration of the following bill(s):**

HB 173 CS Construction Contracts by Ross
HB 457 CS Guardianship by Sands
HB 459 Public Records by Sands
HB 817 CS Telecommunications Carriers of Last Resort by Murzin
HB 857 Insurance Premium Tax by Mahon
HB 1323 Actions Involving Free Speech or Defamation by Simmons
HB 1521 Children in Out-of-Home Placements by Barreiro
HB 7123 Child Protective Services by Future of Florida's Families Committee
HB 7157 Fraudulent Use or Possession of Identifying Information by Economic Development, Trade & Banking Committee

**NOTICE FINALIZED on 03/31/2006 16:23 by Hay.Tracey**

HB 173

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 173 CS Construction Contracts
**SPONSOR(S):** Ross and others
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 682

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Insurance Committee | 19 Y, 0 N, w/CS | Callaway | Cooper |
| 2) Business Regulation Committee | 9 Y, 8 N, w/CS | Livingston | Liepshutz |
| 3) Civil Justice Committee | | Blalock | Bond |
| 4) Commerce Council | | | |
| 5) | | | |

## SUMMARY ANALYSIS


There are currently no specific statutory provisions relating to insurance provisions in construction contracts. This bill addresses the issue of a subcontractor's failure to obtain the insurance coverage required by a construction contract between a contractor and a sub-contractor, and the general contractor's failure to compensate the sub-contractor for past work that the subcontractor accomplished while the general contractor reviewed the sub-contractor's insurance coverage.

This bill gives a general contractor three business days to reject, in writing, a certificate of insurance given to him by a subcontractor. If a general contractor does not reject the certificate of insurance within the three day window, he or she is deemed to accept it, except under specified circumstances. The general contractor can still reject the certificate of insurance at a later date as long as the rejection is in writing.

This bill also requires general contractors who accept a subcontractor's certificate of insurance, or who have been deemed in acceptance of it, to pay the subcontractor for the work done, except under specified circumstances.

This bill's provisions also apply to certificates of insurance required by construction contracts between general contractors, subcontractors, sub-subcontractors, and materialmen.

There does not appear to be a fiscal impact on state or local government.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -- This bill creates statutory provisions governing the actions of contractors who are parties to a construction contract relating to acceptance or rejection of certificates of insurance and the resulting payment for work done or materials supplied. There are currently no specific statutory provisions relating to this issue.

Safeguard Individual Liberty -- This bill restricts when a general contractor can reject work done by a subcontractor or withhold payment for work done by a subcontractor due to the subcontractor not having insurance coverage required in the construction contract. The bill also provides a time limit when a general contractor must reject a certificate of insurance from a subcontractor. Noncompliance with the time limit provided results in a general contractor's deemed acceptance of the certificate of insurance.

B. EFFECT OF PROPOSED CHANGES:

**Background**

Most property owners, general contractors, and subcontractors carry numerous kinds of insurance, such as workers' compensation[1] and commercial liability. Insurance costs are factored into the contractors' bids on a construction project. Insurance requirements for a particular construction project are included in the resulting construction contracts between the owner and general contractor, the general contractor and subcontractor, and/or subcontractor and sub-subcontractor or materialman. For purposes of brevity, this analysis refers to the working relationship between a general contractor and a subcontractor. The same practices can occur when general contractors or subcontractors contract with sub-subcontractors or with materialmen and the sub-subcontractor or materialmen are required to provide policies or certificates of insurance as proof of insurance coverage.

Although there are no laws specifically addressing the practice, a general contractor or subcontractor may require, as a part of the construction contract, a certificate of insurance or an insurance policy to be submitted by a subcontractor as a condition of work. The certificate of insurance is evidence of insurance in lieu of an actual copy of an insurance policy. At some point upon signing a construction contract, sometimes before the work begins and sometimes after, the subcontractor provides a certificate of insurance to the general contractor listing the insurance provided by the subcontractor. Most times the general contractor reviews all documents required to be submitted under the construction contract, including the certificate of insurance, prior to paying the first invoice for each subcontractor. If an insurance policy or certificate of insurance is not submitted or if it does not meet the standards of the general contractor requiring the policy under the contract, the contractor may prohibit the other party from working on the construction project or may withhold payment for work already done until the proper insurance is obtained and proof is submitted.

According to proponents of the bill, a practice of misuse of certificates of insurance by general contractors has emerged that is of serious concern to the subcontractors and their insurance agents.[2]

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[1] Employers in the construction industry with one or more employee must provide workers' compensation coverage for its' employees. s. 440.02(17)(b)2., F.S. (2005). If a subcontractor does not have workers' compensation coverage, the general contractor must provide workers' compensation benefits for any injured employee of the subcontractor. This is true even if the subcontractor lied to the general contractor about his or her workers' compensation insurance coverage or gave the general contractor a fraudulent certificate of workers' compensation insurance coverage. John J. Dubreuil, *Florida Workers' Compensation Handbook*, 3-43 (2003 Edition, 2003).

[2] Florida Association of Insurance Agents, *300 Words (more or less) about Certificates of Insurance* (2006) (on file with the Insurance Committee).

This practice involves a general contractor demanding their subcontractors supply them with certificates of insurance containing non-standard and sometimes unavailable coverage provisions, such as hold harmless agreements or waiver of subrogation rights.

Specifically, the subcontractor is told by the general contractor that in order to work on the construction project, the subcontractor must supply evidence of a liability policy with certain provisions. The subcontractor purchases an insurance policy and receives a certificate of insurance from his or her insurance agent which contains information about what type of insurance coverage the policyholder/subcontractor has in force. The subcontractor usually gives the certificate of insurance to the general contractor before starting work on the construction project. However, circumstances do exist where the documentation may be submitted after commencement of the subcontractors' portion of the project.

According to the bill's proponents, once the subcontractor's work is complete, the general contractor often refuses payment to the subcontractor for work completed because the subcontractor did not carry insurance containing the general contractor's required specifications, even though the general contractor had the certificate of insurance from the outset of the subcontractor's work. The general contractor refuses payment to the subcontractor until the subcontractor provides the general contractor with a certificate of insurance meeting the general contractor's specifications.

The problem is further complicated when the subcontractor asks his or her insurance agent to give him or her a new certificate of insurance with the appropriate specifications, to provide him or her with a retroactive insurance policy with corresponding certificate of insurance meeting the specifications, or to alter his or her existing certificate of insurance to reflect the appropriate specifications. Most agents refuse to alter the certificates of insurance as doing so potentially subjects them to license discipline and administrative fines.[3] Also, an agent doing so may incur an "errors and omission" problem.[4]

If an agent refuses to alter a certificate of insurance, the general contractor may ask the agent to issue a personal guarantee of the changes to the certificate of insurance the general contractor requires.[5] A personal guarantee by the agent may expose him or her to suit if the insurer will not honor the changes required by the general contractor and personally guaranteed by the agent.

**Effect of Bill**

This bill is designed to resolve the problem relating to certificates of insurance between contractors alleged by the bill's proponents. In that regard, the bill creates statutory provisions allowing a general contractor three business days to reject a certificate of insurance given to him by a subcontractor. This bill's provisions also apply to certificates of insurance required by construction contracts between general contractors, subcontractors, sub-subcontractors, and materialmen. The rejection must be in writing and must specify the reason(s) for rejection. This bill does not require the general contractor to allow the subcontractor time to cure any deficiency in the certificate of insurance causing rejection of it by the general contractor.

If a general contractor does not reject the certificate of insurance within the three day window, he or she automatically accepts it (i.e. deemed acceptance). The general contractor is still able to reject a certificate of insurance at a later date (after acceptance or automatic acceptance) as long as the rejection is in writing and specifies the reason(s) for rejection. However, the general contractor must pay the subcontractor for work done by the subcontractor up to the date of written rejection of the certificate of insurance by the general contractor.

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[3] s. 626.9541(1)(a)1., F.S. (2005); s. 626.9521, F.S. (2005); Informational Memorandum OIR-03-003M, issued by the Office of Insurance Regulation on February 21, 2003 (on file with the Insurance Committee).
[4] Florida Association of Insurance Agents, *300 Words (more or less) about Certificates of Insurance* (2006) (on file with the Insurance Committee).
[5] Id.

This bill outlines circumstances where a general contractor can withhold payment or reject work that has been completed by a subcontractor despite the general contractor's acceptance or automatic acceptance of the certificate of insurance. These circumstances are:

- If the certificate of insurance does not comply with the insurance coverage limits specified in the construction contract;
- If the certificate of insurance was knowingly and fraudulently altered or reflects coverages not in the insurance policy; or
- If the insurance policy is cancelled, nonrenewed, or materially and adversely altered during the term of the construction contract.

This bill also requires general contractors who voluntarily accept a subcontractor's certificate of insurance at the outset or who automatically accept it by operation of law after the 3 day window to pay the subcontractor for work completed up to the time the general contractor rejects the insurance policy on the basis that it is nonconforming. This bill does not require the general contractor to pay the subcontractor for work done in the three day window allowed for rejection of the certificate of insurance. Thus, the subcontractor is at risk for not getting paid for work performed, if any, during this time period.

This bill outlines circumstances where a general contractor cannot be caused to automatically accept a certificate of insurance even if he or she does not reject during the three day rejection window. These circumstances are:

- if the certificate of insurance does not comply with the insurance coverage limits specified in the construction contract,
- if the certificate of insurance was knowingly and fraudulently altered, or
- if the certificate of insurance reflects coverages not in the insurance policy

C. SECTION DIRECTORY:

Section 1 creates s. 627.442, F.S. providing provisions regarding acceptance and/or rejection of certificates of insurance by parties to a construction contract and payment on construction contracts.

Section 2 provides 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:

None.

## 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, 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 January 26, 2006, the Insurance Committee considered the bill, adopted a strike-all amendment, and reported the bill favorably with CS. The strike-all amendment made the following changes to the original text of the bill:

- Specified the general contractor has 3 business days to reject a certificate of insurance, rather than 3 days as provided in the original bill text
- Clarified that a subcontractor will be paid for work done before the certificate of insurance is accepted or deemed to be accepted
- Clarified that a general contractor can reject a certificate of insurance even after he originally accepted it or was deemed to have accepted it
- Created exceptions to the provision relating to deemed acceptance of a certificate of insurance by a general contractor. The exceptions are a policy or certificate "that does not comply with the insurance coverage limits specified in the construction contract, that was knowingly and fraudulently altered, or that reflects coverages or conditions that are not contained in the underlying policy."
- Created exceptions to the provision requiring a general contractor to pay a subcontractor for work performed. The exceptions allow a general contractor to withhold payment or reject work completed by a subcontractor if the policy or certificate: "(a) Does not comply with the insurance coverage limits specified in the construction contract; (b) Was knowingly and fraudulently altered or reflects coverages or conditions that are not contained in the underlying policy; or (c) Is cancelled, nonrenewed, or materially and adversely altered during the term of the construction contract."
- Deleted the provision in the original bill making the construction contract provision requiring insurance unenforceable if the certificate of insurance is rejected.

On February 21, 2006, the Committee on Business Regulation considered the bill, adopted one amendment, and reported the bill favorably with CS. The CS includes a provision that specifies a contractor may not reject an insurance policy based on the fact that the insurer is not rated by a national rating service.

CHAMBER ACTION

The Business Regulation Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to construction contracts; creating s. 627.442, F.S.; specifying acceptance of certain insurance provisions of a construction contract under certain circumstances; providing exceptions; prohibiting certain actions after acceptance of such provisions; providing an exception authorizing such actions under certain circumstances; authorizing contractors or subcontractors to reject certain accepted construction contract insurance provisions as nonconforming under certain circumstances; authorizing such contractors and subcontractors to withhold payment for work performed or materials supplied under certain circumstances; prohibiting rejecting certain policies of insurance on certain grounds; providing an effective date.

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

23 Section 1. Section 627.442, Florida Statutes, is created
24 to read:
25 627.442 Construction contract insurance provisions;
26 acceptance, rejection, or application.--
27 (1) If a written construction contract requires a
28 subcontractor, sub-subcontractor, or materialman to provide an
29 insurance policy or certificate of insurance to the general
30 contractor or another subcontractor for work performed or
31 materials provided, which extends coverage rights to an
32 additional insured, the general contractor or subcontractor is
33 deemed to have accepted the insurance policy or certificate of
34 insurance as conforming to the written construction contract
35 unless the general contractor or subcontractor rejects the
36 insurance policy or certificate of insurance in writing within 3
37 business days after receipt of the insurance policy or
38 certificate of insurance. The written rejection must specify the
39 reason for rejection. However, the general contractor or
40 subcontractor may not be deemed to have accepted an insurance
41 policy or certificate of insurance that does not comply with the
42 insurance coverage limits specified in the construction
43 contract, that was knowingly and fraudulently altered, or that
44 reflects coverages or conditions that are not contained in the
45 underlying policy.
46 (2) After a general contractor or subcontractor accepts an
47 insurance policy or certificate of insurance or is deemed to
48 have accepted the insurance policy or certificate of insurance,
49 a general contractor or subcontractor may not use the lack of
50 conforming insurance as a reason to reject work previously

51 completed by a subcontractor or sub-subcontractor, reject
52 materials previously supplied by a materialman, or withhold
53 payment for work previously completed or materials previously
54 supplied. However, the general contractor or subcontractor may
55 reject work previously completed or materials previously
56 supplied or withhold payment for such work or materials if the
57 policy or certificate provided by the subcontractor, sub-
58 subcontractor, or materialman:
59 (a) Does not comply with the insurance coverage limits
60 specified in the construction contract;
61 (b) Was knowingly and fraudulently altered or reflects
62 coverages or conditions that are not contained in the underlying
63 policy; or
64 (c) Is canceled, nonrenewed, or materially and adversely
65 altered during the term of the construction contract.
66 (3) Subsection (1) does not preclude a general contractor
67 or subcontractor from rejecting as nonconforming an insurance
68 policy or certificate of insurance previously accepted or deemed
69 to have been accepted; however, such a rejection shall be in
70 writing and shall specify the reason for rejection. A general
71 contractor or subcontractor who rejects in writing an insurance
72 policy or certificate of insurance as nonconforming and states
73 the specific reason for such rejection may withhold payment for
74 the work performed or materials supplied after the date of the
75 rejection of the policy or certificate.
76 (4) A policy of insurance issued by an authorized insurer
77 or self-insurance fund that is subject to ss. 631.901-631.932
78 may not be rejected as nonconforming by a general contactor on

79 the grounds that such authorized insurer or self-insurance fund
80 is rated or not rated by a nationally recognized insurance
81 rating service.
82 Section 2. This act shall take effect July 1, 2006.

HB 457

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Future of Florida's Families Committee | 7 Y, 0 N, w/CS | Preston | Collins |
| 2) Civil Justice Committee | | Shaddock | Bond |
| 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 Elderly 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 $15 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. 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:

- 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

[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* s. 744.102(8)(a), F.S.

[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* s. 744.102(8)(b), F.S.

[3] See ss. 744.102(16) and 744.334, F.S.

- 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 to the direct supervision of the Secretary of Elderly Affairs.[6]

The 2003 Legislature also created the Guardianship Task Force within Department of Elderly Affairs (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 s. 28.241, F.S., 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 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.

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[4] See s. 744.703, F.S.
[5] See s. 744.7021, F.S. 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.

**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.

**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 s. 318.17, F.S., 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 requires 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

On March 28, 2006, the Future of Florida's Families Committee adopted 3 amendments which do the following:

- Removes the requirement that professional guardians provide the Statewide Public Guardianship Office (SPGO) with the names, address, and dates of birth for each member of their partnerships, associations, persons owning at least 10% of their corporation, or persons providing guardian delegated services;
- Removes the requirement that a certified public accountant conduct the public guardian's ward file review and requires the SPGO to conduct such review;
- Removes the prohibition on the executive director of a public guardian office from being included in the ratio of staff to wards; and
- Restores current language related to the termination of a voluntary guardianship.

The bill was reported favorably as a committee substitute.

CHAMBER ACTION

1 The Future of Florida's Families Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to guardianship; amending s. 744.102,
8 F.S.; defining the terms "audit" and "surrogate guardian";
9 amending s. 744.1083, F.S.; revising provisions relating
10 to identification information provided by professional
11 guardians for registration; providing that the Statewide
12 Public Guardianship Office need not review credit and
13 criminal investigations from a state college or university
14 before registering the institution as a professional
15 guardian; amending s. 744.301, F.S.; providing that in the
16 event of death, the surviving parent is the sole natural
17 guardian of a minor; prohibiting a natural guardian from
18 using the property of the ward for the guardian's benefit
19 without a court order; creating s. 744.3025, F.S.;
20 authorizing a court to appoint a guardian ad litem to
21 represent a minor's interest in certain claims that exceed
22 a specified amount; requiring a court to appoint a
23 guardian ad litem to represent a minor's interest in

24 certain claims that exceed a specified amount; providing
25 that a court need not appoint a guardian ad litem under
26 certain circumstances; requiring a court to award
27 reasonable fees and costs to the guardian ad litem;
28 amending s. 744.3031, F.S.; increasing the time an
29 emergency temporary guardian may serve; increasing the
30 time of an extension; requiring an emergency temporary
31 guardian to file a final report; providing for the
32 contents of the final report; amending s. 744.304, F.S.;
33 specifying the persons who may file a petition for a
34 standby guardian; requiring that notice of the appointment
35 hearing be served on the ward's next of kin; clarifying
36 when a standby guardian may assume the duties of guardian;
37 requiring that each standby guardian submit to credit and
38 criminal background checks; amending s. 744.3115, F.S.;
39 defining the term "health care decision"; amending s.
40 744.3135, F.S.; providing procedures for completing a
41 guardian's criminal background investigation; authorizing
42 a guardian to use inkless electronic fingerprinting
43 equipment that is available for background investigations
44 of public employees; providing that a guardian need not be
45 rescreened if he or she uses certain inkless electronic
46 fingerprinting equipment; providing for fees; requiring
47 the Statewide Public Guardianship Office to adopt a rule
48 for credit investigations of guardians; amending s.
49 744.3145, F.S.; reducing the time in which a guardian must
50 complete the education courses; amending s. 744.3215,
51 F.S.; providing that an incapacitated person retains the

52 right to receive services and rehabilitation necessary to
53 maximize the quality of the person's life; revising
54 provisions relating to rights that may be removed from a
55 person determined incapacitated; amending s. 744.331,
56 F.S.; requiring that the court appoint an attorney for an
57 alleged incapacitated person from a specified registry;
58 requiring attorneys to complete certain training programs;
59 providing that a member of the examining committee may not
60 be related to or associated with certain persons;
61 prohibiting a person who served on an examining committee
62 from being appointed as the guardian; requiring each
63 member of an examining committee to file an affidavit
64 stating that he or she has completed or will timely
65 complete the mandatory training; providing for training
66 programs; requiring each member to report the time and
67 date that he or she examined the person alleged to be
68 incapacitated, the names of all persons present during the
69 examination, and the response and name of each person
70 supplying an answer posed to the examinee; providing for
71 an award of attorney's fees; amending s. 744.341, F.S.;
72 requiring the voluntary guardian to include certain
73 information in the annual report; amending s. 744.361,
74 F.S.; requiring a professional guardian to ensure that
75 each of his or her wards is personally visited at least
76 quarterly; providing for the assessment of certain
77 conditions during the personal visit; providing an
78 exemption; amending s. 744.365, F.S.; requiring that the
79 verified inventory include information on any trust to

80 which a ward is a beneficiary; amending s. 744.367, F.S.;
81 requiring that the annual report of the guardian filing on
82 a calendar-year basis be filed on or before a specified
83 date; exempting all minor wards from service of the annual
84 report; amending s. 744.3675, F.S.; requiring that the
85 annual guardianship plan include information on the mental
86 condition of the ward; providing for an annual
87 guardianship plan for wards who are minors; amending s.
88 744.3678, F.S.; providing that property of the ward which
89 is not under the control of the guardian, including
90 certain trusts, is not subject to annual accounting;
91 requiring certain documentation for the annual accounting;
92 amending s. 744.3679, F.S.; removing a provision
93 prohibiting the clerk of the court from having
94 responsibility for monitoring or auditing accounts in
95 certain cases; amending s. 744.368, F.S.; requiring that
96 the verified inventory and the accountings be audited
97 within a specified time period; amending s. 744.441, F.S.;
98 requiring the court to retain oversight for assets of a
99 ward transferred to a trust; creating s. 744.442, F.S.;
100 providing that a guardian may designate a surrogate
101 guardian to exercise the powers of the guardian if the
102 guardian is unavailable to act; requiring the surrogate
103 guardian to be a professional guardian; providing the
104 procedures to be used in appointing a surrogate guardian;
105 providing the duties of a surrogate guardian; requiring
106 the guardian to be liable for the acts of the surrogate
107 guardian; authorizing the guardian to terminate the

108 services of the surrogate guardian by filing a written
109 notice of the termination with the court; amending s.
110 744.464, F.S.; removing the state attorney from the list
111 of persons to be served a notice of a hearing on
112 restoration of capacity; removing a time limitation on the
113 filing of a suggestion of capacity; amending s. 744.474,
114 F.S.; revising provisions relating to removal of a
115 guardian who is not a family member; revising provisions
116 relating to removal of a guardian upon a showing that
117 removal of the current guardian is in the best interest of
118 the ward; amending s. 744.511, F.S.; providing that a ward
119 who is a minor need not be served with the final report of
120 a removed guardian; amending s. 744.527, F.S.; providing
121 that final reports for a deceased ward be filed at a
122 specified time; amending s. 744.528, F.S.; providing for a
123 notice of the hearing for objections to a report filed by
124 a guardian; amending s. 744.708, F.S.; revising provisions
125 relating to audits and investigations of each office of
126 public guardian; requiring a public guardian to ensure
127 that each of his or her wards is personally visited at
128 least quarterly; providing for the assessment of certain
129 conditions during the personal visit; providing for
130 additional distribution of a specified annual report;
131 deleting a definition; amending s. 765.101, F.S.;
132 redefining the term "health care decision" to include
133 informed consent for mental health treatment services;
134 amending s. 28.345, F.S.; revising provisions relating to
135 exemptions from paying court-related fees and charges;

136 amending ss. 121.091, 121.4501, 709.08, and 744.1085,
137 F.S.; conforming cross-references; reenacting s.
138 117.107(4), F.S., relating to prohibited acts of a notary
139 public, to incorporate the amendment made to s. 744.3215,
140 F.S., in a reference thereto; amending s. 318.18, F.S.;
141 authorizing a county to impose a surcharge on certain
142 civil penalties to fund local participation in the public
143 guardianship program; prescribing prerequisites for
144 imposing the surcharge; providing a limit on the
145 surcharge; creating s. 938.065, F.S.; requiring that a
146 specified surcharge be assessed against all misdemeanor
147 offenses; providing that the clerk of the court may retain
148 a service charge; directing that the funds collected be
149 used to fund public guardianship programs; providing an
150 effective date.
151
152 Be It Enacted by the Legislature of the State of Florida:
153
154 Section 1. Section 744.102, Florida Statutes, is amended
155 to read:
156 744.102 Definitions.--As used in this chapter, the term:
157 (1) "Attorney for the alleged incapacitated person" means
158 an attorney who represents the alleged incapacitated person. The
159 ~~Such~~ attorney shall represent the expressed wishes of the
160 alleged incapacitated person to the extent it is consistent with
161 the rules regulating The Florida Bar.

162 (2) "Audit" means a systematic review of financial
163 documents with adherence to generally accepted auditing
164 standards.
165 (3) ~~(2)~~ "Clerk" means the clerk or deputy clerk of the
166 court.
167 (4) ~~(3)~~ "Corporate guardian" means a corporation authorized
168 to exercise fiduciary or guardianship powers in this state and
169 includes a nonprofit corporate guardian.
170 (5) ~~(4)~~ "Court" means the circuit court.
171 (6) ~~(5)~~ "Court monitor" means a person appointed by the
172 court under ~~pursuant to~~ s. 744.107 to provide the court with
173 information concerning a ward.
174 (7) ~~(6)~~ "Estate" means the property of a ward subject to
175 administration.
176 (8) ~~(7)~~ "Foreign guardian" means a guardian appointed in
177 another state or country.
178 (9) ~~(8)~~ "Guardian" means a person who has been appointed by
179 the court to act on behalf of a ward's person or property, or
180 both.
181 (a) "Limited guardian" means a guardian who has been
182 appointed by the court to exercise the legal rights and powers
183 specifically designated by court order entered after the court
184 has found that the ward lacks the capacity to do some, but not
185 all, of the tasks necessary to care for his or her person or
186 property, or after the person has voluntarily petitioned for
187 appointment of a limited guardian.
188 (b) "Plenary guardian" means a person who has been
189 appointed by the court to exercise all delegable legal rights

190 and powers of the ward after the court has found that the ward
191 lacks the capacity to perform all of the tasks necessary to care
192 for his or her person or property.
193 (10) ~~(9)~~ "Guardian ad litem" means a person who is
194 appointed by the court having jurisdiction of the guardianship
195 or a court in which a particular legal matter is pending to
196 represent a ward in that proceeding.
197 (11) ~~(10)~~ "Guardian advocate" means a person appointed by a
198 written order of the court to represent a person with
199 developmental disabilities under s. 393.12. As used in this
200 chapter, the term does not apply to a guardian advocate
201 appointed for a person determined incompetent to consent to
202 treatment under s. 394.4598.
203 (12) ~~(11)~~ "Incapacitated person" means a person who has
204 been judicially determined to lack the capacity to manage at
205 least some of the property or to meet at least some of the
206 essential health and safety requirements of the ~~such~~ person.
207 (a) To "manage property" means to take those actions
208 necessary to obtain, administer, and dispose of real and
209 personal property, intangible property, business property,
210 benefits, and income.
211 (b) To "meet essential requirements for health or safety"
212 means to take those actions necessary to provide the health
213 care, food, shelter, clothing, personal hygiene, or other care
214 without which serious and imminent physical injury or illness is
215 more likely than not to occur.

216 (13) ~~(12)~~ "Minor" means a person under 18 years of age
217 whose disabilities have not been removed by marriage or
218 otherwise.
219 (14) ~~(13)~~ "Next of kin" means those persons who would be
220 heirs at law of the ward or alleged incapacitated person if the
221 ~~such~~ person were deceased and includes the lineal descendants of
222 the ~~such~~ ward or alleged incapacitated person.
223 (15) ~~(14)~~ "Nonprofit corporate guardian" means a nonprofit
224 corporation organized for religious or charitable purposes and
225 existing under the laws of this state.
226 (16) ~~(15)~~ "Preneed guardian" means a person named in a
227 written declaration to serve as guardian in the event of the
228 incapacity of the declarant as provided in s. 744.3045.
229 (17) ~~(16)~~ "Professional guardian" means any guardian who
230 ~~receives or~~ has at any time ~~received compensation for services~~
231 rendered services to three or more ~~than two~~ wards as their
232 guardian. A person serving as a guardian for two or more
233 relatives as defined in s. 744.309(2) is not considered a
234 professional guardian. A public guardian shall be considered a
235 professional guardian for purposes of regulation, education, and
236 registration.
237 (18) ~~(17)~~ "Property" means both real and personal property
238 or any interest in it and anything that may be the subject of
239 ownership.
240 (19) ~~(18)~~ "Standby guardian" means a person empowered to
241 assume the duties of guardianship upon the death or adjudication
242 of incapacity of the last surviving natural or appointed
243 guardian.

244 (20) "Surrogate guardian" means a guardian designated
245 according to s. 744.442.
246 (21) ~~(19)~~ "Totally incapacitated" means incapable of
247 exercising any of the rights enumerated in s. 744.3215(2) and
248 (3).
249 (22) ~~(20)~~ "Ward" means a person for whom a guardian has
250 been appointed.
251 Section 2. Subsections (3), (7), and (10) of section
252 744.1083, Florida Statutes, are amended to read:
253 744.1083 Professional guardian registration.--
254 (3) Registration must include the following:
255 (a) Sufficient information to identify the professional
256 guardian, as follows:
257 1. If the professional guardian is a natural person, the
258 name, address, date of birth, and employer identification or
259 social security number of the person ~~professional guardian~~.
260 2. ~~(b)~~ If the professional guardian is a partnership or
261 association, the name, address, and ~~date of birth of every~~
262 ~~member, and the~~ employer identification number of the entity
263 ~~partnership or association~~.
264 ~~(c) If the professional guardian is a corporation, the~~
265 ~~name, address, and employer identification number of the~~
266 ~~corporation; the name, address, and date of birth of each of its~~
267 ~~directors and officers; the name of its resident agent; and the~~
268 ~~name, address, and date of birth of each person having at least~~
269 ~~a 10-percent interest in the corporation.~~
270 ~~(d) The name, address, date of birth, and employer~~
271 ~~identification number, if applicable, of each person providing~~

272 ~~guardian-delegated financial or personal guardianship services~~
273 ~~for wards.~~
274 (b) ~~(e)~~ Documentation that the bonding and educational
275 requirements of s. 744.1085 have been met.
276 (c) ~~(f)~~ Sufficient information to distinguish a guardian
277 providing guardianship services as a public guardian,
278 individually, through partnership, corporation, or any other
279 business organization.
280 (7) A trust company, a state banking corporation or state
281 savings association authorized and qualified to exercise
282 fiduciary powers in this state, or a national banking
283 association or federal savings and loan association authorized
284 and qualified to exercise fiduciary powers in this state, may,
285 but is not required to, register as a professional guardian
286 under this section. If a trust company, state banking
287 corporation, state savings association, national banking
288 association, or federal savings and loan association described
289 in this subsection elects to register as a professional guardian
290 under this subsection, the requirements of subsections (3) and
291 (4) do not apply and the registration must include only the
292 name, address, and employer identification number of the
293 registrant, the name and address of its registered agent, if
294 any, and the documentation described in paragraph (3) (b) ~~(e)~~.
295 (10) A state college or university or an independent
296 college or university described in s. 1009.98(3)(a), may, but is
297 not required to, register as a professional guardian under this
298 section. If a state college or university or independent college
299 or university elects to register as a professional guardian

300 under this subsection, the requirements of subsections (3) and
301 (4) ~~subsection (3)~~ do not apply and the registration must
302 include only the name, address, and employer identification
303 number of the registrant.
304 Section 3. Section 744.301, Florida Statutes, is amended
305 to read:
306 744.301 Natural guardians.--
307 (1) The mother and father jointly are natural guardians of
308 their own children and of their adopted children, during
309 minority. If one parent dies, the surviving parent remains the
310 sole natural guardian even if he or she ~~the natural guardianship~~
311 ~~shall pass to the surviving parent, and the right shall continue~~
312 ~~even though the surviving parent~~ remarries. If the marriage
313 between the parents is dissolved, the natural guardianship
314 belongs ~~shall belong~~ to the parent to whom ~~the~~ custody of the
315 child is awarded. If the parents are given joint custody, then
316 both ~~shall~~ continue as natural guardians. If the marriage is
317 dissolved and neither the father nor the mother is given custody
318 of the child, neither shall act as natural guardian of the
319 child. The mother of a child born out of wedlock is the natural
320 guardian of the child and is entitled to primary residential
321 care and custody of the child unless a court of competent
322 jurisdiction enters an order stating otherwise.
323 (2) ~~The~~ Natural ~~guardian or~~ guardians are authorized, on
324 behalf of any of their minor children, to:
325 (a) Settle and consummate a settlement of any claim or
326 cause of action accruing to any of their minor children for
327 damages to the person or property of any of said minor children;

328 (b) Collect, receive, manage, and dispose of the proceeds
329 of any such settlement;
330 (c) Collect, receive, manage, and dispose of any real or
331 personal property distributed from an estate or trust;
332 (d) Collect, receive, manage, and dispose of and make
333 elections regarding the proceeds from a life insurance policy or
334 annuity contract payable to, or otherwise accruing to the
335 benefit of, the child; and
336 (e) Collect, receive, manage, dispose of, and make
337 elections regarding the proceeds of any benefit plan as defined
338 by s. 710.102, of which the minor is a beneficiary, participant,
339 or owner,
340
341 without appointment, authority, or bond, when the amounts
342 received, in the aggregate, do ~~amount involved in any instance~~
343 ~~does~~ not exceed $15,000.
344 (3) All instruments executed by a natural guardian for the
345 benefit of the ward under the powers specified ~~provided for~~ in
346 subsection (2) shall be binding on the ward. The natural
347 guardian may not, without a court order, use the property of the
348 ward for the guardian's benefit or to satisfy the guardian's
349 support obligation to the ward.
350 ~~(4)(a) In any case where a minor has a claim for personal~~
351 ~~injury, property damage, or wrongful death in which the gross~~
352 ~~settlement for the claim of the minor exceeds $15,000, the court~~
353 ~~may, prior to the approval of the settlement of the minor's~~
354 ~~claim, appoint a guardian ad litem to represent the minor's~~
355 ~~interests. In any case in which the gross settlement involving a~~

356 ~~minor equals or exceeds $25,000, the court shall, prior to the~~
357 ~~approval of the settlement of the minor's claim, appoint a~~
358 ~~guardian ad litem to represent the minor's interests. The~~
359 ~~appointment of the guardian ad litem must be without the~~
360 ~~necessity of bond or a notice. The duty of the guardian ad litem~~
361 ~~is to protect the minor's interests. The procedure for carrying~~
362 ~~out that duty is as prescribed in the Florida Probate Rules. If~~
363 ~~a legal guardian of the minor has previously been appointed and~~
364 ~~has no potential adverse interest to the minor, the court may~~
365 ~~not appoint a guardian ad litem to represent the minor's~~
366 ~~interests, unless the court determines that the appointment is~~
367 ~~otherwise necessary.~~
368 ~~(b) Unless waived, the court shall award reasonable fees~~
369 ~~and costs to the guardian ad litem to be paid out of the gross~~
370 ~~proceeds of the settlement.~~
371 Section 4. Section 744.3025, Florida Statutes, is created
372 to read:
373 744.3025 Claims of minors.--
374 (1)(a) The court may appoint a guardian ad litem to
375 represent the minor's interest before approving a settlement of
376 the minor's portion of the claim in any case in which a minor
377 has a claim for personal injury, property damage, wrongful
378 death, or other cause of action in which the gross settlement of
379 the claim exceeds $15,000.
380 (b) The court shall appoint a guardian ad litem to
381 represent the minor's interest before approving a settlement of
382 the minor's claim in any case in which the gross settlement
383 involving a minor equals or exceeds $50,000.

384 (c) The appointment of the guardian ad litem must be
385 without the necessity of bond or notice.
386 (d) The duty of the guardian ad litem is to protect the
387 minor's interests as described in the Florida Probate Rules.
388 (e) A court need not appoint a guardian ad litem for the
389 minor if a guardian of the minor has previously been appointed
390 and that guardian has no potential adverse interest to the
391 minor. A court may appoint a guardian ad litem if the court
392 believes a guardian ad litem is necessary to protect the
393 interests of the minor.
394 (2) Unless waived, the court shall award reasonable fees
395 and costs to the guardian ad litem to be paid out of the gross
396 proceeds of the settlement.
397 Section 5. Subsection (3) of section 744.3031, Florida
398 Statutes, is amended, and subsection (8) is added to that
399 section, to read:
400 744.3031 Emergency temporary guardianship.--
401 (3) The authority of an emergency temporary guardian
402 expires 90 ~~60~~ days after the date of appointment or when a
403 guardian is appointed, whichever occurs first. The authority of
404 the emergency temporary guardian may be extended for an
405 additional 90 ~~30~~ days upon a showing that the emergency
406 conditions still exist.
407 (8)(a) An emergency temporary guardian shall file a final
408 report no later than 30 days after the expiration of the
409 emergency temporary guardianship.
410 (b) An emergency temporary guardian is a guardian for the
411 property. The final report must consist of a verified inventory

412 of the property, as provided in s. 744.365, as of the date the
413 letters of emergency temporary guardianship were issued, a final
414 accounting that gives a full and correct account of the receipts
415 and disbursements of all the property of the ward over which the
416 guardian had control, and a statement of the property of the
417 ward on hand at the end of the emergency temporary guardianship.
418 If the emergency temporary guardian becomes the successor
419 guardian of the property, the final report must satisfy the
420 requirements of the initial guardianship report for the guardian
421 of the property as provided in s. 744.362.
422 (c) If the emergency temporary guardian is a guardian of
423 the person, the final report must summarize the activities of
424 the temporary guardian with regard to residential placement,
425 medical condition, mental health and rehabilitative services,
426 and the social condition of the ward to the extent of the
427 authority granted to the temporary guardian in the letters of
428 guardianship. If the emergency temporary guardian becomes the
429 successor guardian of the person, the report must satisfy the
430 requirements of the initial report for a guardian of the person
431 as stated in s. 744.362.
432 (d) A copy of the final report of the emergency temporary
433 guardianship shall be served on the successor guardian and the
434 ward.
435 Section 6. Section 744.304, Florida Statutes, is amended
436 to read:
437 744.304 Standby guardianship.--
438 (1) Upon a petition by the natural guardians or a guardian
439 appointed under s. 744.3021, the court may appoint a standby

440 guardian of the person or property of a minor ~~or consent of both~~
441 ~~parents, natural or adoptive, if living, or of the surviving~~
442 ~~parent, a standby guardian of the person or property of a minor~~
443 ~~may be appointed by the court~~. The court may also appoint an
444 alternate to the guardian to act if the standby guardian does
445 not serve or ceases to serve after appointment. Notice of a
446 hearing on the petition must be served on the parents, natural
447 or adoptive, and on any guardian currently serving unless the
448 notice is waived in writing by them or waived by the court for
449 good cause shown ~~shall renounce, die, or become incapacitated~~
450 ~~after the death of the last surviving parent of the minor~~.
451 (2) Upon petition of a currently serving guardian, a
452 standby guardian of the person or property of an incapacitated
453 person may be appointed by the court. Notice of the hearing
454 shall be served on the ward's next of kin.
455 (3) The standby guardian or alternate shall be empowered
456 to assume the duties of guardianship ~~his or her office~~
457 immediately on the death, removal, or resignation of the
458 guardian of a minor, or on the death or adjudication of
459 incapacity of the last surviving natural guardian ~~or adoptive~~
460 ~~parent~~ of a minor, or upon the death, removal, or resignation of
461 the guardian for an adult. The~~; however, such a~~ guardian of the
462 ward's property may not be empowered to deal with the ward's
463 property, other than to safeguard it, before ~~prior to~~ issuance
464 of letters of guardianship. If the ward ~~incapacitated person~~ is
465 over the age of 18 years, the court shall conduct a hearing as
466 provided in s. 744.331 before confirming the appointment of the

467 standby guardian, unless the ward has previously been found to
468 be incapacitated.
469 (4) Within 20 days after assumption of duties as guardian,
470 a standby guardian shall petition for confirmation of
471 appointment. If the court finds the standby guardian to be
472 qualified to serve as guardian under ~~pursuant to~~ ss. 744.309 and
473 744.312, appointment of the guardian must be confirmed. Each
474 guardian so confirmed shall file an oath in accordance with s.
475 744.347, ~~and~~ shall file a bond, and shall submit to a credit and
476 criminal investigation as set forth in s. 744.3135, if required.
477 Letters of guardianship must then be issued in the manner
478 provided in s. 744.345.
479 (5) After the assumption of duties by a standby guardian,
480 the court shall have jurisdiction over the guardian and the
481 ward.
482 Section 7. Section 744.3115, Florida Statutes, is amended
483 to read:
484 744.3115 Advance directives for health care.--In each
485 proceeding in which a guardian is appointed under this chapter,
486 the court shall determine whether the ward, prior to incapacity,
487 has executed any valid advance directive under ~~pursuant to~~
488 chapter 765. If any ~~such~~ advance directive exists, the court
489 shall specify in its order and letters of guardianship what
490 authority, if any, the guardian shall exercise over the
491 surrogate. Pursuant to the grounds listed in s. 765.105, the
492 court, upon its own motion, may, with notice to the surrogate
493 and any other appropriate parties, modify or revoke the
494 authority of the surrogate to make health care decisions for the

495 ward. For purposes of this section, the term "health care
496 decision" has the same meaning as in s. 765.101.
497 Section 8. Section 744.3135, Florida Statutes, is amended
498 to read:
499 744.3135 Credit and criminal investigation.--
500 (1) The court may require a nonprofessional guardian and
501 shall require a professional or public guardian, and all
502 employees of a professional guardian who have a fiduciary
503 responsibility to a ward, to submit, at their own expense, to an
504 investigation of the guardian's credit history and to undergo
505 level 2 background screening as required under s. 435.04. If a
506 credit or criminal investigation is required, the court must
507 consider the results of any investigation before appointing a
508 guardian. At any time, the court may require a guardian or the
509 guardian's employees to submit to an investigation of the
510 person's credit history and complete a level 1 background
511 screening as set forth in s. 435.03. The court shall consider
512 the results of any investigation when reappointing a guardian.
513 The clerk of the court shall maintain a file on each guardian
514 appointed by the court and retain in the file documentation of
515 the result of any investigation conducted under this section. A
516 professional guardian must pay the clerk of the court a fee of
517 up to $7.50 for handling and processing professional guardian
518 files.
519 (2) The court and the Statewide Public Guardianship Office
520 shall accept the satisfactory completion of a criminal
521 background investigation by any method described in this

522 subsection. A guardian satisfies the requirements of this
523 section by undergoing:
524 (a) An inkless electronic fingerprint criminal background
525 investigation. A guardian may use any inkless electronic
526 fingerprinting equipment used for criminal background
527 investigations of public employees. The guardian shall pay the
528 actual costs incurred by the Federal Bureau of Investigation and
529 the Department of Law Enforcement for the criminal background
530 investigation. The agency that operates the equipment used by
531 the guardian may charge the guardian an additional fee, not to
532 exceed $10, for the use of the equipment. The agency completing
533 the investigation must immediately send the results of the
534 criminal background investigation to the clerk of the court and
535 the Statewide Public Guardianship Office. The clerk of the court
536 shall maintain the results in the guardian's file and shall make
537 the results available to the court; or
538 (b) A criminal background investigation using a
539 fingerprint card. The clerk of the court shall obtain
540 fingerprint cards from the Federal Bureau of Investigation and
541 make them available to guardians. Any guardian who is so
542 required shall have his or her fingerprints taken and forward
543 the proper fingerprint card along with the necessary fee to the
544 ~~Florida~~ Department of Law Enforcement for processing. ~~The~~
545 ~~professional guardian shall pay to the clerk of the court a fee~~
546 ~~of up to $7.50 for handling and processing professional guardian~~
547 ~~files.~~ The results of the fingerprint card background
548 investigations ~~checks~~ shall be forwarded to the clerk of the
549 court who shall maintain the results in the guardian's ~~a~~

550 ~~guardian~~ file and ~~shall~~ make the results available to the court
551 and the Statewide Public Guardianship Office.
552 (3)(a) A professional guardian, and each employee of a
553 professional guardian who has a fiduciary responsibility to a
554 ward, must complete, at his or her own expense, a level 2
555 background screening as set forth in s. 435.04 before and at
556 least once every 5 years after the date the guardian is
557 appointed. A professional guardian, and each employee of a
558 professional guardian who has a fiduciary responsibility to a
559 ward, must complete, at his or her own expense, a level 1
560 background screening as set forth in s. 435.03 at least once
561 every 2 years after the date the guardian is appointed. However,
562 a person is not required to resubmit fingerprints for a criminal
563 background investigation if he or she has been screened using
564 inkless electronic fingerprinting equipment that is capable of
565 notifying the clerk of the court of any crime charged against
566 the person in this state or elsewhere, as appropriate.
567 (b) Effective December 15, 2006, all fingerprints
568 electronically submitted to the Department of Law Enforcement
569 under this section shall be retained by the Department of Law
570 Enforcement in a manner provided by rule and entered in the
571 statewide automated fingerprint identification system authorized
572 by s. 943.05(2)(b). The fingerprints shall thereafter be
573 available for all purposes and uses authorized for arrest
574 fingerprint cards entered in the Criminal Justice Information
575 Program under s. 943.051.
576 (c) Effective December 15, 2006, the Department of Law
577 Enforcement shall search all arrest fingerprint cards received

578 under s. 943.051 against the fingerprints retained in the
579 statewide automated fingerprint identification system under
580 paragraph (b). Any arrest record that is identified with the
581 fingerprints of a person described in this paragraph must be
582 reported as soon as possible to the clerk of the court. The
583 clerk of the court must forward any arrest record received for a
584 professional guardian to the Statewide Public Guardianship
585 Office within 5 days. Each guardian who elects to undergo an
586 inkless electronic background investigation shall participate in
587 this search process by paying an annual fee to the clerk of the
588 court and by informing the clerk of the court of any change in
589 the status of his or her guardianship appointment. The amount of
590 the annual fee to be imposed upon each clerk of the court for
591 performing these searches and the procedures for the retention
592 of guardian fingerprints and the dissemination of search results
593 shall be established by rule of the Department of Law
594 Enforcement. The fee may be borne by the clerk of the court or
595 the guardian, but may not exceed $10.
596 (4)(a) A professional guardian, and each employee of a
597 professional guardian who has a fiduciary responsibility to a
598 ward, must complete, at his or her own expense, an investigation
599 of his or her credit history before and at least once every 2
600 years after the date of the guardian's appointment.
601 (b) The Statewide Public Guardianship Office shall adopt a
602 rule detailing the acceptable methods for completing a credit
603 investigation under this section. If appropriate, the Statewide
604 Public Guardianship Office may administer credit investigations.
605 If the office chooses to administer the credit investigation,

606 the office may adopt a rule setting a fee, not to exceed $25, to
607 reimburse the costs associated with the administration of a
608 credit investigation.
609 (5) The Statewide Public Guardianship Office may inspect
610 at any time the results of any credit or criminal investigation
611 of a public or professional guardian conducted under this
612 section. The office shall maintain copies of the credit or
613 criminal results in the guardian's registration file. If the
614 results of a credit or criminal investigation of a public or
615 professional guardian have not been forwarded to the Statewide
616 Public Guardianship Office by the investigating agency, the
617 clerk of the court shall forward copies of the results of the
618 investigations to the office upon receiving them. ~~If credit or~~
619 ~~criminal investigations are required, the court must consider~~
620 ~~the results of the investigations before appointing a guardian.~~
621 ~~Professional guardians and all employees of a professional~~
622 ~~guardian who have a fiduciary responsibility to a ward, so~~
623 ~~appointed, must resubmit, at their own expense, to an~~
624 ~~investigation of credit history, and undergo level 1 background~~
625 ~~screening as required under s. 435.03, at least every 2 years~~
626 ~~after the date of their appointment. At any time, the court may~~
627 ~~require guardians or their employees to submit to an~~
628 ~~investigation of credit history and undergo level 1 background~~
629 ~~screening as required under s. 435.03. The court must consider~~
630 ~~the results of these investigations in reappointing a guardian.~~
631 ~~(1) Upon receiving the results of a credit or criminal~~
632 ~~investigation of any public or professional guardian, the clerk~~
633 ~~of the court shall forward copies of the results to the~~

634 ~~Statewide Public Guardianship Office in order that the results~~
635 ~~may be maintained in the guardian's registration file.~~
636 (6) ~~(2)~~ The requirements of this section do ~~does~~ not apply
637 to a professional guardian, or to the employees of a
638 professional guardian, that ~~which~~ is a trust company, a state
639 banking corporation or state savings association authorized and
640 qualified to exercise fiduciary powers in this state, or a
641 national banking association or federal savings and loan
642 association authorized and qualified to exercise fiduciary
643 powers in this state.
644 Section 9. Subsection (4) of section 744.3145, Florida
645 Statutes, is amended to read:
646 744.3145 Guardian education requirements.--
647 (4) Each person appointed by the court to be a guardian
648 must complete the required number of hours of instruction and
649 education within 4 months ~~1 year~~ after his or her appointment as
650 guardian. The instruction and education must be completed
651 through a course approved by the chief judge of the circuit
652 court and taught by a court-approved organization. Court-
653 approved organizations may include, but are not limited to,
654 community or junior colleges, guardianship organizations, and
655 the local bar association or The Florida Bar.
656 Section 10. Paragraph (i) of subsection (1) and subsection
657 (2) of section 744.3215, Florida Statutes, are amended to read:
658 744.3215 Rights of persons determined incapacitated.--
659 (1) A person who has been determined to be incapacitated
660 retains the right:

661 (i) To receive ~~necessary~~ services and rehabilitation
662 necessary to maximize the quality of life.
663 (2) Rights that may be removed from a person by an order
664 determining incapacity but not delegated to a guardian include
665 the right:
666 (a) To marry. If the right to enter into a contract has
667 been removed, the right to marry is subject to court approval.
668 (b) To vote.
669 (c) To personally apply for government benefits.
670 (d) To have a driver's license.
671 (e) To travel.
672 (f) To seek or retain employment.
673 Section 11. Subsections (2), (3), and (7) of section
674 744.331, Florida Statutes, are amended to read:
675 744.331 Procedures to determine incapacity.--
676 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--
677 (a) When a court appoints an attorney for an alleged
678 incapacitated person, the court must appoint an attorney who is
679 included in the attorney registry compiled by the circuit's
680 Article V indigent services committee. Appointments must be made
681 on a rotating basis, taking into consideration conflicts arising
682 under this chapter.
683 (b) ~~(a)~~ The court shall appoint an attorney for each person
684 alleged to be incapacitated in all cases involving a petition
685 for adjudication of incapacity. The alleged incapacitated person
686 may substitute her or his own attorney for the attorney
687 appointed by the court, subject to court approval.

688 (c) ~~(b)~~ Any attorney representing an alleged incapacitated
689 person may not serve as guardian of the alleged incapacitated
690 person or as counsel for the guardian of the alleged
691 incapacitated person or the petitioner.
692 (d) Effective January 1, 2007, an attorney seeking to be
693 appointed by a court for incapacity and guardianship proceedings
694 must have completed a minimum of 8 hours of education in
695 guardianship. A court may waive the initial training requirement
696 for an attorney who has served as a court-appointed attorney in
697 incapacity proceedings or as an attorney of record for guardians
698 for not less than 3 years.
699 (3) EXAMINING COMMITTEE.--
700 (a) Within 5 days after a petition for determination of
701 incapacity has been filed, the court shall appoint an examining
702 committee consisting of three members. One member must be a
703 psychiatrist or other physician. The remaining members must be
704 either a psychologist, gerontologist, another psychiatrist, or
705 other physician, a registered nurse, nurse practitioner,
706 licensed social worker, a person with an advanced degree in
707 gerontology from an accredited institution of higher education,
708 or other person who by knowledge, skill, experience, training,
709 or education may, in the court's discretion, advise the court in
710 the form of an expert opinion, including a professional
711 guardian. One of three members of the committee must have
712 knowledge of the type of incapacity alleged in the petition.
713 Unless good cause is shown, the attending or family physician
714 may not be appointed to the committee. If the attending or
715 family physician is available for consultation, the committee

716 must consult with the physician. Members of the examining
717 committee may not be related to or associated with one another,
718 ~~or~~ with the petitioner, with counsel for the petitioner or the
719 proposed guardian, or with the person alleged to be totally or
720 partially incapacitated. A member may not be employed by any
721 private or governmental agency that has custody of, or
722 furnishes, services or subsidies, directly or indirectly, to the
723 person or the family of the person alleged to be incapacitated
724 or for whom a guardianship is sought. A petitioner may not serve
725 as a member of the examining committee. Members of the examining
726 committee must be able to communicate, either directly or
727 through an interpreter, in the language that the alleged
728 incapacitated person speaks or to communicate in a medium
729 understandable to the alleged incapacitated person if she or he
730 is able to communicate. The clerk of the court shall send notice
731 of the appointment to each person appointed no later than 3 days
732 after the court's appointment.
733 (b) A person who has been appointed to serve as a member
734 of an examining committee to examine an alleged incapacitated
735 person may not thereafter be appointed as a guardian for the
736 person who was the subject of the examination.
737 (c) Each person appointed to an examining committee must
738 file an affidavit with the court stating that he or she has
739 completed the required courses or will do so no later than 4
740 months after his or her initial appointment. Each year, the
741 chief judge of the circuit must prepare a list of persons
742 qualified to be members of the examining committee.

743 (d) A member of an examining committee must complete a
744 minimum of 4 hours of initial training. The person must complete
745 2 hours of continuing education during each 2-year period after
746 the initial training. The initial training and continuing
747 education program must be developed under the supervision of the
748 Statewide Public Guardianship Office, in consultation with the
749 Florida Conference of Circuit Court Judges; the Elder Law and
750 the Real Property, Probate and Trust Law sections of The Florida
751 Bar; the Florida State Guardianship Association; and the Florida
752 Guardianship Foundation. The court may waive the initial
753 training requirement for a person who has served for not less
754 than 5 years on examining committees. If a person wishes to
755 obtain his or her continuing education on the Internet or by
756 watching a video course, the person must first obtain the
757 approval of the chief judge before taking an Internet or video
758 course.
759 (e) ~~(b)~~ Each member of the examining committee shall
760 examine the person. Each ~~The~~ examining committee member must
761 ~~shall~~ determine the alleged incapacitated person's ability to
762 exercise those rights specified in s. 744.3215. In addition to
763 the examination, each ~~the~~ examining committee member must ~~shall~~
764 have access to, and may consider, previous examinations of the
765 person, including, but not limited to, habilitation plans,
766 school records, and psychological and psychosocial reports
767 voluntarily offered for use by the alleged incapacitated person.
768 Each member of the examining committee must ~~shall~~ submit a
769 report within 15 days after appointment.

770 (f) ~~(e)~~ The examination of the alleged incapacitated person
771 must include a comprehensive examination, a report of which
772 shall be filed by the examining committee as part of its written
773 report. The comprehensive examination report should be an
774 essential element, but not necessarily the only element, used in
775 making a capacity and guardianship decision. The comprehensive
776 examination must include, if indicated:
777 1. A physical examination;
778 2. A mental health examination; and
779 3. A functional assessment.
780
781 If any of these three aspects of the examination is not
782 indicated or cannot be accomplished for any reason, the written
783 report must explain the reasons for its omission.
784 (g) ~~(d)~~ The committee's written report must include:
785 1. To the extent possible, a diagnosis, prognosis, and
786 recommended course of treatment.
787 2. An evaluation of the alleged incapacitated person's
788 ability to retain her or his rights, including, without
789 limitation, the rights to marry; vote; contract; manage or
790 dispose of property; have a driver's license; determine her or
791 his residence; consent to medical treatment; and make decisions
792 affecting her or his social environment.
793 3. The results of the comprehensive examination and the
794 committee members' assessment of information provided by the
795 attending or family physician, if any.
796 4. A description of any matters with respect to which the
797 person lacks the capacity to exercise rights, the extent of that

798 incapacity, and the factual basis for the determination that the
799 person lacks that capacity.
800 5. The names of all persons present during the time the
801 committee member conducted his or her examination. If a person
802 other than the person who is the subject of the examination
803 supplies answers posed to the alleged incapacitated person, the
804 report must include the response and the name of the person
805 supplying the answer.
806 6.~~5.~~ The signature of each member of the committee and the
807 date and time that each member conducted his or her examination.
808 (h)~~(e)~~ A copy of the report must be served on the
809 petitioner and on the attorney for the alleged incapacitated
810 person within 3 days after the report is filed and at least 5
811 days before the hearing on the petition.
812 (7) FEES.--
813 (a) The examining committee and any attorney appointed
814 under subsection (2) are entitled to reasonable fees to be
815 determined by the court.
816 (b) The fees awarded under paragraph (a) shall be paid by
817 the guardian from the property of the ward or, if the ward is
818 indigent, by the state. The state shall have a creditor's claim
819 against the guardianship property for any amounts paid under
820 this section. The state may file its claim within 90 days after
821 the entry of an order awarding attorney ad litem fees. If the
822 state does not file its claim within the 90-day period, the
823 state is thereafter barred from asserting the claim. Upon
824 petition by the state for payment of the claim, the court shall

825 enter an order authorizing immediate payment out of the property
826 of the ward. The state shall keep a record of the ~~such~~ payments.
827 (c) If the petition is dismissed, costs and attorney's
828 fees of the proceeding may be assessed against the petitioner if
829 the court finds the petition to have been filed in bad faith.
830 Section 12. Subsection (4) of section 744.341, Florida
831 Statutes, is renumbered as subsection (5) and a new subsection
832 (4) is added to that section to read:
833 744.341 Voluntary guardianship.--
834 (4) A guardian must include in the annual report filed
835 with the court a certificate from a licensed physician who
836 examined the ward not more than 90 days before the annual report
837 is filed with the court. The certificate must certify that the
838 ward is competent to understand the nature of the guardianship
839 and of the ward's authority to delegate powers to the voluntary
840 guardian.
841 Section 13. Subsection (9) is added to section 744.361,
842 Florida Statutes, to read:
843 744.361 Powers and duties of guardian.--
844 (9) A professional guardian must ensure that each of the
845 guardian's wards is personally visited by the guardian or one of
846 the guardian's professional staff at least once each calendar
847 quarter. During the personal visit, the guardian or the
848 guardian's professional staff person shall assess:
849 (a) The ward's physical appearance and condition.
850 (b) The appropriateness of the ward's current living
851 situation.

852 (c) The need for any additional services and the necessity
853 for continuation of existing services, taking into consideration
854 all aspects of social, psychological, educational, direct
855 service, health, and personal care needs.
856
857 This subsection does not apply to a professional guardian who
858 has been appointed only as guardian of the property.
859 Section 14. Subsection (2) of section 744.365, Florida
860 Statutes, is amended to read:
861 744.365 Verified inventory.--
862 (2) CONTENTS.--The verified inventory must include the
863 following:
864 (a) All property of the ward, real and personal, that has
865 come into the guardian's possession or knowledge, including a
866 statement of all encumbrances, liens, and other secured claims
867 on any item, any claims against the property, ~~and~~ any cause of
868 action accruing to the ward, and any trusts of which the ward is
869 a beneficiary.~~;~~
870 (b) The location of the real and personal property in
871 sufficient detail so that it may be clearly identified or
872 located.~~; and~~
873 (c) A description of all sources of income, including,
874 without limitation, social security benefits and pensions.
875 Section 15. Subsections (1) and (3) of section 744.367,
876 Florida Statutes, are amended to read:
877 744.367 Duty to file annual guardianship report.--
878 (1) Unless the court requires filing on a calendar-year
879 basis, each guardian of the person shall file with the court an

880 annual guardianship plan within 90 days after the last day of
881 the anniversary month the letters of guardianship were signed,
882 and the plan must cover the coming fiscal year, ending on the
883 last day in such anniversary month. If the court requires
884 calendar-year filing, the guardianship plan must be filed on or
885 before April 1 of each year ~~within 90 days after the end of the~~
886 ~~calendar year~~.
887 (3) The annual guardianship report of a guardian of the
888 property must consist of an annual accounting, and the annual
889 report of a guardian of the person ~~of an incapacitated person~~
890 must consist of an annual guardianship plan. The annual report
891 shall be served on the ward, unless the ward is a minor ~~under~~
892 ~~the age of 14 years~~ or is totally incapacitated, and on the
893 attorney for the ward, if any. The guardian shall provide a copy
894 to any other person as the court may direct.
895 Section 16. Section 744.3675, Florida Statutes, is amended
896 to read:
897 744.3675 Annual guardianship plan.--Each guardian of the
898 person must file with the court an annual guardianship plan
899 which updates information about the condition of the ward. The
900 annual plan must specify the current needs of the ward and how
901 those needs are proposed to be met in the coming year.
902 (1) Each plan for an adult ward must, if applicable,
903 include:
904 (a) Information concerning the residence of the ward,
905 including:
906 1. The ward's address at the time of filing the plan.~~;~~

907 2. The name and address of each place where the ward was
908 maintained during the preceding year.~~;~~
909 3. The length of stay of the ward at each place.~~;~~
910 4. A statement of whether the current residential setting
911 is best suited for the current needs of the ward.~~; and~~
912 5. Plans for ensuring during the coming year that the ward
913 is in the best residential setting to meet his or her needs.
914 (b) Information concerning the medical and mental health
915 conditions ~~condition~~ and treatment and rehabilitation needs of
916 the ward, including:
917 1. A resume of any professional medical treatment given to
918 the ward during the preceding year.~~;~~
919 2. The report of a physician who examined the ward no more
920 than 90 days before the beginning of the applicable reporting
921 period. The ~~Such~~ report must contain an evaluation of the ward's
922 condition and a statement of the current level of capacity of
923 the ward.~~; and~~
924 3. The plan for providing ~~provision of~~ medical, mental
925 health, and rehabilitative services in the coming year.
926 (c) Information concerning the social condition of the
927 ward, including:
928 1. The social and personal services currently used
929 ~~utilized~~ by the ward.~~;~~
930 2. The social skills of the ward, including a statement of
931 how well the ward communicates and maintains interpersonal
932 relationships. ~~with others;~~
933 ~~3. A description of the ward's activities at communication~~
934 ~~and visitation; and~~

935 3.~~4.~~ The social needs of the ward.
936 (2) Each plan filed by the legal guardian of a minor must
937 include:
938 (a) Information concerning the residence of the minor,
939 including:
940 1. The minor's address at the time of filing the plan.
941 2. The name and address of each place the minor lived
942 during the preceding year.
943 (b) Information concerning the medical and mental health
944 conditions and treatment and rehabilitation needs of the minor,
945 including:
946 1. A resume of any professional medical treatment given to
947 the minor during the preceding year.
948 2. A report from the physician who examined the minor no
949 more than 180 days before the beginning of the applicable
950 reporting period that contains an evaluation of the minor's
951 physical and mental conditions.
952 3. The plan for providing medical services in the coming
953 year.
954 (c) Information concerning the education of the minor,
955 including:
956 1. A summary of the school progress report.
957 2. The social development of the minor, including a
958 statement of how well the minor communicates and maintains
959 interpersonal relationships.
960 3. The social needs of the minor.
961 (3) ~~(2)~~ Each plan for an adult ward must address the issue
962 of restoration of rights to the ward and include:

963 (a) A summary of activities during the preceding year that
964 ~~which~~ were designed to enhance ~~increase~~ the capacity of the
965 ward.~~;~~
966 (b) A statement of whether the ward can have any rights
967 restored.~~; and~~
968 (c) A statement of whether restoration of any rights will
969 be sought.
970 (4) ~~(3)~~ The court, in its discretion, may require
971 reexamination of the ward by a physician at any time.
972 Section 17. Subsections (2) and (3) of section 744.3678,
973 Florida Statutes, are amended to read:
974 744.3678 Annual accounting.--
975 (2) The annual accounting must include:
976 (a) A full and correct account of the receipts and
977 disbursements of all of the ward's property over which the
978 guardian has control and a statement of the ward's property on
979 hand at the end of the accounting period. This paragraph does
980 not apply to any property or any trust of which the ward is a
981 beneficiary but which is not under the control or administration
982 of the guardian.
983 (b) A copy of the annual or year-end statement of all of
984 the ward's cash accounts from each of the institutions where the
985 cash is deposited.
986 (3) The guardian must obtain a receipt, ~~or~~ canceled check,
987 or other proof of payment for all expenditures and disbursements
988 made on behalf of the ward. The guardian must preserve all
989 evidence of payment ~~the receipts and canceled checks~~, along with
990 other substantiating papers, for a period of 3 years after his

991 or her discharge. The receipts, proofs of payment ~~checks~~, and
992 substantiating papers need not be filed with the court but shall
993 be made available for inspection and review at the ~~such~~ time and
994 ~~in such~~ place and before the ~~such~~ persons as the court may ~~from~~
995 ~~time to time~~ order.
996 Section 18. Section 744.3679, Florida Statutes, is amended
997 to read:
998 744.3679 Simplified accounting procedures in certain
999 cases.--
1000 (1) In a guardianship of property, when all assets of the
1001 estate are in designated depositories under s. 69.031 and the
1002 only transactions that occur in that account are interest
1003 accrual, deposits from a ~~pursuant to~~ settlement, or financial
1004 institution service charges, the guardian may elect to file an
1005 accounting consisting of:
1006 (a) The original or a certified copy of the year-end
1007 statement of the ward's account from the financial institution;
1008 and
1009 (b) A statement by the guardian under penalty of perjury
1010 that the guardian has custody and control of the ward's property
1011 as shown in the year-end statement.
1012 ~~(2) The clerk has no responsibility to monitor or audit~~
1013 ~~the accounts and may not accept a fee for doing so.~~
1014 (2) ~~(3)~~ The accounting allowed by subsection (1) is in lieu
1015 of the accounting and auditing procedures under s. 744.3678(2)
1016 ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party
1017 may seek judicial review as provided in s. 744.3685.

1018 (3) ~~(4)~~ The guardian need not be represented by an attorney
1019 in order to file the annual accounting allowed by subsection
1020 (1).
1021 Section 19. Subsection (3) of section 744.368, Florida
1022 Statutes, is amended to read:
1023 744.368 Responsibilities of the clerk of the circuit
1024 court.--
1025 (3) Within 90 days after the filing of the verified
1026 inventory and accountings ~~initial or annual guardianship report~~
1027 by a guardian of the property, the clerk shall audit the
1028 verified inventory and ~~or~~ the accountings ~~annual accounting~~. The
1029 clerk shall advise the court of the results of the audit.
1030 Section 20. Subsection (19) of section 744.441, Florida
1031 Statutes, is amended to read:
1032 744.441 Powers of guardian upon court approval.--After
1033 obtaining approval of the court pursuant to a petition for
1034 authorization to act, a plenary guardian of the property, or a
1035 limited guardian of the property within the powers granted by
1036 the order appointing the guardian or an approved annual or
1037 amended guardianship report, may:
1038 (19) Create or amend revocable or irrevocable trusts of
1039 property of the ward's estate which may extend beyond the
1040 disability or life of the ward in connection with estate, gift,
1041 income, or other tax planning or in connection with estate
1042 planning. The court shall retain oversight of the assets
1043 transferred to a trust, unless otherwise ordered by the court.
1044 Section 21. Section 744.442, Florida Statutes, is created
1045 to read:

1046 744.442 Delegation of authority.--
1047 (1) A guardian may designate a surrogate guardian to
1048 exercise the powers of the guardian if the guardian is
1049 unavailable to act. A person designated as a surrogate guardian
1050 under this section must be a professional guardian.
1051 (2)(a) A guardian must file a petition with the court
1052 requesting permission to designate a surrogate guardian.
1053 (b) If the court approves the designation, the order must
1054 specify the name and business address of the surrogate guardian
1055 and the duration of appointment, which may not exceed 30 days.
1056 The court may extend the appointment for good cause shown. The
1057 surrogate guardian may exercise all powers of the guardian
1058 unless limited by order of the court. The surrogate guardian
1059 must file with the court an oath swearing or affirming that he
1060 or she will faithfully perform the duties delegated. The court
1061 may require the surrogate guardian to post a bond.
1062 (3) This section does not limit the responsibility of the
1063 guardian to the ward and to the court. The guardian is liable
1064 for the acts of the surrogate guardian. The guardian may
1065 terminate the authority of the surrogate guardian by filing a
1066 written notice of the termination with the court.
1067 (4) The surrogate guardian is subject to the jurisdiction
1068 of the court as if appointed to serve as guardian.
1069 Section 22. Paragraphs (c), (e), and (f) of subsection (2)
1070 and subsection (4) of section 744.464, Florida Statutes, are
1071 amended to read:
1072 744.464 Restoration to capacity.--
1073 (2) SUGGESTION OF CAPACITY.--

1074 (c) The court shall immediately send notice of the filing
1075 of the suggestion of capacity to the ward, the guardian, the
1076 attorney for the ward, if any, ~~the state attorney,~~ and any other
1077 interested persons designated by the court. Formal notice must
1078 be served on the guardian. Informal notice may be served on
1079 other persons. Notice need not be served on the person who filed
1080 the suggestion of capacity.
1081 (e) If an objection is timely filed, or if the medical
1082 examination suggests that full restoration is not appropriate,
1083 the court shall set the matter for hearing. If the ward does not
1084 have an attorney, the court shall appoint one to represent the
1085 ward.
1086 (f) Notice of the hearing and copies of the objections and
1087 medical examination reports shall be served upon the ward, the
1088 ward's attorney, the guardian, ~~the state attorney,~~ the ward's
1089 next of kin, and any other interested persons as directed by the
1090 court.
1091 ~~(4) TIME LIMITATION FOR FILING SUGGESTION OF~~
1092 ~~CAPACITY.--Notwithstanding this section, a suggestion of~~
1093 ~~capacity may not be filed within 90 days after an adjudication~~
1094 ~~of incapacity or denial of restoration, unless good cause is~~
1095 ~~shown.~~
1096 Section 23. Paragraph (a) of subsection (19) of section
1097 744.474, Florida Statutes, is amended, and paragraph (b) of that
1098 subsection is redesignated as subsection (20) of that section
1099 and amended, to read:

1100 744.474 Reasons for removal of guardian.--A guardian may
1101 be removed for any of the following reasons, and the removal
1102 shall be in addition to any other penalties prescribed by law:
1103 (19) Upon a showing by a person who did not receive notice
1104 of the petition for adjudication of incapacity, when such notice
1105 is required, or who is related to the ward within the
1106 relationships specified for nonresident relatives in ss.
1107 744.309(2) and 744.312(2) and who has not previously been
1108 rejected by the court as a guardian that~~:~~
1109 ~~(a)~~ the current guardian is not a family member~~,~~ and
1110 subsection (20) applies.
1111 (20) ~~(b)~~ Upon a showing that removal of the current
1112 guardian is in the best interest of the ward, the court may
1113 remove the current guardian and appoint the petitioner, or such
1114 person as the court deems in the best interest of the ward,
1115 either as guardian of the person or of the property, or both.
1116 Section 24. Section 744.511, Florida Statutes, is amended
1117 to read:
1118 744.511 Accounting upon removal.--A removed guardian shall
1119 file with the court a true, complete, and final report of his or
1120 her guardianship within 20 days after removal and shall serve a
1121 copy on the successor guardian and the ward, unless the ward is
1122 a minor ~~under 14 years of age~~ or has been determined to be
1123 totally incapacitated.
1124 Section 25. Section 744.527, Florida Statutes, is amended
1125 to read:
1126 744.527 Final reports and application for discharge;
1127 hearing.--

1128 (1) When the court terminates the guardianship for any of
1129 the reasons set forth in s. 744.521, the guardian shall promptly
1130 file his or her final report. If the ward has died, the guardian
1131 must file a final report with the court no later than 45 days
1132 after he or she has been served with letters of administration
1133 or letters of curatorship. If no objections are filed and if it
1134 appears that the guardian has made full and complete
1135 distribution to the person entitled and has otherwise faithfully
1136 discharged his or her duties, the court shall approve the final
1137 report. If objections are filed, the court shall conduct a
1138 hearing in the same manner as provided for a hearing on
1139 objections to annual guardianship reports.
1140 (2) The guardian applying for discharge may ~~is authorized~~
1141 ~~to~~ retain from the funds in his or her possession a sufficient
1142 amount to pay the final costs of administration, including
1143 guardian and attorney's fees regardless of the death of the
1144 ward, accruing between the filing of his or her final returns
1145 and the order of discharge.
1146 Section 26. Subsection (3) of section 744.528, Florida
1147 Statutes, is amended to read:
1148 744.528 Discharge of guardian named as personal
1149 representative.--
1150 (3) Any interested person may file a notice of ~~The court~~
1151 ~~shall set~~ a hearing on any objections filed by the
1152 beneficiaries. Notice of the hearing must ~~shall~~ be served upon
1153 the guardian, beneficiaries of the ward's estate, and any other
1154 person to whom the court directs service. If a notice of hearing

1155 on the objections is not served within 90 days after filing of
1156 the objections, the objections are deemed abandoned.
1157 Section 27. Subsections (5) through (8) of section
1158 744.708, Florida Statutes, are amended to read:
1159 744.708 Reports and standards.--
1160 (5)(a) Each office of public guardian shall undergo an
1161 independent audit by a qualified certified public accountant
1162 ~~shall be performed~~ at least once every 2 years. ~~The audit should~~
1163 ~~include an investigation into the practices of the office for~~
1164 ~~managing the person and property of the wards.~~ A copy of the
1165 audit report shall be submitted to the Statewide Public
1166 Guardianship Office.
1167 (b) In addition to regular monitoring activities, the
1168 Statewide Public Guardianship Office shall conduct an
1169 investigation into the practices of each office of public
1170 guardian related to the managing of each ward's personal affairs
1171 and property. When feasible, the investigation required under
1172 this paragraph shall be conducted in conjunction with the
1173 financial audit of each office of public guardian under
1174 paragraph (a).
1175 (c) In addition, each ~~the~~ office of public guardian shall
1176 be subject to audits or examinations by the Auditor General and
1177 the Office of Program Policy Analysis and Government
1178 Accountability pursuant to law.
1179 (6) A ~~The~~ public guardian shall ensure that each of the
1180 guardian's wards is personally visited ~~ward is seen~~ by the
1181 public guardian or by one of the guardian's ~~a~~ professional staff
1182 ~~person~~ at least once each calendar quarter ~~four times a year~~.

1183 During this personal visit, the public guardian or the
1184 professional staff person shall assess:
1185 (a) The ward's physical appearance and condition.
1186 (b) The appropriateness of the ward's current living
1187 situation.
1188 (c) The need for any additional services and the necessity
1189 for continuation of existing services, taking into consideration
1190 all aspects of social, psychological, educational, direct
1191 service, health, and personal care needs.
1192 (7) The ratio for professional staff to wards shall be 1
1193 professional to 40 wards. The Statewide Public Guardianship
1194 Office may increase or decrease the ratio after consultation
1195 with the local public guardian and the chief judge of the
1196 circuit court. The basis of the decision to increase or decrease
1197 the prescribed ratio shall be reported in the annual report to
1198 the Secretary of Elderly Affairs, the Governor, the President of
1199 the Senate, the Speaker of the House of Representatives, and the
1200 Chief Justice of the Supreme Court.
1201 ~~(8) The term "professional," for purposes of this part,~~
1202 ~~shall not include the public guardian nor the executive director~~
1203 ~~of the Statewide Public Guardianship Office. The term~~
1204 ~~"professional" shall be limited to those persons who exercise~~
1205 ~~direct supervision of individual wards under the direction of~~
1206 ~~the public guardian.~~
1207 Section 28. Paragraph (a) of subsection (5) of section
1208 765.101, Florida Statutes, is amended to read:
1209 765.101 Definitions.--As used in this chapter:
1210 (5) "Health care decision" means:

1211 (a) Informed consent, refusal of consent, or withdrawal of
1212 consent to any and all health care, including life-prolonging
1213 procedures and mental health treatment, unless otherwise stated
1214 in the advance directives.
1215 Section 29. Section 28.345, Florida Statutes, is amended
1216 to read:
1217 28.345 Exemption from court-related fees and
1218 charges.--Notwithstanding any other ~~provision of this chapter or~~
1219 law to the contrary, judges and those court staff acting on
1220 behalf of judges, state attorneys, guardians ad litem, public
1221 guardians, attorneys ad litem, court-appointed private counsel,
1222 and public defenders, acting in their official capacity, and
1223 state agencies~~,~~ are exempt from all court-related fees and
1224 charges assessed by the clerks of the circuit courts.
1225 Section 30. Paragraph (c) of subsection (8) of section
1226 121.091, Florida Statutes, is amended to read:
1227 121.091 Benefits payable under the system.--Benefits may
1228 not be paid under this section unless the member has terminated
1229 employment as provided in s. 121.021(39)(a) or begun
1230 participation in the Deferred Retirement Option Program as
1231 provided in subsection (13), and a proper application has been
1232 filed in the manner prescribed by the department. The department
1233 may cancel an application for retirement benefits when the
1234 member or beneficiary fails to timely provide the information
1235 and documents required by this chapter and the department's
1236 rules. The department shall adopt rules establishing procedures
1237 for application for retirement benefits and for the cancellation

1238 of such application when the required information or documents
1239 are not received.
1240 (8) DESIGNATION OF BENEFICIARIES.--
1241 (c) Notwithstanding the member's designation of benefits
1242 to be paid through a trust to a beneficiary that is a natural
1243 person as provided in s. 121.021(46), and notwithstanding the
1244 provisions of the trust, benefits shall be paid directly to the
1245 beneficiary if the ~~such~~ person is no longer a minor or an
1246 incapacitated person as defined in s. 744.102~~(11) and (12)~~.
1247 Section 31. Paragraph (c) of subsection (20) of section
1248 121.4501, Florida Statutes, is amended to read:
1249 121.4501 Public Employee Optional Retirement Program.--
1250 (20) DESIGNATION OF BENEFICIARIES.--
1251 (c) Notwithstanding the participant's designation of
1252 benefits to be paid through a trust to a beneficiary that is a
1253 natural person, and notwithstanding the provisions of the trust,
1254 benefits shall be paid directly to the beneficiary if the ~~such~~
1255 person is no longer a minor or an incapacitated person as
1256 defined in s. 744.102~~(11) and (12)~~.
1257 Section 32. Subsection (1) and paragraphs (b), (d), and
1258 (f) of subsection (4) of section 709.08, Florida Statutes, are
1259 amended to read:
1260 709.08 Durable power of attorney.--
1261 (1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable
1262 power of attorney is a written power of attorney by which a
1263 principal designates another as the principal's attorney in
1264 fact. The durable power of attorney must be in writing, must be
1265 executed with the same formalities required for the conveyance

1266 of real property by Florida law, and must contain the words:
1267 "This durable power of attorney is not affected by subsequent
1268 incapacity of the principal except as provided in s. 709.08,
1269 Florida Statutes"; or similar words that show the principal's
1270 intent that the authority conferred is exercisable
1271 notwithstanding the principal's subsequent incapacity, except as
1272 otherwise provided by this section. The durable power of
1273 attorney is exercisable as of the date of execution; however, if
1274 the durable power of attorney is conditioned upon the
1275 principal's lack of capacity to manage property as defined in s.
1276 744.102(12)~~(11)~~(a), the durable power of attorney is exercisable
1277 upon the delivery of affidavits in paragraphs (4)(c) and (d) to
1278 the third party.
1279 (4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS;
1280 AFFIDAVITS.--
1281 (b) Any third party may rely upon the authority granted in
1282 a durable power of attorney that is conditioned on the
1283 principal's lack of capacity to manage property as defined in s.
1284 744.102(12)~~(11)~~(a) only after receiving the affidavits provided
1285 in paragraphs (c) and (d), and such reliance shall end when the
1286 third party has received notice as provided in subsection (5).
1287 (d) A determination that a principal lacks the capacity to
1288 manage property as defined in s. 744.102(12)~~(11)~~(a) must be made
1289 and evidenced by the affidavit of a physician licensed to
1290 practice medicine pursuant to chapters 458 and 459 as of the
1291 date of the affidavit. A judicial determination that the
1292 principal lacks the capacity to manage property pursuant to
1293 chapter 744 is not required prior to the determination by the

1294 physician and the execution of the affidavit. For purposes of
1295 this section, the physician executing the affidavit must be the
1296 primary physician who has responsibility for the treatment and
1297 care of the principal. The affidavit executed by a physician
1298 must state where the physician is licensed to practice medicine,
1299 that the physician is the primary physician who has
1300 responsibility for the treatment and care of the principal, and
1301 that the physician believes that the principal lacks the
1302 capacity to manage property as defined in s. 744.102(12) ~~(11)~~(a).
1303 The affidavit may, but need not, be in the following form:
1304
1305 STATE OF_____
1306 COUNTY OF_____
1307
1308 Before me, the undersigned authority, personally appeared
1309 (name of physician) , Affiant, who swore or affirmed that:
1310 1. Affiant is a physician licensed to practice medicine in
1311 (name of state, territory, or foreign country) .
1312 2. Affiant is the primary physician who has responsibility
1313 for the treatment and care of (principal's name) .
1314 3. To the best of Affiant's knowledge after reasonable
1315 inquiry, Affiant believes that the principal lacks the capacity
1316 to manage property, including taking those actions necessary to
1317 obtain, administer, and dispose of real and personal property,
1318 intangible property, business property, benefits, and income.
1319
1320
1321 _____

1322 (Affiant)
1323
1324 Sworn to (or affirmed) and subscribed before me this (day
1325 of) (month) , (year) , by (name of person making
1326 statement)
1327
1328 (Signature of Notary Public-State of Florida)
1329
1330 (Print, Type, or Stamp Commissioned Name of Notary Public)
1331
1332 Personally Known OR Produced Identification
1333 (Type of Identification Produced)
1334 (f) A third party may not rely on the authority granted in
1335 a durable power of attorney conditioned on the principal's lack
1336 of capacity to manage property as defined in s.
1337 744.102(12) ~~(11)~~ (a) when any affidavit presented has been
1338 executed more than 6 months prior to the first presentation of
1339 the durable power of attorney to the third party.
1340 Section 33. Subsection (3) of section 744.1085, Florida
1341 Statutes, is amended to read:
1342 744.1085 Regulation of professional guardians;
1343 application; bond required; educational requirements.--
1344 (3) Each professional guardian defined in s.
1345 744.102(17) ~~(16)~~ and public guardian must receive a minimum of 40
1346 hours of instruction and training. Each professional guardian
1347 must receive a minimum of 16 hours of continuing education every
1348 2 calendar years after the year in which the initial 40-hour
1349 educational requirement is met. The instruction and education

1350 must be completed through a course approved or offered by the
1351 Statewide Public Guardianship Office. The expenses incurred to
1352 satisfy the educational requirements prescribed in this section
1353 may not be paid with the assets of any ward. This subsection
1354 does not apply to any attorney who is licensed to practice law
1355 in this state.
1356 Section 34. For the purpose of incorporating the amendment
1357 made by this act to section 744.3215, Florida Statutes, in a
1358 reference thereto, subsection (4) of section 117.107, Florida
1359 Statutes, is reenacted to read:
1360 117.107 Prohibited acts.--
1361 (4) A notary public may not take the acknowledgment of or
1362 administer an oath to a person whom the notary public actually
1363 knows to have been adjudicated mentally incapacitated by a court
1364 of competent jurisdiction, where the acknowledgment or oath
1365 necessitates the exercise of a right that has been removed
1366 pursuant to s. 744.3215(2) or (3), and where the person has not
1367 been restored to capacity as a matter of record.
1368 Section 35. Subsection (13) of section 318.18, Florida
1369 Statutes, is amended to read:
1370 318.18 Amount of civil penalties.--The penalties required
1371 for a noncriminal disposition pursuant to s. 318.14 are as
1372 follows:
1373 (13) In addition to any penalties imposed for noncriminal
1374 traffic infractions <u>under</u> ~~pursuant to~~ this chapter or imposed
1375 for criminal violations listed in s. 318.17, <u>notwithstanding s.</u>
1376 <u>318.121,</u> a board of county commissioners or any unit of local
1377 government which is consolidated as provided by s. 9, Art. VIII

1378 of the State Constitution of 1885, as preserved by s. 6(e), Art.
1379 VIII of the Constitution of 1968:
1380 (a) May impose by ordinance a surcharge of up to $15 for
1381 any infraction or violation to fund state court facilities. The
1382 court may ~~shall~~ not waive this surcharge. Up to 25 percent of
1383 the revenue from such surcharge may be used to support local law
1384 libraries provided that the county or unit of local government
1385 provides a level of service equal to that provided prior to July
1386 1, 2004, which shall include the continuation of library
1387 facilities located in or near the county courthouse or annexes.
1388 (b) That imposed increased fees or service charges by
1389 ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the
1390 purpose of securing payment of the principal and interest on
1391 bonds issued by the county before July 1, 2003, to finance state
1392 court facilities, may impose by ordinance a surcharge for any
1393 infraction or violation for the exclusive purpose of securing
1394 payment of the principal and interest on bonds issued by the
1395 county before July 1, 2003, to fund state court facilities until
1396 the date of stated maturity. The court may ~~shall~~ not waive this
1397 surcharge. The ~~Such~~ surcharge may not exceed an amount per
1398 violation calculated as the quotient of the maximum annual
1399 payment of the principal and interest on the bonds as of July 1,
1400 2003, divided by the number of traffic citations for county
1401 fiscal year 2002-2003 certified as paid by the clerk of the
1402 court of the county. The ~~Such~~ quotient shall be rounded up to
1403 the next highest dollar amount. The bonds may be refunded only
1404 if savings will be realized on payments of debt service and the

1405 refunding bonds are scheduled to mature on the same date or
1406 before the bonds being refunded.
1407 (c) May impose an additional $15 surcharge to fund the
1408 county's participation in the public guardianship program under
1409 chapter 744. Imposition of this surcharge must be by vote of
1410 two-thirds of the board of county commissioners or after a
1411 referendum approved by the electors of the county. Before
1412 imposing the surcharge, the county commission must demonstrate
1413 that available revenue sources are insufficient to fund such
1414 participation. The court may not waive this surcharge.
1415
1416 A county may not impose ~~both of~~ the surcharges authorized under
1417 both paragraphs (a) and (b) concurrently. The clerk of court
1418 shall report, no later than 30 days after the end of the
1419 quarter, the amount of funds collected under this subsection
1420 during each quarter of the fiscal year. The clerk shall submit
1421 the report, in a format developed by the Office of State Courts
1422 Administrator, to the chief judge of the circuit, the Governor,
1423 the President of the Senate, and the Speaker of the House of
1424 Representatives.
1425 Section 36. Section 938.065, Florida Statutes, is created
1426 to read:
1427 938.065 Additional cost for public guardianship
1428 programs.--
1429 (1) In addition to any fine prescribed by law for any
1430 misdemeanor offense, there is assessed as a court cost an
1431 additional surcharge of $18 on each fine, which shall be imposed

1432 by each county and circuit court and collected by the clerk of
1433 the court together with the fine.
1434 (2) The clerk of the court shall collect and forward, on a
1435 monthly basis, all costs assessed under this section, less $3
1436 per assessment as a service charge to be retained by the clerk,
1437 to the Department of Revenue for deposit into the General
1438 Revenue Fund. The funds collected shall be used exclusively to
1439 fund public guardianship programs in this state.
1440 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 | 4 Y, 2 N | Preston | Collins |
| 2) Civil Justice Committee | | Shaddock | Bond |
| 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. This 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 -- This 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.

2. Expenditures:

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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.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

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

None.

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.

HB 817

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 817 CS Telecommunications Carriers of Last Resort
**SPONSOR(S):** Murzin
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Utilities & Telecommunications Committee | 16 Y, 0 N, w/CS | Cater | Holt |
| 2) Business Regulation Committee | 14 Y, 0 N | Watson | Liepshutz |
| 3) Civil Justice Committee | | Blalock | Bond |
| 4) Commerce Council | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Current law provides that, "until January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's territory." This provision is generally referred to as the "carrier-of-last-resort" obligation under which local exchange telecommunications companies have always operated. PSC rules provide availability of service requirements such as having facilities in place for "realistically anticipated customer demands for basic local telecommunications service" and timeframes for service requests to be fulfilled.

This bill amends s. 364.025, F.S., to provide that a local exchange telecommunications company (LEC), with carrier-of-last resort (COLR) obligations, is relieved of providing basic local telecommunications service to business or residential buildings or developments, when circumstances exist that prevented or impeded it from connecting with the occupants.

This bill requires a LEC, with COLR obligations, to give timely notice to the PSC when circumstances exist that prevent or impede it from providing basic local exchange telecommunications service (basic service) to the occupants of building or development. If its COLR obligation is not automatically relieved, a LEC can petition the PSC for a waiver of this obligation based on the facts and circumstances of the provision of service on the party.

This bill also requires the COLR obligation to go back into effect if the circumstances for automatic relief no longer exist and the owner or developer of the property has no intention to arrange for communication service for another provider. The bill allows the LEC to recover from the developer, reasonable costs in excess of the LECs costs if it had initially provided service.

The bill does not have a fiscal impact on state or local governments.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -- This bill provides an exemption to a local exchange telecommunications company with carrier-of-last resort (COLR) obligations, when circumstances exist that prevented or impeded it from providing basic service to the occupants of a business or residential multi-tenant building or development.

B. EFFECT OF PROPOSED CHANGES:

**Background**

Section 364.025(1), F.S., provides that, "[U]ntil January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service[1] within a reasonable time period to any person requesting such service within the company's territory." This provision is generally referred to as the "carrier-of-last-resort" obligation under which local exchange telecommunications companies[2] have always operated. PSC rules provide availability of service requirements such as having facilities in place for "realistically anticipated customer demands for basic local telecommunications service" and timeframes for service requests to be fulfilled.[3]

The current law does not provide for waiver of the COLR obligations. However, s. 364.01(4)(f), F.S., provides the PSC with authority to eliminate rules and regulations that delay or impair the transition to competition.

Local exchange telecommunications companies with COLR obligations have encountered situations in multi-tenant structures and developments that have prevented or impeded them from providing basic service to the occupants (end-use customers). Either before or after a LEC begins provisioning activities to serve these end-use customers, the property owner either enters into an exclusive arrangement with another carrier and prohibits the COLR from installing facilities and/or providing service, or the property owner enters into an agreement with another communications provider where the property owner collects money from the tenants to cover the cost of the alternative communications services. However, the LEC still has its COLR obligation; and when these situations have occurred, the LEC has notified the PSC of these "locked out" situations.

On December 16, 2005, BellSouth Telecommunications, Inc., a COLR, petitioned the PSC for Waiver of Rules 25-4.066 and 25-4.067, F.A.C. and Petition to Initiate Rulemaking (Petition). BellSouth seeks relief relate to service installation intervals and line extension cost recovery which have been established, in part, to implement its COLR obligation. BellSouth's rulemaking request is to permit a waiver of the rules relating only to multi-tenant establishments and subdivisions where owners or developers have sought to limit the ability of COLRs to serve the occupants of such locations. The PSC has not ruled on the Petition.

**Effect of Bill**

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[1] Section 364.02(1), F.S., defines "basic local telecommunications service" as voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.
[2] Section 364.02(8), F.S., defines "local exchange telecommunications company" as any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995.
[3] S. 25-4.066, F.A.C., Availability of Service.

This bill amends s. 364.025, F.S., to provide an exemption to local exchange telecommunications companies, with carrier-of-last resort (COLR) obligations. The exemption relieves them of providing basic service only to business or residential buildings or developments, when circumstances exist that prevented or impeded them from connecting with the occupants. The bill provides definitions and establishes criteria under which the exemption is applicable.

The bill defines the following terms:

- "Owner or developer" as the owner or developer of a multi-tenant business or residential property, any condominium association or homeowners' association thereof, or any other person or entity having ownership in or control over the property.
- "Communications service provider" includes any person or entity providing communications services or allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or developer.
- "Communications service" means voice service or voice replacement service.

This bill establishes criteria whereby a LEC, with COLR obligations, may be relieved of its obligations to provide basic service to any customers in a multi-tenant business or residential property (including, but not limited to, apartments, condominiums, subdivisions, office buildings or office parks), when the owner or developer:

- Permits only one communications service provider, not the LEC, to install its communications service-related facilities or equipment during the construction phase of the project;
- Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the LEC;
- Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the LEC, in any manner, including, but not limited to, collection through rent, fees, or dues;
- Restricts or limits a LEC's access to the property or enters into an agreement with a communications service provider that restricts or limits an LEC's access to the property or grants incentives or rewards to such owner or developer contingent upon such restriction or limitation; or
- Restricts or limits the types of services that may be provided by a LEC or enters into an agreement with a communications service provider which restricts or limits the types of services that may be provided by a LEC.

This bill also requires a LEC, with COLR obligations, to give timely notice to the PSC when the above circumstances exist and prevent or impede it from providing basic service to the occupants of a business or residential multi-tenant building or development.

If a LEC is not automatically relieved of its COLR obligation, it may seek a waiver of this obligation from the PSC for good cause based on facts and circumstances of provisioning services to the multi-tenant property. When the COLR petitions the PSC it shall provide notice to the building owner or developer. The PSC has 90 days to act on the petition, and shall implement this paragraph through rulemaking.

If the condition for which the LEFC is relieved of its COLR obligation ceases to exist, and the property's owner or developer provides a written request to the LEC to make service available to customers at the property, and the owner has not arranged and does not intend to arrange with another communications service provider to make service available to customers at the property, the COLR obligation again applies to the LEC, however the LEC may recover from the owner or developer a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire the facilities to serve the customers initially. Additionally, the COLR shall have a reasonable period of time following the request to make arrangements for service availability. If the conditions that allow the LEC to be

relieved of its COLR obligation again exist on a property, the LEC is then again relieved of its COLR obligation.

Nothing in the bill affects the limitations on PSC jurisdiction imposed by s. 364.011 or s. 364.013, F.S.[4]

C. SECTION DIRECTORY:

Section 1 creates s. 364.025(6), F.S., related to carrier of last resort obligations for telecommunications carriers.

Section 2 provides 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:

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:

The bill requires the PSC to implement the paragraph relating to waivers through rulemaking.

[4] Section 364.011, F.S., provides for exemptions from the PSC's jurisdiction and s. 364.013, provides that broadband and VoIP services are free from state regulation except as delineated in ch. 364, F.S., or in federal law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2006, the Utilities & Telecommunications Committee adopted a strike-all amendment. This amendment:

- Changed all references "eligible telecommunications carrier" to the more appropriate "local exchange telecommunication company."
- Narrowed the definition of "communications service."
- Removed a circumstance where companies would be relieved of the COLR obligation where the owner or developer restricts or limits the type of service the COLR can provide.
- Added a provision allowing LECs to petition the PSC for a waiver of the COLR obligation.
- Added a provision for after a COLR is relieved of its obligation, it would again have the COLR obligation.

This bill was then reported favorably with a CS.

On March 30, 2006, the Business Regulation Committee adopted one amendment. This amendment clarified that a COLR is automatically relieved of its obligation when the COLR's access is specifically limited by an agreement between a property owner and a competing carrier. This bill was then reported favorably with a CS.

CHAMBER ACTION

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1 The Business Regulation 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 telecommunications carriers of last
7 resort; amending s. 364.025, F.S.; providing definitions;
8 providing that a local exchange telecommunications company
9 obligated to serve as the carrier of last resort is not
10 obligated to provide basic local telecommunications
11 service to customers in a multitenant business or
12 residential property under certain circumstances;
13 requiring the local exchange telecommunications company to
14 notify the Public Service Commission when it is relieved
15 of the obligation to provide service; providing for the
16 local exchange telecommunications company to request a
17 waiver of its carrier of last resort obligation from the
18 commission; providing for carrier of last resort
19 obligation to apply when specified conditions cease to
20 exist; providing for effect of the act on the commission's
21 jurisdiction; providing an effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (6) is added to section 364.025,
26 Florida Statutes, to read:
27 364.025 Universal service.--
28 (6)(a) For purposes of this subsection:
29 1. "Owner or developer" means the owner or developer of a
30 multitenant business or residential property, any condominium
31 association or homeowners' association thereof, or any other
32 person or entity having ownership in or control over the
33 property.
34 2. "Communications service provider" means any person or
35 entity providing communications services, any person or entity
36 allowing another person or entity to use its communications
37 facilities to provide communications services, or any person or
38 entity securing rights to select communications service
39 providers for a property owner or developer.
40 3. "Communications service" means voice service or voice
41 replacement service through the use of any technology.
42 (b) A local exchange telecommunications company obligated
43 by this section to serve as the carrier of last resort is not
44 obligated to provide basic local telecommunications service to
45 any customers in a multitenant business or residential property,
46 including, but not limited to, apartments, condominiums,
47 subdivisions, office buildings, or office parks, when the owner
48 or developer thereof:
49 1. Permits only one communications service provider to
50 install its communications service-related facilities or
51 equipment, to the exclusion of the local exchange

52 telecommunications company, during the construction phase of the
53 property;
54 2. Accepts or agrees to accept incentives or rewards from
55 a communications service provider that are contingent upon the
56 provision of any or all communications services by one or more
57 communications service providers to the exclusion of the local
58 exchange telecommunications company;
59 3. Collects from the occupants or residents of the
60 property charges for the provision of any communications
61 service, provided by a communications service provider other
62 than the local exchange telecommunications company, to the
63 occupants or residents in any manner, including, but not limited
64 to, collection through rent, fees, or dues; or
65 4. Enters into an agreement with a communications service
66 provider that grants incentives or rewards to such owner or
67 developer contingent upon restriction or limitation of the local
68 exchange telecommunications company's access to the property.
69 (c) The local exchange telecommunications company relieved
70 of its carrier of last resort obligation to provide basic local
71 telecommunications service to the occupants or residents of a
72 multitenant business or residential property pursuant to
73 paragraph (b) shall notify the commission of that fact in a
74 timely manner.
75 (d) A local exchange telecommunications company that is
76 not automatically relieved of its carrier-of-last-resort
77 obligation pursuant to subparagraphs (b)1.-4. may seek a waiver
78 of its carrier of last resort obligation from the commission for
79 good cause shown based on the facts and circumstances of

80 provision of service to the multitenant business or residential
81 property. Upon petition for such relief, notice shall be given
82 by the company at the same time to the relevant building owner
83 or developer. The commission shall have 90 days to act on the
84 petition. The commission shall implement this paragraph through
85 rulemaking.
86 (e) If all conditions described in subparagraphs (b)1.-4.
87 cease to exist at a property, the owner or developer requests in
88 writing that the local exchange telecommunications company make
89 service available to customers at the property and confirms in
90 writing that all conditions described in subparagraphs (b)1.-4.
91 have ceased to exist at the property, and the owner or developer
92 has not arranged and does not intend to arrange with another
93 communications service provider to make communications service
94 available to customers at the property, then the carrier of last
95 resort obligation under this section shall again apply to the
96 local exchange telecommunications company at the property;
97 however, the local exchange telecommunications company may
98 require that the owner or developer pay to the company in
99 advance a reasonable fee to recover costs that exceed the costs
100 that would have been incurred to construct or acquire facilities
101 to serve customers at the property initially, and the company
102 shall have a reasonable period of time following the request
103 from the owner or developer to make arrangements for service
104 availability. If any conditions described in subparagraphs
105 (b)1.-4. again exist at the property, then paragraph (b) shall
106 again apply.

107 (f) Nothing in this subsection affects the limitations on
108 commission jurisdiction imposed by s. 364.011 or s. 364.013.
109 Section 2. This act shall take effect July 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 857 Insurance Premium Tax
**SPONSOR(S):** Mahon
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1714

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Finance & Tax Committee | 8 Y, 0 N | Levin | Diez-Arguelles |
| 2) Civil Justice Committee | | Blalock | Bond |
| 3) Fiscal Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Title insurance is sold as part of the initial purchase or refinance of real property, and the purchaser of the title insurance pays a premium for the insurance coverage.

This bill reduces the amount of the premiums for title insurance subject to the 1.75 percent tax. The 1.75 percent tax on title insurance is due only on that portion of the title insurance premium that is not paid as a commission to a title insurance agent. This change is implemented over a three year period, with 80 percent of the total premium subject to the tax in 2007, 55 percent in 2008, and up to 30 percent in 2009 and subsequent years.

This bill also amends the definition of "premium" by removing the reference to the 1.75 percent tax, in conformity to the other changes in the bill.

This bill appears to have a negative fiscal impact on state government revenues and does not appear to have a fiscal impact on state government expenditures. This bill does not have a fiscal impact on local government.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensures lower taxes -- This bill will decrease premium taxes paid on title insurance policies.

B. EFFECT OF PROPOSED CHANGES:

**Background**

Part III, chapter 624, F.S., a portion of the Florida Insurance Code, contains the general requirements an insurer must follow to receive a certificate of authority to transact business in Florida. The Department of Financial Services (DFS) regulates the insurance industry in Florida.

Section 624.509, F.S., imposes a tax of 1.75 percent on the gross amount of premiums on title insurance.

The tax is due for all insurance premiums, including title insurance, health, life, property, and insurance to cover property, subjects, or risks located or to be performed within Florida. The law also taxes premiums for wet marine and transportation insurance and for annuity policies, but at a rate lower than the 1.75-percent of gross receipts due for all other policies.

Insures remit taxes quarterly to the Department of Revenue (DOR). Section 624.509, F.S., specifies that the insurance premium taxes are to be deposited into the state's General Revenue Fund pursuant to rules of DOR.

Title Insurance

Chapter 627, F.S., regulates insurance rates and contracts; part XIII of that chapter, which encompasses ss. 627.7711 through 627.798, F.S., governs title insurance contracts specifically.

Title insurance is sold as part of the initial purchase or refinance of real property. A title search is conducted by an attorney or other qualified person. A title search examines ownership of a parcel of property through its years of ownership. The primary goal of a title search is to establish that all previous liens have been satisfied, that property boundaries are clear and unobstructed, and that any easements are well-defined and included in the description of the property.

Section 627.7711, F.S., contains definitions relating to the regulation of title insurance. As part of the definitions, the word "premium" means the charge made by a title insurer for a title insurance policy, including the charge related to title services, and the assumption of the risks associated with such a policy. The definition indicates that the word "premium" as used throughout part XIII of the law governing title insurance does not include commission. As a practical matter, the definition of premium with respect to title insurance includes the gross amount collected for title insurance, without consideration for any portion of the premium that is paid to the insurance carrier, agent, or agency as a commission. Staff of DFS report that commissions paid to title insurance agents frequently constitute 70 percent or more of the total price paid for such insurance. This definition of the word premium as the gross receipts for a policy, without an allowance for a commission, is standard throughout the Florida Insurance Code and the regulation of the different types of insurance policies.

**Effect of Bill**

This bill amends s. 624.509, F.S., to provide that the 1.75 percent tax on title insurance is due only on that portion of a title insurance premium that is not paid as a commission to an insurance agent. The bill specifies that the commission, and thus the portion of the title insurance premium that is exempt from

the premium tax, may not exceed 20 percent of the total price paid for the title insurance in 2007; 45 percent in 2008; and 70 percent for 2009 and subsequent years.

This bill amends the definition for title insurance premium in s. 627.7711, F.S., to delete a cross-reference to section 624.509, F.S. This change conforms to the other changes proposed by the bill regarding the 1.75 percent.

C. SECTION DIRECTORY:

Section 1 amends s. 624.509, F.S., to exempt up to 70 percent of the gross receipts resulting from title insurance premiums from the 1.75 percent tax due on all insurance premiums, except annuity policies and contracts.

Section 2 amends s. 627.7711, F.S., the definitions that apply to title insurance contracts. This bill deletes a cross-reference to s. 624.509, F.S., to conform to the change made by Section 1.

Section 3 provides an effective date of January 1, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference considered the fiscal impact of this bill at its meeting on February 24, 2006.

| | FY 2006-2007 | FY 2007-2008 |
|---|---|---|
| General Revenue | -$2.6 million | -$7.6 million |

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:

When fully implemented, the provisions of this bill will result in a reduction of $11.3 million in state revenues in future years.

## 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

None.

1 A bill to be entitled
2 An act relating to the insurance premium tax; amending s.
3 624.509, F.S.; providing for separate taxation of certain
4 title insurance gross receipts; providing limitations;
5 amending s. 627.7711, F.S.; revising the definition of the
6 term "premium"; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (1) of section 624.509, Florida
11 Statutes, is amended to read:
12 624.509 Premium tax; rate and computation.--
13 (1) In addition to the license taxes provided for in this
14 chapter, each insurer shall also annually, and on or before
15 March 1 in each year, except as to wet marine and transportation
16 insurance taxed under s. 624.510, pay to the Department of
17 Revenue a tax on insurance premiums, premiums for title
18 insurance, or assessments, including membership fees and policy
19 fees and gross deposits received from subscribers to reciprocal
20 or interinsurance agreements, and on annuity premiums or
21 considerations, received during the preceding calendar year, the
22 amounts thereof to be determined as set forth in this section,
23 to wit:
24 (a) An amount equal to 1.75 percent of the gross amount of
25 such receipts on account of life and health insurance policies
26 covering persons resident in this state and on account of all
27 other types of policies and contracts, ~~(~~except annuity policies
28 or contracts taxable under paragraph (b) and title insurance

29 policies or contracts written through affiliated and
30 nonaffiliated agencies taxable under paragraph (c), covering
31 property, subjects, or risks located, resident, or to be
32 performed in this state, omitting premiums on reinsurance
33 accepted, and less return premiums or assessments, but without
34 deductions:
35 1. For reinsurance ceded to other insurers;
36 2. For moneys paid upon surrender of policies or
37 certificates for cash surrender value;
38 3. For discounts or refunds for direct or prompt payment
39 of premiums or assessments; and
40 4. On account of dividends of any nature or amount paid
41 and credited or allowed to holders of insurance policies;
42 certificates; or surety, indemnity, reciprocal, or
43 interinsurance contracts or agreements. ~~; and~~
44 (b) An amount equal to 1 percent of the gross receipts on
45 annuity policies or contracts paid by holders thereof in this
46 state.
47 (c) An amount equal to 1.75 percent of the gross receipts
48 on title insurance written through affiliated and nonaffiliated
49 agencies, less the portion of the gross receipts retained by or
50 paid under contract to the affiliated and nonaffiliated title
51 insurance agents. The reduction in the insurer's total amount of
52 title insurance premium gross receipts received through
53 affiliated and nonaffiliated agencies may not exceed the
54 following percentages of the total title insurance premium gross
55 receipts received by the insurer through affiliated and
56 nonaffiliated agencies:

57 1. For 2007, 20 percent.
58 2. For 2008, 45 percent.
59 3. For 2009 and subsequent years, 70 percent.
60 Section 2. Subsection (2) of section 627.7711, Florida
61 Statutes, is amended to read:
62 627.7711 Definitions.--As used in this part, the term:
63 (2) "Premium" means the charge, as specified by rule of
64 the commission, that is made by a title insurer for a title
65 insurance policy, including the charge for performance of
66 primary title services by a title insurer or title insurance
67 agent or agency, and incurring the risks incident to such
68 policy, under the several classifications of title insurance
69 contracts and forms~~, and upon which charge a premium tax is paid~~
70 ~~under s. 624.509~~. As used in this part or in any other law, with
71 respect to title insurance, the word "premium" does not include
72 a commission.
73 Section 3. This act shall take effect January 1, 2007.

HB 1323

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1323 Actions Involving Free Speech or Defamation
**SPONSOR(S):** Simmons; Sansom
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1346

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Civil Justice Committee | | Shaddock | Bond |
| 2) Judiciary Committee | | | |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


A false light invasion of privacy lawsuit is based on a legal theory which allows a plaintiff to sue for damages due to publicity that places the plaintiff in a "false light." The civil action of false light arises either when something factually untrue has been communicated about an individual, or when the communication of true information carries a false implication. The damages awarded under the false light cause of action are intended to remedy the emotional distress caused by the depiction of the plaintiff.

This bill modifies the presuit requirements, the elements of, the statute of limitation applicable to, and the privileges and defenses available to a false light action.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill decreases the probability that individuals who sue newspapers and reporters under a theory of placing a person in false light will prevail.

B. EFFECT OF PROPOSED CHANGES:

**Background on False Light**

"Since its inception, critics have questioned and greatly criticized the existence of the false light form of invasion of privacy. Because it is similar to the more respected tort of defamation, it is attacked as a method of avoiding the constitutional protections of free speech and press that have developed in defamation."[1]

> The greatest advantage presented by a false light cause of action is that an action or publication need not be defamatory before it is actionable. It is possible for a plaintiff to recover for a so-called "laudatory" false light. Laudatory false light recognizes that the mere publication of a false impression can be damaging to a plaintiff whether or not it is technically defamatory. In order to recover in defamation, a plaintiff must prove that the communication "lower[ed] him in the estimation of the community or ... [would] deter third persons from associating or dealing with him." By contrast, in a false light cause of action, the plaintiff must prove that the statement is false, and that the plaintiff was portrayed in a manner that "would be highly offensive to a reasonable person."[2]

The first case involving invasion of privacy to be heard by the U.S. Supreme Court was a false light case. In *Time, Inc. v. Hill*, 385 U.S. 374 (1967), the Court held that in order for a plaintiff to recover in a false light action for invasion of privacy, the plaintiff must demonstrate that the defendant published the statements with knowledge of their falsity or in reckless disregard of their truth. In the ruling, the Court acknowledged both the similarities and the distinctions between defamation and invasion of privacy.[3]

The *Time* Court "noted that an actionable statement under false light need not be defamatory, and could in fact be laudatory."[4] Further, the primary harm compensated in an invasion of privacy action is the mental distress caused by exposure to public view, rather than damage to reputation.[5] However, a successful plaintiff under either theory must prove the material falsity of the publication, as well as the publisher's knowledge of the falsity or reckless disregard for the truth.[6]

The second false light case heard by the U.S. Supreme Court was *Cantrell v. Forest City Publishing Co*, 419 U.S. 245 (1974).[7] The Supreme Court reaffirmed the decision in *Time* calling for actual knowledge of falsity or reckless disregard for the truth in order to establish the defendant's liability.[8]

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[1] Bryan R. Lasswell, *In Defense of False Light: Why False Light Must Remain A Viable Cause of Action*, 34 S. Tex. L. Rev. 149 (1993).
[2] Lasswell, 34 S. Tex. L. Rev. at 172.
[3] Lasswell, 34 S. Tex. L. Rev. at 155.
[4] Lasswell, 34 S. Tex. L. Rev. at 156.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*

**Background from Restatement of Torts**[9]

The Restatement Second of Torts ("Restatement") provides the following explanation of the tort of false light.

> One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if
>
> (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
>
> (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.[10]

The Restatement clarifies the elements of a false light claim with the comment that "[t]he form of invasion of privacy covered by the rule stated in this Section does not depend upon making public any facts concerning the private life of the individual. On the contrary, it is essential to the rule stated in this Section that the matter published concerning the plaintiff is not true. The rule stated here is, however, limited to the situation in which the plaintiff is given publicity."[11]

The Restatement is clear that "[i]t is not, however, necessary to the action for invasion of privacy that the plaintiff be defamed. It is enough that he is given unreasonable and highly objectionable publicity that attributes to him characteristics, conduct or beliefs that are false, and so is placed before the public in a false position.[12]

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[9] The Restatement Second of Torts is a publication of the American Law Institute.

> The American Law Institute was organized in 1923 following a study conducted by a group of prominent American judges, lawyers, and teachers known as "The Committee on the Establishment of a Permanent Organization for the Improvement of the Law." The Committee had reported that the two chief defects in American law, its uncertainty and its complexity, had produced a "general dissatisfaction with the administration of justice.
>
> ****
>
> The founding Committee had recommended that the first undertaking of The American Law Institute should address uncertainty in the law through a restatement of basic legal subjects that would tell judges and lawyers what the law was. The formulation of such a restatement thus became the first endeavor of the Institute. Between 1923 and 1944, Restatements of the Law were developed for Agency, Conflict of Laws, Contracts, Judgments, Property, Restitution, Security, Torts, and Trusts. In 1952, the Institute started Restatement Second—new editions of the original Restatements that updated them, reflected new analyses and concepts, and expanded upon the authorities used in reaching the conclusions set forth. Restatement Second also treated subjects not included in the first Restatement, such as Landlord and Tenant and the Foreign Relations Law of the United States. In 1987 a new Restatement of the Foreign Relations Law of the United States inaugurated a third series of Restatements, which also now includes Restatements of Unfair Competition, Property (Mortgages and Servitudes), Suretyship and Guaranty, Torts (Products Liability and Apportionment of Liability), and The Law Governing Lawyers. New Restatements on Agency, Property (Wills and Other Donative Transfers), Restitution and Unjust Enrichment, Trusts, Torts (Liability for Physical Harm), and Employment Law are also being developed as part of Restatement Third. The Restatement Case Citations are additional aids designed to provide easy access to court decisions that cite the Restatements.

*About the American Law Institute* (last visited Mar. 29, 2006) <http://www.ali.org/ali/thisali.htm>.

[10] Restatement (Second) of Torts s. 652E cmt. A (1977).

[11] *Id.*

[12] *Id.* s. 652E cmt. B.

As for damages, the Restatement provides that a plaintiff may recover compensatory damages for the harm to the plaintiff's reputation, and emotional distress or humiliation.[13] It is also possible that a plaintiff could recover special damages so long as they are pleaded and proved.[14]

Finally, "the right protected by the action for invasion of privacy is a personal right, peculiar to the individual whose privacy is invaded." [15] Therefore, such a cause of action "is not assignable, and it cannot be maintained by other persons such as members of the individual's family, unless their own privacy is invaded along with his. The only exception to this rule involves the appropriation to the defendant's own use of another's name or likeness."[16]

**Florida's Privacy Actions**

"The right to one's person may be said to be a right of complete immunity: to be let alone."[17] That phrase encapsulates Florida's concept of the privacy actions or torts.[18]

The law recognizes a right of privacy in our tort law,[19] and there are four types "of wrongful conduct that can all be remedied with resort to an invasion of privacy action."[20] These four privacy actions are:

> (1) appropriation--the unauthorized use of a person's name or likeness to obtain some benefit; (2) intrusion--physically or electronically intruding into one's private quarters; (3) public disclosure of private facts--the dissemination of truthful private information which a reasonable person would find objectionable; and (4) false light in the public eye--publication of facts which place a person in a false light even though the facts themselves may not be defamatory.[21]

Of the four invasion of privacy torts, "only false-light invasion of privacy contemplates any issue of falsehood, and even then, the tort may exist when the facts published are completely true."[22]

**Element of a False Light Claim**

In order to succeed on a case alleging false light, the plaintiff must demonstrate: (1) the false light must be highly offensive to a reasonable person; and (2) the defendant must have acted either knowingly or in reckless disregard as to the falsity of the publicized material and the false light in which it would be placed.[23] Neither knowledge of the falsity of the information nor reckless disregard for the truth is an element of a cause of action for false light.[24]

The bill provides new elements for the tort of false light. A person may not be held liable for publishing a matter concerning an individual which places that individual before the public in a false light, unless:

- The published matter is false;

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[13] *Id.* s. 652H cmts. A-B.
[14] *Id.* s. 652H cmt. D.
[15] Restatement (Second) of Torts s. 652I cmt. A.
[16] Restatement (Second) of Torts s. 652I cmt. A.
[17] *Forsberg v. Housing Auth. Of the City of Miami Beach*, 455 So. 2d 373, 376 (Fla. 1984).
[18] A tort is defined as: "a civil wrong for which a remedy may be obtained, usu[ally] in the form of damages; a breach of a duty that the law imposes on everyone in the same relation to one another as those involved in a given transaction." Black's Law Dictionary 1497 (7th ed 1999)
[19] *Agency for Health Care Admin. v. Associated Indus. of Fla., Inc.*, 678 So.2d 1239, 1252 (Fla.1996).
[20] *Agency for Health Care Admin.*, 678 So.2d 1252 n. 20.
[21] *Agency for Health Care Admin.*, 678 So.2d 1252 n. 20.
[22] 19A Fla. Jur. 2d Defamation and Privacy s. 222 (citing *Heekin v. CBS Broad., Inc.*, 789 So. 2d 355 (Fla. 2d DCA 2001)).
[23] 19A Fla. Jur. 2d Defamation and Privacy s. 222 (citing *Lane v. MRA Holdings, LLC*, 242 F. Supp. 2d 1205 (M.D. Fla. 2002); *Harris v. Dist. Bd. of Trs. of Polk Cmty. College*, 9 F. Supp. 2d 1319, (M.D. Fla. 1998)).
[24] 19A Fla. Jur. 2d Defamation and Privacy s. 222 (citing *Heekin*).

- The false fact placed the individual in a false light that is highly offensive to a reasonable person;
- The person making the publication acted knowingly or in reckless disregard as to the falsity of the fact publicized; and
- The person making the publication acted knowingly or in reckless disregard as to the false light in which the individual would be placed.

**Statute of Limitations**

Since no defamation is required for an invasion of privacy claim, the statute of limitations for defamation[25] actions (2 years) does not apply to invasion of privacy actions.[26] Therefore, the four-year general statute of limitations, in s. 95.11(3)(p), F.S. applies to false light claims.[27]

The bill provides for a two year statute of limitations on an action for false light. Specifically, an action must be filed within 2 years after the first publication of the matter that forms the basis of the claim.

The bill further provides that a cause of action for damages founded upon a single publication accrues at the time of the first publication in this state. A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication bars any other action for damages by the same plaintiff against the same defendant founded upon the same publication.[28]

**Selection of Remedies**

The law provides that a "plaintiff may not avoid the two-year statute of limitations for defamation actions by simply renaming the defamation action as one for false light invasion of privacy."[29]

The bill provides that an action may for false light not be brought or maintained if a claim based upon the same published fact or facts is, or could be, brought under the common law of defamation.

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[25] Despite a similarity of elements, false light and defamation are independent torts. Defamation involves injury to reputation; false light involves injury to the person, primarily through mental and emotional distress.
The elements of defamation are as follows:

> A common law claim for defamation requires the unprivileged publication (to a third party) of a false and defamatory statement concerning another, with fault amounting to at least negligence on behalf of the publisher, with damage ensuing. A communication is "defamatory" if it tends to harm the reputation of another as to lower him or her in estimation of community or deter third persons from associating or dealing with the defamed party.

*Mile Marker, Inc. v. Petersen Publ'g, L.L.C*, 811 So. 2d 841, 845 (Fla. 4th DCA 2002)(internal citations omitted).
[26] *Id.*
[27] *Heekin*, 789 So. 2d at 358.
[28] This provision of the bill appears to be substantially similar to s. 770.06, F.S. which provides for adverse judgments in any jurisdiction. Specifically, s. 770.06, F.S. states: "A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication or exhibition or utterance as described in s. 770.05 shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance."
[29] *Heekin*, 789 So. 2d at 358. The *Heekin* court expounded: "[w]e do, however, recognize one exception to this general rule. When a plaintiff has a cause of action for libel or slander and alleges a claim for false light invasion of privacy based on the publication of the same false facts, the false light invasion of privacy action is barred by the two-year statute of limitations." *Id.*

**Burden of Proof**

The bill imposes a greater standard of proof in false light cases. Generally, in civil cases the burden of proof is a preponderance of the evidence. The Florida Supreme Court admitted that numerous definitions for preponderance of the evidence, but cited to *McCormick on Evidence* 575 (4th ed.1992) for this definition:

> The most acceptable meaning to be given the expression, proof by a preponderance, seems to be proof which leads the jury to find the existence of the contested fact is more probable than its nonexistence. Thus the preponderance of the evidence becomes the trier's belief in the preponderance of probability.[30]

Another definition for the term is "'evidence preponderates when it is more convincing to the trier than the opposing evidence.'"[31]

This bill imposes a greater standard of proof in false light cases. This bill requires a plaintiff must prove the elements listed above by clear and convincing evidence. This standard of proof has been defined by the Florida Supreme Court as an "intermediate level of proof [that] entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy."[32]

**Presuit Requirement**

Currently there is no presuit requirement for filing a false light claim.

The bill imposes presuit requirements by providing that ss. 770.01 and 770.02, F.S. apply to all false light actions. Sections 770.01 and 770.02, F.S., require plaintiffs to provide 5 days' written notice to a media defendant before instituting a defamation action in order to give such defendants an opportunity to correct the allegedly defamatory communications. Notice is a jurisdictional condition precedent to filing a defamation claim. If such a correction is published, the plaintiff is limited to recovering actual damages.

**Privilege**

The bill provides that a publication that is privileged or otherwise protected from liability under the common law of defamation, the First Amendment to the United States Constitution, or s. 4, Art. I of the State Constitution is not subject to liability under this section.[33] A non-exhaustive list of some of the

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[30] *Dept. of Health and Rehabilitative Services v. M.B.*,701 So. 2d 1155 n.20 (Fla. 1997)(citing *McCormick on Evidence* 575 (4th ed.1992).

[31] *Dept. of Health*,701 So. 2d at 1155 n.20.

[32] G.W.B., v. J.S.W., 658 So. 2d 951, 967 (Fla 1995)(citing *In re Davey*, 645 So. 2d 398, 404 (Fla. 1994)).

[33] The Restatement provides guidance on this point:

> The free-speech and free-press provisions of the First Amendment have been held to apply to the common law of defamation and to impose certain restrictions on the availability of defamation actions. In *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, it was held that a public official could not recover for a false and defamatory publication unless he proved by clear and convincing evidence that the defendant had knowledge of the falsity of the statement or acted in reckless disregard of its truth or falsity. This rule was later extended to public figures. In the case of *Time, Inc. v. Hill* [385 U.S. 534 (1967)], involving a magazine pictorial treatment of a play based upon a real episode, which implied that certain fictitious incidents in the play transpired with the real-life parties, the Supreme Court held that the rule of New York Times Co. v. Sullivan also applies to the false-light cases covered by this Section. It is on the basis of Time v. Hill that Clause (b) has been set forth. The full extent of the authority of this case, however, is presently in some doubt.

affirmative defenses and privileges under Florida law for defamation are: truth coupled with a good motive;[34] pure opinion;[35] immunity from defamation liability to former employer for disclosure of information about former employee's job performance to prospective employer;[36] and a statement made by one who has a duty or interest in the matter.[37]

**Preclusion**

It has been held that since privacy rights are personal, they die with the individual.[38] Therefore, in order to bring a false light action, a plaintiff must be alive.

The bill precludes a false light action, on or behalf of, a deceased person.

**Retroactivity**

The bill provides that it is the expressed intent of the Legislature that this bill applies retroactively.

C. SECTION DIRECTORY:

Section 1 creates s. 770.09, F.S. relating to actions for false light.

Section 2 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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Although the Supreme Court had extended the rule of *New York Times Co. v. Sullivan* in defamation cases beyond public officials and public figures to all "matters of public or general interest," by a plurality opinion in *Rosenbloom v. Metromedia, Inc.*, [403 U.S. 29 (1970)], this position was subsequently repudiated in *Gertz v. Robert Welch, Inc.*, [418 U.S. 323 (1974)], which restricted the knowledge-or-reckless-disregard rule again to public officials and public figures, but held that in other cases the plaintiff must show that the defendant was at fault, at least to the extent of being negligent, regarding the truth or falsity of the statement. The effect of the Gertz decision upon the holding in Time, Inc. v. Hill has thus been left in a state of uncertainty. In *Cantrell v. Forest City Pub. Co.* [419 U.S. 425 (1974)], the court found that the defendant was shown to have acted in reckless disregard as to the truth or falsity of the statement, and it consciously abstained from indicating the present authority of Time v. Hill.

Pending further enlightenment from the Supreme Court, therefore, this Section provides that liability for invasion of privacy for placing the plaintiff in a false light may exist if the defendant acted with knowledge of the falsity of the statement or in reckless disregard as to truth or falsity. The Caveat leaves open the question of whether there may be liability based on a showing of negligence as to truth or falsity. If *Time v. Hill* is modified along the lines of *Gertz v. Robert Welch*, then the reckless-disregard rule would apparently apply if the plaintiff is a public official or public figure and the negligence rule will apply to other plaintiffs. If *Time v. Hill* remains in full force and effect because the injury is not so serious when the statement is not defamatory, the blackletter provision will be fully controlling.

[34] *Lipsig v. Ramlawi*, 760 So. 2d 170, 183 (Fla. 3d DCA 2000).

[35] *From v. Tallahassee Democrat, Inc.*, 400 So. 2d 52, 57 (Fla. 1st DCA 1981).

[36] *Linafelt v. Beverly Enterprises-Florida*, 745 So.2d 386, 388 (Fla. 1st DCA 1999).

[37] *Schreidell v. Shoter*, 500 So. 2d 288, 230 (Fla. 3d DCA 1987). The *Schreidell* court stated: The Florida Supreme Court in *Coogler v. Rhodes*, 38 Fla. 240, 248, 21 So. 109, 112 (1897) (citing Townshend on Slander & Libel s. 209 (4th ed.)), first enunciated the concept of a qualified privilege: Where a person is so situated that it becomes right, in the interests of society, that he should tell to a third person certain facts, then, if he bona fide, and without malice, does tell them, it is a privileged communication. Thus, a statement is qualifiedly privileged if made by one who has a duty or interest in the subject matter to one who has a corresponding duty or interest (some internal citations omitted).

[38] *Nestor v. Posner-Gerstenhaber*, 857 So. 2d 953, 955 (Fla. 3d DCA 2003) (citing *Williams v. City of Minneola*, 575 So. 2d 683, 689 (Fla. 5th DCA 1991)(citing Restatement (Second) of Torts s. 652I)).

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:

Prospective and Retrospective Effect of a Change in Statutory Law

Florida law provides that retroactive application of a statute is possible depending on the outcome of two inquiries. *Romine v. Fla. Birth Related Neurological Injury Comp. Ass'n,* 842 So.2d 148, 153 (Fla. 5th DCA 2003). First, is there clear legislative intent for the statute to apply retroactively? If not then that ends the inquiry and the statute will only apply prospectively. *Romine*, 842 So. 2d at 153. Second, would the retroactive application of the statute be constitutional? In other words, "[c]ourts will not permit the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties ..." *Romine*, 842 So. 2d at 153.

The bill expressly provides for the retroactive application of the changes to the false light torts. Therefore, the sole question before this Court is whether or not the changes to the Act would impair a vested right. A vested right has been defined as:

> an immediate, fixed right of present or future enjoyment and also as an immediate right of present enjoyment, or a present, fixed right of future enjoyment. To be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand. Vested rights are distinguished not only from expectant rights but also from contingent rights. Rights are vested, in contradistinction to being expectant or contingent. They are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons, as a present interest. They are expectant when they depend upon the continued existence of the present condition of things until the happening of some future event. They are

contingent when they are only to come into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting.

*R.A.M of South Fla., Inc., v. WCI Communities, Inc.,* 869 So.2d 1210, 1218 (Fla. 2d DCA 2004)(internal citations and quotations omitted).

It is unclear if the presuit and the higher standard of proof requirements in this bill would impinge upon a vested rights for cases filed before the enactment of this bill.

Selection of Remedies

It is unclear if the bill's limitation that a false light action may not be "brought or maintained" if a claim for defamation "is, or could be, brought" for the same facts, preclude pleading in the alternative by a plaintiff.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear if the bill's limitation that a false light action may not be "brought or maintained" if a claim for defamation "is, or could be, brought" for the same facts, preclude pleading in the alternative by a plaintiff.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

1 A bill to be entitled
2 An act relating to actions involving free speech or
3 defamation; creating s. 770.09, F.S.; clarifying criteria
4 for liability for publishing a matter concerning an
5 individual which places that individual before the public
6 in a false light; providing for a civil action to recover
7 damages; requiring that the person bringing the action
8 plead and prove by clear and convincing evidence the
9 elements of the claim; providing that certain privileged
10 publications are not subject to liability under the act;
11 limiting the period in which to commence an action;
12 providing that the Legislature intends that the act apply
13 retroactively; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Section 770.09, Florida Statutes, is created to
18 read:
19 770.09 Publicity placing a person in a false light.--
20 (1) A person may not be held liable for publishing a
21 matter concerning an individual which places that individual
22 before the public in a false light, unless:
23 (a) The matter published relates to a fact that is false;
24 (b) The false fact placed the individual in a false light
25 that is highly offensive to a reasonable person;
26 (c) The person making the publication acted knowingly or
27 in reckless disregard as to the falsity of the fact publicized;
28 and

29 (d) The person making the publication acted knowingly or
30 in reckless disregard as to the false light in which the
31 individual would be placed.
32 (2) A person may bring a civil action under this section
33 to recover damages sustained by reason of the false light in
34 which he or she was placed, except that ss. 770.01 and 770.02
35 apply to all actions under this section.
36 (3) In any action under this section, the person bringing
37 the action has the burden to plead and prove by clear and
38 convincing evidence the elements set forth in subsection (1).
39 (4) A publication that is privileged or otherwise
40 protected from liability under the common law of defamation, the
41 First Amendment to the United States Constitution, or s. 4, Art.
42 I of the State Constitution is not subject to liability under
43 this section.
44 (5) An action may not be brought or maintained under this
45 section if a claim based upon the same published fact or facts
46 is, or could be, brought under the common law of defamation.
47 (6) A cause of action for damages founded upon a single
48 publication as described in this section accrues at the time of
49 the first publication or exhibition or utterance thereof in this
50 state. A judgment in any jurisdiction for or against the
51 plaintiff upon the substantive merits of any action for damages
52 founded upon a single publication as described in this section
53 bars any other action for damages by the same plaintiff against
54 the same defendant founded upon the same publication.
55 (7) An action may not be brought or maintained under this
56 section by, or on behalf of, a person who is deceased.

57 (8) An action under this section must be commenced within
58 2 years after the first publication of the matter that forms the
59 basis of the claim.
60 (9) It is the expressed intent of the Legislature that
61 this section applies retroactively.
62 Section 2. This act shall take effect July 1, 2006.

HB 1521

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1521 Children in Out-of-Home Placements
**SPONSOR(S):** Barreiro
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1732

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| 1) Civil Justice Committee | | Shaddock | Bond |
| 2) Health Care Appropriations Committee | | | |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


Abused, neglected, abandoned and orphaned children are placed in the foster care system under the supervision of the Department of Children and Family Services ("DCF"), pending reunification with their parents, adoption, or other placement as appropriate. Foster parents and their foster children sometimes develop close emotional bonds that are harmed when the foster children are removed from the foster home. Current law places some limits upon moving a dependent child after a disposition hearing has been conducted and the dependent child is in a placement.

This bill further limits the ability of DCF to move a dependent child from a current out-of-home placement by creating a rebuttable presumption that it is in the best interests of a dependent child who has resided in a particular out-of-home placement for one than 1 year to remain in that placement with the foster parent as the permanent custodian.

The bill also requires that a foster child who has been denied developmental disabilities services must be given an opportunity for an administrative hearing before the Division of Administrative Hearings (DOAH).

The Department of Children and Family Services estimates that this bill may have a recurring negative fiscal impact on state revenues of $16 million annually commencing in FY 2005-2006. This bill does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families -- This bill may provide stability for foster children, but may interfere with reunification of such foster children with their parents.

B. EFFECT OF PROPOSED CHANGES:

**Background - Moving Foster Children**

Chapter 39, F.S., provides for proceedings regarding dependency of minor children. A dependent child is one that is dependent upon the state for services due to abuse, neglect, abandonment, or death of the parents or guardian. Once a child is adjudicated dependent, the court has the power by order to:

- Require the parent or the legal custodian and the child, to participate in necessary treatment and services;
- Require the parties to participate in dependency mediation; and
- Require placement of the child either under the protective supervision of an authorized agent of the Department of Children and Family Services ("DCF"), in the home of one or both of the child's parents, in the home of a relative of the child, with another adult approved by the court, or in the custody of the DCF.[1]

In 2000, the legislative enacted s. 39.522, F.S., regarding change of custody after the disposition hearing. The statute provides:

- A child who has been placed in the child's own home under the protective supervision of an authorized agent of the department, in the home of a relative, in the home of a legal custodian, or in some other place may be brought before the court by the department or by any other interested person, upon the filing of a petition alleging a need for a change in the conditions of protective supervision or the placement.
- If the parents or other legal custodians deny the need for a change, the court must hear all parties in person or by counsel, or both. Upon the admission of a need for a change or after such hearing, the court must enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered.
- The standard for changing custody of the child is the best interest of the child.
- If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to this chapter.
- In cases where the issue before the court is whether a child should be reunited with a parent, the court must determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home.

[1] 25 Fla. Jur. 2d, Family Law s. 273.

Section 39.701(9)(f), F.S., requires the dependency court to review a child's permanency no later than 12 months after a child was sheltered.[2] Section 39.621, F.S., identifies adoption as the primary permanency option when reunification with a parent is not appropriate.

Section 39.812(4), F.S., provides that, when the department denies foster parents' applications to adopt a child, the Department of Children and Families ("department") must obtain court approval in order to remove the child from the foster home if the child has resided there for at least 6 months.

If the parents or other legal custodians deny the need for a change, the court must hear all parties in person or by counsel, or both. Upon the admission of a need for a change or after a hearing, the court can order a change in the placement, modify the conditions of supervision, or continue the conditions of supervision. If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to ch. 39, F.S.[3]

**Effect of Bill - Moving Foster Children**

This bill first adds foster homes to the list of placements from which a child can be moved pursuant to a postdisposition change of custody. Further, the bill expands who a court must hear in determining the need for a change in custody. If a need for a change of custody has been denied, the court must hear all parties in including the custodian and the interested persons.

The bill also creates a rebuttable presumption that continued placement with the custodian of a child in an out-of-home placement as in the best interest of the child if the child has resided in the same out-of-home placement for more than 1 year. This presumption may not be rebutted solely by the wishes of a parent or by placing the child with a person who is biologically related to the child but who is not living with a parent.

**Background - Certain Disability Hearings**

All persons who have been denied federally-funded developmental disability services or other public benefits, including foster children, are entitled to a fair hearing conducted by the Office of Appeal Hearings. The fair hearing process is designed to provide relatively rapid and easily accessible due process proceedings to contest the denial, reduction or termination of benefits or services. The fair hearings process is conducted according to federal and state law and rules that ensure the individual's right to due process is protected.[4] Applicants for or recipients of public benefits have the right to appeal an adverse decision in a fair hearing to the District Court of Appeal, but the agency may not seek an appeal.[5]

**Effect of Bill - Certain Disability Hearings**

Finally, the bill directs that all decision affecting developmental disability benefits of dependent children, who are in the custody of the department, be heard by an administrative law judge, regardless of the facts.

C. SECTION DIRECTORY:

Section 1 amends s. 39.522, F.S. to provide a rebuttable presumption in out-of-home placements.

Section 2 amends s. 63.082, F.S. to include a cross-reference to the rebuttable presumption.

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[2] Sheltered is defined in s. 39.01(64), F.S. as "a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication."
[3] 25 Fla. Jur. 2d, Family Law s. 279.
[4] *See, e.g.,* 42 U.S.C. 1396a(3); 42 CFR 431.200, et seq; s. 409.285, F.S.
[5] Sections 120.68, 409.285, F.S.

Section 3 amends s. 120.80, F.S. to require that hearings be conducted by an administrative law judges in cases involving children with developmental disabilities who are in the custody of the department.

Section 4 provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Department of Children and Family Services estimates that this bill may cause the loss of federal matching funds resulting in a loss of $15,952,857.80 annually commencing in FY 2005-2006.

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:

**Department of Children and Families Comments**

> As of January 31, 2006, there were 8,228 children in licensed out-of-home care classified as Title IV-E Eligible/Reimbursable. As of December 31, 2005, the federal share of the average quarterly cost for these IV-E clients is $1,938.85. A statutory rebuttable presumption regarding the appropriateness of a particular placement, without consideration of case specifics as required by Safe Families and Adoptions Act,, has the potential to cost Florida all or a significant portion of that federal share, up to an anticipated maximum of $15,952,857.80. This does not include the concurrent loss of federal administrative or training funds. However, the legislature could choose to continue state matching funds, in order to provide a reduced level of services.

## 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:

**Department of Children and Families Comments:**

Page 2, lines 38-39 which describe who has standing to participate in a postdisposition change of custody hearing, the term "other legal custodians" is changed to "other custodians" and "guardians" is added. These changes will give foster parents the standing to object to a modification of placement, even if that modification were actually reunification with a parent.

Page 2, Lines 38-40, provide that the court shall hear, in addition to all parties, "the custodian and the interested persons in person or by counsel" not only reinforces the provision of standing as discussed above for foster parents, but gives party standing to interested persons who would otherwise be, at best, participants. In other words, foster parents and other interested persons would now be entitled to ask the court for relief in regard to children to whom they have no legal rights.

This bill first adds foster homes to the list of placements from which a child can be moved pursuant to a postdisposition change of custody. This change creates an anomaly, since s. 39.522, F.S., actually provides for modification of legal custody, not modification of physical placements. A foster home is only a physical placement. The actual temporary legal custodian, when a child is in a foster home, is the department. As the legal custodian, the department determines the particular licensed foster care placement for a foster child. Court interference with this determination would violate the separation of power between the judicial and executive branch.

This bill would effect a dramatic expansion of foster parents' rights to custody of dependent children far beyond what the Legislature has provided for in ss. 39.521 or 409.175, F.S. The bill would create a new impediment to the primary goal of reunification, and would create a new ground for litigation in the dependency proceeding that could substantially delay permanency decisions, to the detriment of the child. The bill would, therefore, make it more difficult to comply with the AFSA time parameters.

The bill also adversely impacts the reunification goal by creating a rebuttable presumption that an out-of-home caregiver is the placement that is in the best interest of the child when the same out-of-home placement has continued for more than 12 months. Currently, parents are required by state law to complete case plans within 12 months of a child's removal from the home. The 12-month deadline can be extended under extraordinary circumstances. The effect of the proposed rebuttable presumption would be that, after 12 months, the child's parents would be required to prove that they are superior to the out-of-home placement in order to be reunified with the child upon resolution of the extraordinary circumstances.

There is no "permanent custodian" (see page 2, lines 49-50) currently provided under ch. 39, F.S. Long-term custody is a permissible permanency goal pursuant to s. 39.622, F.S. The "permanent custodian" referenced by the bill appears to be incorporate a concept from another current bill, SB 1080, which

would replace the permanency option of "long-term custodian" with "permanent guardian". The language in the two bills, however, is different. The bill would create a de facto change in the case plan goal on the 366th day of the case, notwithstanding whatever findings a court made regarding the final case plan goal at a permanency hearing prior to the end of the 1st year of an out-of-home placement.

The bill appears to conflict with the Safe Families and Adoptions Act ("ASFA")[6] requirements. AFSA requires the finalization of the case plan goal within 12 months of a child's removal from the home. The case plan goal must be in the best interests of a child, based on the facts and circumstances of that particular child's case. [*See* 45 C.F.R. s. 1356.21(d).] A statutory rebuttable presumption that remaining in a particular placement with a particular person as "permanent custodian" is in a child' best interests is in direct conflict with ASFA requirements.

The language in the bill conflicts with ss 120.569 and 120.57, F.S., because it would direct that all decisions affecting developmental disability benefits of dependent children be heard by an administrative law judge (ALJ), regardless of whether there were disputed issues of material fact. The bill would also place Florida in potential violation of federal law. Subsection 120.80(7), F.S., currently exempts *all* federally funded public benefits decisions from being heard by an administrative law judge, because the federal hearing procedures and requirements (*see* 42 CFR s. 431.200, et seq.) are different from those in ss. 120.569 and 120.57, F.S., and from the Uniform Rules of Procedure that apply to administrative proceedings in Florida. *See* ch. 28-106, F.A.C. To the extent that the federal procedures are different, adherence to the State of Florida Division of Administrative Hearings ("DOAH") requirements would be unlawful.

Additionally, providing that such cases be heard in DOAH would greatly delay their resolution. The Office of Appeal Hearings generally schedules and hears these cases more quickly than DOAH could. Furthermore, the Office of Appeal Hearings has final order authority in these cases, whereas DOAH would not. The client would be required to wait for DOAH to render a Recommended Order, and then for the agency to prepare and issue a Final Order, before the issue were resolved or even ripe for appeal to the District Court of Appeal.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

[6] 42 U.S.C. s. 620, et seq.

1 A bill to be entitled
2 An act relating to children in out-of-home placements;
3 amending s. 39.522, F.S.; providing that a rebuttable
4 presumption arises to continue placement with the
5 custodian of a child in an out-of-home placement as in the
6 best interest of the child if the child has resided in the
7 same out-of-home placement for more than 1 year and the
8 custodian is eligible to be the permanent custodian;
9 providing that the presumption is not rebutted solely by
10 the expressed wishes of a parent or by placing the child
11 with a person who is biologically related to the child but
12 who is not living with a parent; amending s. 63.082, F.S.;
13 conforming provisions to changes made by the act; amending
14 s. 120.80, F.S.; requiring that an administrative hearing
15 be conducted by an administrative law judge assigned by
16 the Division of Administrative Hearings in cases involving
17 children with developmental disabilities who are in the
18 custody of the department and placed in out-of-home care
19 who apply for, are denied, or receive reduced
20 developmental disability services under ch. 393, F.S.;
21 providing an effective date.
22
23 Be It Enacted by the Legislature of the State of Florida:
24
25 Section 1. Section 39.522, Florida Statutes, is amended to
26 read:
27 39.522 Postdisposition change of custody.--The court may
28 change the temporary legal custody or the conditions of

29 protective supervision at a postdisposition hearing, without the
30 necessity of another adjudicatory hearing.
31 (1) A child who has been placed in the child's own home
32 under the protective supervision of an authorized agent of the
33 department, in the home of a relative, in the home of a legal
34 custodian, or in some other place, including a foster home, may
35 be brought before the court by the department or by any other
36 interested person, upon the filing of a petition alleging a need
37 for a change in the conditions of protective supervision or the
38 placement. If the parents, ~~or~~ other ~~legal~~ custodians, or
39 guardian denies ~~deny~~ the need for a change, the court shall hear
40 all parties, the custodian, and the interested persons in person
41 or by counsel, or both. Upon the admission of a need for a
42 change or after the ~~such~~ hearing, the court shall enter an order
43 changing the placement, modifying the conditions of protective
44 supervision, or continuing the conditions of protective
45 supervision as ordered. The standard for changing custody of the
46 child shall be the best interest of the child. If a child has
47 resided in the same out-of-home placement for more than 1 year
48 and the custodian of the child in that out-of-home placement
49 requests and is eligible for consideration as a permanent
50 custodian for the child, a rebuttable presumption arises that
51 continuing the out-of-home placement is in the best interest of
52 the child. This presumption may not be rebutted solely by the
53 expressed wishes of a parent or by placing the child with a
54 person who is biologically related to the child but who is not
55 living with a parent. If the child is not placed in foster care,
56 ~~then~~ the new placement for the child must meet the home study

57 criteria and court approval pursuant to this chapter.
58 (2) In cases where the issue before the court is whether a
59 child should be reunited with a parent, the court shall
60 determine whether the parent has substantially complied with the
61 terms of the case plan to the extent that the safety, well-
62 being, and physical, mental, and emotional health of the child
63 is not endangered by the return of the child to the home.
64 Section 2. Paragraph (d) of subsection (6) of section
65 63.082, Florida Statutes, is amended to read:
66 63.082 Execution of consent to adoption or affidavit of
67 nonpaternity; family social and medical history; withdrawal of
68 consent.--
69 (6)
70 (d) Subject to s. 39.522(1), when ~~In~~ determining whether
71 the best interest of the child will be served by transferring
72 the custody of the minor child to the prospective adoptive
73 parent selected by the birth parent, the court shall give
74 consideration to the rights of the birth parent to determine an
75 appropriate placement for the child, the permanency offered, the
76 child's bonding with any potential adoptive home that the child
77 has been residing in, and the importance of maintaining sibling
78 relationships, if possible.
79 Section 3. Subsection (18) is added to section 120.80,
80 Florida Statutes, to read:
81 120.80 Exceptions and special requirements; agencies.--
82 (18) AGENCY FOR PERSONS WITH
83 DISABILITIES.--Notwithstanding subsection (7), hearings shall be
84 conducted by an administrative law judge assigned by the

85 division in cases involving children with developmental
86 disabilities who are in the custody of the department and placed
87 in out-of-home care who apply for, are denied, or receive
88 reduced developmental disability services under chapter 393.
89 Section 4. This act shall take effect July 1, 2006.

# HB 7123

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7123 PCB FFF 06-03 Child Protective Services
**SPONSOR(S):** Future of Florida's Families Committee; Galvano
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/CS/SB 1080

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Future of Florida's Families Committee | 6 Y, 0 N | Preston | Collins |
| 1) Civil Justice Committee | | Shaddock | Bond |
| 2) Health & Families Council | | | |
| 3) | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


This bill amends the statutes relating to child protection, to conform to those provisions of the federal Adoption and Safe Families Act (ASFA) in three major areas. These areas are reasonable efforts, case planning, and permanency. These changes are to ensure that Florida continues to receive federal funds under the ASFA.

Concerning reasonable efforts, the bill amends current law to describe when reasonable efforts are required, and provide the nature of reasonable efforts required regarding both parental and relative placements at each stage of dependency proceedings.

With regard to case planning, the bill amends current law to:

- Provide that agreeing to a case plan does not constitute an admission of wrongdoing or consent to a finding of dependency;
- Recognize the role of mediation and family conferencing in the development of case plans;
- Define "concurrent case planning" and provide direction for its use;
- Replace language relating to "extending the case plan" with clear direction as to the time frames and requirements for permanency hearings;
- Provide options available to the court when it is clear that a case plan cannot be completed within the first 12 months that a child is in care;
- Provide new emphasis on current language that "time is of the essence" in case planning; and
- Provide the considerations and the process to be used in amending a case plan.

Finally, with regard to permanency, the bill amends current law to define "permanency hearings," "permanency plan," and "permanency goal;" and conform the permanency options to those contained in federal law.

The Department of Children and Family Services' fiscal analysis suggests the passage of this bill will save Florida just under $1 million in penalties from the federal government for lack of consistency with federal laws and regulations. This bill does not appear to have a fiscal impact on local governments.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2), F.S. and for ensuring that this information follows the child until permanency has been achieved; and
- Ensure that the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

Empower families -- The bill will reduce delays in achieving permanency for children and includes families to a greater degree in the case planning process.

B. EFFECT OF PROPOSED CHANGES:

**Background**

Florida laws relating to child welfare issues were enacted long before federal intervention. The responsibility and authority to intervene in situations where a child is or appears to be in need of protection as a result of child abuse or neglect has traditionally been at the state rather than federal level.[1] However, beginning with the passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, Congress has enacted a number of laws having a significant effect on state child protection and child welfare services.[2]

The major federal laws impacting Florida's child protection system, listed in order of original enactment, are: CAPTA,[3] the Indian Child Welfare Act (ICWA),[4] the Adoption Assistance and Child Welfare Act,[5] the Family Preservation and Family Support Services Program (established as part of the Omnibus Reconciliation Act of 1993),[6] the Multi-Ethnic Placement Act (MEPA),[7] the Adoption and Safe Families Act (ASFA),[8] the Foster Care Independence Act,[9] the Child Abuse Prevention and Enforcement Act,[10] the Intercountry Adoption Act,[11] the Promoting Safe and Stable Families Amendments,[12] and the Keeping Children and Families Safe Act.[13]

The ASFA of 1997, which amends the 1980 Child Welfare Act, was signed into law on November 19, 1997. This law provides that the health and safety of children served by child welfare agencies must be the paramount concern of those agencies. It emphasizes moving children in foster care more quickly into permanent homes.[14] Its implementing regulations[15] became effective on March 27, 2000. These

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[1] National Clearinghouse on Child Abuse and Neglect Information, http://nccanch.acf.hhs.gov (August 1, 2005).
[2] *Id.*
[3] P.L. 93-247, amended P.L. 95-266, 98-257, 100-294, 102-295, 104-235.
[4] P.L. 95-608.
[5] P.L. 98-272.
[6] P.L. 103-66.
[7] P.L. 103-382, amended P.L. 104-188.
[8] P.L. 105-89.
[9] P.L. 106-169.
[10] P.L. 106-177.
[11] P.L. 106-279.
[12] P.L. 107-133.
[13] P.L. 108-36.
[14] *Adoption and Safe Families Act of 1997 (H.R. 867)* National Association of Social Workers (December 1997), found at

regulations incorporate provisions of ASFA and MEPA and amend pre-existing regulations by adding new requirements for state compliance with Titles IV-B and IV-E of the Social Security Act.[16]

State and local child protection agencies that accept federal funds pursuant to Titles IV-B and IV-E of the Social Security Act are required to follow ASFA and its regulations. In FY 2004-2005, the last year for which figures are available, Florida received $29,873,959 in federal funds pursuant to Title IV-B and $190,309,299 in federal funds pursuant to Title IV-E of the Social Security Act. In that year, these sums amounted to 23.61 percent of the total budget for Florida's child welfare programs, a percentage which remains fairly consistent.[17]

As a prerequisite to accepting federal funding through Titles IV-B and IV-E of the Social Security Act, states were required to amend state legislation to bring it into compliance with ASFA. However, the short deadlines for compliance[18] required states to draft legislation quickly, increasing the likelihood that inconsistencies would remain between state law and ASFA requirements. Further, since the required date for drafting statutory changes was earlier than the date of the issuance of the final ASFA regulations (January 25, 2000), the likelihood of inconsistencies between state and federal law was even further increased.

During the 1998 session, the Florida Legislature enacted significant changes to Florida's child protection statute, in part with the goal of bringing state law into compliance with ASFA.[19] The ASFA-related changes included:

- Recognizing the parents' right to counsel at the shelter and subsequent hearings and the right, if indigent, to appointed counsel;
- Providing for access by the Department of Children and Family Services ("DCFS" or the "department") to federal and state parent locator services for diligent search activities;
- Increasing requirements for documentation in cases where the case plan goal is not reunification;
- Reducing the time period from 18 to 12 months for judicial review of permanency options for a child;
- Requiring judicial reviews for all children in out-of-home care every six months; and
- Authorizing but not requiring the use of concurrent case planning. Concurrent case planning is the practice of establishing a permanency goal in a case plan which uses reasonable efforts to reunify the child with the parent, while at the same time establishing an alternative or back-up permanency plan to be implemented if children cannot safely return to their biological parents.[20] If concurrent case planning is not used, the alternative goal is explored only after the court determines that reunification is no longer a viable permanency option for the child, a process that almost inevitably significantly delays permanence for the child.

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http://www.naswdc.org/archives/advocacy/updates/1997/safeadop.htm.

[15] 45 CFR ss. 1355, 1356, 1357; see also the introductory materials and comments, found at 65 FR 4020-4075.

[16] *Making Sense of the ASFA Regulations*, Baker, Debra Ratterman et al, American Bar Association (2001), p. 4.

[17] Information obtained from O. Roy Hutcheson, Jr., Chief, Federal Program Eligibility-Revenue Maximization Unit, Child Welfare/CBC Program Office, DCF, August 15, 2005.

[18] P.L. 105-89, s. 103(a)(3).

[19] Ch. 98-403, L.O.F.

[20] *Tools for Permanency: Tool #1: Concurrent Permanency Planning*, National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work of the City University of New York, found at www.hunter.curry.edu/socwork/nrcfcpp (July 2005).

The remaining major provisions of ASFA which have not been addressed in state law may be described as:

- "Reasonable efforts" – ASFA redefines "reasonable efforts" to emphasize children's health and safety. It describes at least three circumstances when "reasonable efforts" are required by the state agency in child welfare cases: to prevent foster care placement, to finalize a permanency plan for each child, and to reunify families if such placement has occurred. It also describes situations when reasonable efforts to preserve families are not required;

- Case plan and review requirements – ASFA requires that the case plan and associated reviews specifically address child safety and permanency; and

- Increased emphasis on timely permanency decision making, including shorter time periods (shortened from 18 months to 12 months) to finalize a permanency plan, a new requirement for permanency hearings, and a limitation on the time period for reunification services to families.[21]

These three major provisions of ASFA were, for the most part, not addressed in the 1998 legislation. Consequently, Florida law on these issues contains pre-ASFA provisions which are not consistent with current federal law.

Occurring simultaneously with the implementation of the ASFA-related changes, Florida's child welfare system has undertaken the transition from a traditional agency-driven structure to one in which child welfare services are delivered by community-based care lead agencies. These community-based care lead agencies are independent, non-profit organizations under contract with DCF to provide child welfare services. There are currently 22 lead agencies, each with several subcontracting agencies. This decentralization of service delivery has created additional opportunity for confusion as to the requirements of federal and state law in this area.

When state and federal law are not consistent, the Supremacy Clause of the U.S. Constitution requires state courts to apply federal law.[22] However, since most practitioners and decision makers in the Florida child welfare system are more familiar with Florida law than with federal law. The inconsistencies may not be recognized at the court or agency level and may result in failures to comply with federal law which are detected when state practices are reviewed as part of the federal Child and Family Services Review (CFSR) process. Such a failure may lead to the loss of significant federal financial support for Florida's child welfare program.

**Effect of Bill**

**Section 1 Definitions**

The bill creates new definitions of the terms "concurrent planning," "family team conference," "permanency goal," "permanency plan," "permanent guardian," and "permanent guardianship of a dependent child." Current definitions are also amended and or deleted to reflect provisions of the bill.

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[21] See *Congress Passes Major new Adoption/Foster Care Reform Law*, ABA Center on Children and the Law, found at http://www.abanet.org/child/adofost.html.

[22] *Hilton v. South Carolina Public Railways Comm'n,* 502 U.S. 197 (1991); *Mississippi Power & Light Co. v. Mississippi,* 487 U.S. 354 (1988); *Kalb v. Feuerstein,* 308 U.S. 433 (1940).

**Section 2 Rulemaking Authority**

The bill grants authority to the DCFS to adopt rules to make available to all physical custodians and family services counselors the information in the case plan and to ensure that this information follows the child until permanency has been achieved.

**Section 3 Procedures and Jurisdiction**

The bill amends s. 39.013, F.S., to remove provisions relating to time limitations in dependency cases. (These provisions are re-enacted and emphasized in section 4 of the bill.)

**Section 4 Time Limitations**

The bill removes current provisions relating to time limitations in dependency cases and creates a new section that provides for added emphasis on that fact that time is of the essence for establishing permanency for a child in the dependency system. The bill also outlines the time limitations applicable to dependency cases.

**Section 5 Federal Law**

The bill provides that ch. 39, F.S., does not supersede the requirements of the ICWA, MEPA, or their implementing regulations and encourages the DCFS to enter into agreements with recognized American Indian tribes.

**Section 6 Requirements for Placement of Children; Exemptions**

The bill creates a new section to describe the background screening requirements for the out-of-home placement of children and the procedures for seeking review of the department's denial of placement of a child based on a disqualifying criminal offense.

Specifically, the bill provides DCFS may conduct a criminal records checks on any person being considered for placement of a child. Approval for placement with any person other than a parent may not be granted in any case in which a criminal records check reveals a felony conviction in a court for:

- Child abuse, abandonment, or neglect; spousal abuse; a crime against children, including child pornography, or a crime involving violence, including sexual battery, sexual assault, or homicide, but not including other physical assault or battery, if the felony was committed at any time; or

- Physical assault, battery, or a drug-related offense if the felony was committed within the past 5 years.

DCFS may place a child in a home that otherwise meets placement requirements if state and local criminal records checks do not disqualify the applicant and if DCFS has submitted fingerprint information to the Department of Law Enforcement for forwarding to the Federal Bureau of Investigation and is awaiting the results of the federal criminal records check.

Persons with whom placement of a child is being considered must disclose to DCFS any prior or pending local, state, or federal criminal proceedings in which they are or have been involved. The results of any criminal records check of a parent conducted under this section must be considered in determining whether placement with the parent will jeopardize the safety of the child being placed.

The court may review the decision of the department to grant or deny an exemption. The court must prepare written findings to support its decision in this matter. A person seeking placement of a child, but has been denied by DCFS has the burden of setting forth sufficient evidence of rehabilitation.

**Section 7 Mandatory Reports of Child Abuse**

The bill provides that the duty to report to the central abuse hotline includes the reasonable suspicion that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. The hotline is authorized to accept such reports. The bill also adds a child who is known or suspected to be a victim of human trafficking to the list of offenses defined as "criminal conduct" that DCFS is to immediately forward to a law enforcement agency.

**Section 8 Initiation of Protective Investigations**

The bill amends s. 39.301, F.S., to allow previous reports of child abuse, neglect, or abandonment to be considered in determining whether a child is safe and the risk to a child at any stage of a child protection proceeding. The bill requires parents or legal custodians to notify the protective investigator of any change in the location or residence of a child while an investigation is open, and to clarify that this notification can serve as the basis for a missing child report to law enforcement.

**Section 9 Child Protective Teams**

The bill amends s. 39.303, F.S., to authorize the Child Protection Teams of the Department of Health to provide assessment and support in any report alleging sexual abuse of a child.

**Section 10 Placement in Shelter**

The bill amends ss. 39.402(10) and (16), F.S., to require that the order at the shelter[23] hearing include a description of the specific services which could prevent or eliminate the need for the removal of a child and the date the services are expected to become available or an explanation of why the services are not available.

This section requires that the order contain a notice to all parties of the date, time, and place of the case plan conference, family team conference, or mediation that will be used to develop the case plan. The bill also requires the court to inquire, and the parents to provide, the names and location information of all relatives whom they wish to be considered for placement of the child. The bill requires the court to advise the parents that their parental rights may be terminated if the parents fail to substantially comply with their case plan.

**Section 11 Adjudicatory Hearings**

The bill amends s. 39.507, F.S., to require that, when a court adjudicates a child dependent and the child is in out-of-home care, the court must inquire, and the parents provide, the names and location information of all relatives whom they wish to be considered for placement of the child. Further, the bill requires the court to advise the parents that their parental rights may be terminated if the parents fail to substantially comply with their case plan.

**Section 12 Relative Caregiver Program**

The bill provides that children who are in a permanent guardianship with a relative are eligible for the relative caregiver program.

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[23] Section 39.01(64), F.S., provides that a "shelter" is a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

**Section 13 Disposition Hearings**

The bill amends s. 39.521, F.S., to remove the limitation on considering placement of a child with an adult relative at a later date when no suitable relative is earlier identified.

**Section 14 Postdisposition Change of Custody**

The bill requires that the court consider the continuity of the child's placement in the same out-of-home residence as a factor in determining the best interests of a child when a petition is filed to change the custody of a child in an out-of-home placement.

**Section 15 Case Plan Development**

The bill creates new sections of ch. 39, F.S., describing the procedural and other requirements for developing a case plan, describing the tasks and services that must be addressed in a case plan and describing the process and grounds for case plan amendments. The DCFS must develop a case plan in conjunction with the child's parents, any court-appointed guardian ad litem, and if appropriate the temporary custodian of the child.

The parent of the child may receive assistance in preparing the case plan, and the parent must be informed of his/her right to assistance from counsel. Should a parent not participate in the preparation of a case plan, DCFS must document that and prepare a case plan without the parent's assistance. A parent may then petition the court for review of the provision(s) of the case plan with which he/she disagrees.

A case plan must include the following information: a description of the problem being addressed; the permanency goal; a description of the reunification goal (if that is applicable); the date compliance expires (the compliance period expires no later than 12 months after the date the child was initially removed from the home or the date the case plan was approved by the court); and a written notice to the parent that failure to comply with the plan may result in the termination of parental rights sooner than the compliance period.

A case plan should be signed by all the parties, yet the parent's failure to sign does not preclude a court from accepting the case plan. The case plan must describe the role of the foster parents or legal custodians, the minimum number of face-to-face meetings to be held each month between the parents and DCFS's family services counselors, and the parent's responsibility for financial support of the child.

When adoption is the ultimate goal for the child, the case plan must include documentation of the steps to locate an adoptive family.

Once a case plan has been developed, DCFS must provide the following procedural requirements.

- If the case plan requires the department to provide services to the parents or the child and the parents agree to begin compliance with the case plan before the case plan's acceptance by the court, the department must make the appropriate referrals for services that will allow the parents to immediately begin the agreed upon tasks and services.

- After the case plan has been agreed upon and signed by the parties, a copy of the plan must immediately be given to the parties, including the child, if appropriate, and to other persons as directed by the court.

**Section 16 Case Plan Tasks**

The bill describes the tasks and services which must be addressed in a case plan. The services described in the case plan must be designed to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of

the child, or facilitate the child's permanent placement. The services offered must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement.

The case plan must describe each of the tasks with which the parent must comply and the services to be provided to the parent, specifically addressing the identified problem. Should the child be in an out-of-home placement, the case plan must include additional specific information.

**Section 17 Case Plan Amendments**

The bill describes the process and grounds for case plan amendments. Once a case plan has been developed these provisions would be the only method of amending that plan. However, the case plan may be amended at any time in order to change the goal of the plan, employ the use of concurrent planning, add or remove tasks the parent must complete to substantially comply with the plan, provide appropriate services for the child, and update the child's health, mental health, and education records.

The case plan may also be amended:

- By the court when all parties are in agreement regarding the amendments and the amended plan is signed by all parties and submitted to the court with a memorandum of explanation.
- To change the goal of the plan, employ the use of concurrent planning, or add or remove tasks the parent must complete in order to substantially comply with the plan if there is a preponderance of evidence demonstrating the need for the amendment.
- To provide appropriate services to the child if there is competent evidence demonstrating the need for the amendment.

**Section 18 Court Approval of Case Plan**

The bill amends s. 39.603, F.S., to make technical and conforming changes, and provides that all case plans and amendments must be approved by the court.

**Section 19 Permanency Determination by the Court**

The bill amends s. 39.621, F.S., to provide that time is of the essence for permanency of children in the dependency system and to provide direction to the court in conducting permanency hearings for children. Further the bill provides that the best interest of the child is the primary consideration of the permanency goal for the child.

The bill also specifies the provisions of the permanency options of permanent guardianship of a dependent child, permanent placement with a fit and willing relative, and another planned permanent living arrangement.

**Sections 20-22 Newly Created Permanency Options**

This bill creates three new permanency options for children in the dependency system. While these new options are deemed lower priority than either reunification or adoption, they are nonetheless intended to be permanent. These permanency options, discussed in the sections below, differ from an adoption. A few of those differences are: the permanency options do not authorize any rights of inheritance for the child; absent a termination of parental rights, the permanency options do not exclude the possibility of parental reunification; and the court has continuing oversight in all of the permanency placement options.

**Section 20 Permanent Guardianship of a Dependant Child**

The bill describes the permanency options of permanent guardianship of a dependent child, and conforms this permanency option to the option described in federal law. If a court determines that reunification or adoption is not in the best interest of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court.

Placement of a child in a permanent guardianship does not terminate the parent-child relationship. Nor does the placement preclude the right of the child to inherit from his or her parents, the parents' right to consent to the child's adoption, or the parents' responsibility to provide financial, medical, and other support for the child as ordered by the court.

**Section 21 Permanent Placement with Fit and Willing Relative**

The bill describes the permanency options of permanent placement with a fit and willing relative and conforms this permanency option to that described in federal law.

The bill provides for permanent placement of a child with a fit and willing relative. Such a placement can occur when: the child has been in the placement for at least the preceding 6 months; the relative has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence; the relative is suitable and able to provide a safe and permanent home for the child; and the relative agrees to give notice of any change in his or her residence or the residence of the child.

The court must give that relative an order establishing his or her authority to care for the child, and DCFS must continue to supervise the placement with the relative until further court order.

**Section 22 Another Planned Permanent Living Arrangement**

The bill describes the permanency options of permanent placement with another planned permanent living arrangement and conforms this permanency option to the options described in federal law.

If a court finds that reunification is not in the best interest of a child, the court may approve placement of the child in another planned permanent living arrangement. The placement in such arrangement may occur if: the court finds a more permanent placement, such as adoption, permanent guardianship, or placement with a fit and willing relative, is not in the best interest of the child; DCFS has documented reasons the placement will endure and how the proposed arrangement will be more stable and secure than ordinary foster care; the court finds that the health, safety, and well-being of the child will not be jeopardized by such an arrangement; and there are compelling reasons to show that another placement is the most appropriate permanency goal.

**Section 23 Judicial Review**

The bill amends s. 39.701, F.S., to revise requirements for contents of social studies reports prepared by social service agencies and submitted for periodic review by the court. The proposed language would require reports to include copies of the child's current health and education records as identified in new s. 39.6012., F.S.

Also, considerations for the court or citizen review panel conducting a periodic review (every six months or more frequently if required) are revised to incorporate the provisions of this bill. The current requirement, that the court review the child's permanency goal at the judicial review held no later than 12 months after the child is placed in shelter care, is revised to require review after six months. If the court makes a written finding that it is not likely that the child will be reunified within 12 month, the department must file a motion for concurrent planning[24] for the child.

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[24] "Concurrent planning" means "establishing a permanency goal in a case plan that uses reasonable efforts to reunify the child with the parent, while at the same time establishing another goal," such as adoption or permanent guardianship/placement. New definition from this bill.

**Section 24 Initiation of Termination of Parental Rights Proceedings; Judicial Review**

The bill amends s. 39.703, F.S., to provide the circumstances under which DCFS is required to file or is excused from filing a termination of parental rights petition at the time of the 12-month judicial review. It provides authority for the court to review DCFS's decision not to file this petition on motion of any party or its own motion.

**Section 25 Grounds for Termination of Parental Rights**

The bill amends s. 39.806, F.S., to provide that a material breach of the case plan is grounds for filing a termination of parental rights petition before the expiration of the time period for compliance with the case plan if the court finds by clear and convincing evidence that the parent is unlikely or unable to substantially comply with the case plan before the time for compliance expires.

**Section 26 Manifest Best Interests of the Child**

The bill amends s. 39.810, F.S., to provide that, in determining the manifest best interests of a child in the context of a termination of parental rights proceeding, the availability of a non-adoptive relative placement may not be considered as a factor weighing against the termination of parental rights. Also, if a child has been in a stable or pre-adoptive placement for not less than six months, the availability of a different placement, including a placement with relative, may not be considered as a ground to deny the petition for termination of parental rights.

**Section 31 Petition for Termination of Parental Rights; Filing; Elements**

The bill re-enacts s. 39.802(5), F.S., to incorporate the revisions in the bill.

**Section 35 Site Selection of Community Residential Homes**

The bill repeals ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S., relating to case requirements, long-term custody of a dependent child, long-term licensed custody of a dependant child, independent living, and background screening of certain persons before a dependent child is placed in their home.

**Miscellaneous Sections**

Sections 27-30 and 32-34 amend ss. 39.811, 39.0015, 39.205, 39.302, 39.828, 63.092, and 419.001 F.S., to make technical and conforming changes and to update cross-references.

C. SECTION DIRECTORY:

Section 1 amends s. 39.01, F.S., relating to definitions.

Section 2 amends s. 39.0121, F.S., relating to rulemaking authority.

Section 3 amends s. 39.013, F.S., related to procedures and right to counsel for parents in dependency proceedings.

Section 4 creates s. 39.0136, F.S., relating to time limitations and continuances.

Section 5 creates s. 39.0137, F.S., relating to federal law and rulemaking authority.

Section 6 creates s. 39.0138, F.S., relating to requirements for placement of children and exemptions from disqualification.

Section 7 amends s. 39.201, F.S., relating to the central abuse hotline and mandatory reports of abuse, neglect, abandonment, and death.

Section 8 amends s. 39.301, F.S., relating to child protective investigations.

Section 9 amends s. 39.303, F.S., relating to child protection teams.

Section 10 amends s. 39.402, F.S., relating to placement in a shelter.

Section 11 amends s. 39.507, F.S., relating to adjudicatory hearings and orders of adjudication.

Section 12 amends s. 39.5085, F.S., relating to the Relative Caregiver Program.

Section 13 amends s. 39.521, F.S., relating to disposition hearings and powers of disposition.

Section 14 amends s. 39.522, F.S., relating to postdisposition change of custody.

Section 15 creates s. 39.6011, F.S., relating to case plan development.

Section 16 creates s. 39.6012, F.S., relating to case plan tasks and services to be provided.

Section 17 creates s. 39.6013, F.S., relating to amendments to a case plan.

Section 18 amends s. 39.603, F.S., relating to court approval of case planning.

Section 19 amends s. 39.621, F.S., relating to permanency determinations by the court.

Section 20 creates s. 39.6221, F.S., relating to the permanent guardianship of a child.

Section 21 creates s. 39.6231, F.S., relating to permanent placement of a child with a fit and willing relative.

Section 22 creates s. 39.6241, F.S., relating to another planned permanent living arrangement.

Section 23 amends s. 39.701, F.S., relating to judicial review.

Section 24 amends s. 39.703, F.S., relating to the initiation of termination of parental rights proceedings and judicial review.

Section 25 amends s. 39.806, F.S., relating to grounds for termination of parental rights.

Section 26 amends s. 39.810, F.S., relating to manifest best interest of the child.

Section 27 amends s. 39.811, F.S., relating to powers and orders of disposition.

Section 28 amends s. 39.0015, F.S., relating to child abuse prevention training in the district school system.

Section 29 amends 39.205, F.S., relating to penalties relating to the reporting of abuse, abandonment, or neglect.

Section 30 amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.

Section 31 amends s. 39.802, F.S., relating to petitions for termination of parental rights.

Section 32 amends s. 39.828, F.S. relating to the appointment of a guardian advocate for drug dependent newborns.

Section 33 amends s. 63.092, F.S., relating to reports to the court of intended placement by an adoption entity, at-risk placements, and preliminary studies.

Section 34 amends s. 409.165, F.S., relating to alternative care for children.

Section 35 amends s. 419.001, F.S., relating to site selection of community residential homes.

Section 36 repeals ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S.

Section 37 provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Unknown.

2. Expenditures:

   Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Children and Family Services' fiscal analysis suggests the passage of this bill will save Florida just under $1 million in penalties from the federal government for lack of consistency with federal laws and regulations. However, the department does not anticipate any fiscal impact associated with the implementation of this bill.

The bill removes areas of confusion that have led to delay in permanency for children. As a result, more children should achieve permanency at an earlier time, reducing the need for foster care services.

## 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 Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2), F.S. and for ensuring that this information follows the child until permanency has been achieved; and

- Ensure that the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions in this bill regarding criminal history screening of prospective placements appear confusing. (Lines 1104-1148). For instance, the provisions refer to physical assault which could be a misdemeanor, s. 784.011, F.S, and to sexual assault which would appear to be more properly defined as sexual battery under s. 794.011, F.S. The provisions also imply, but do not specifically provide, that DCFS may waive prior convictions in certain circumstances.

The bill attempts to bring Florida law into compliance with federal laws and regulations. Nevertheless, not all of the provisions of the Code of Federal Regulations pertaining to Title IV-E foster care programs have been implemented. For instance the bill does not include provisions of 45 C.F.R. s. 1356.21 pertaining to foster care maintenance payments program implementation requirements. Specifically, the bill does not include: trial home visits, 45 C.F.R. s. 1356.21(e); the provisions the state filing a petition to terminate the parental rights of a foster child who has been the responsibility of the state for 15 of the last 22 months, 45 C.F.R. s. 1356.21(i)(1)(i); the provisions the state filing a petition to terminate the parental rights of a parent who has been convicted of an enumerated felony, 45 C.F.R. s. 1356.21(i)(1)(iii); the provisions related to the removal of a child from the home of a specified relative, 45 C.F.R. s. 1356.21(k),; or the provisions related to the review of payments and licensing standards, 45 C.F.R. s. 1356.21(m).

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to child protective services; amending s.
3 39.01, F.S.; revising definitions relating to child
4 protective services; amending s. 39.0121, F.S.; providing
5 rulemaking authority to the Department of Children and
6 Family Services to provide certain information in a
7 child's case plan to physical custodians and family
8 services counselors under certain circumstances; amending
9 s. 39.013, F.S.; removing provisions relating to
10 continuances; creating s. 39.0136, F.S.; providing for
11 time limitations and circumstances under which a
12 continuance may be granted in child protective cases;
13 providing exceptions; creating s. 39.0137, F.S.; providing
14 that state laws do not supersede certain federal laws;
15 requiring the Department of Children and Family Services
16 to adopt rules; creating s. 39.0138, F.S.; authorizing the
17 department to conduct criminal records checks of persons
18 being considered as prospective foster parents; providing
19 that a court may review the granting or denial of an
20 exemption from disqualification to care for a dependent
21 child; providing that a person seeking placement of a
22 child who is disqualified bears the burden of providing
23 evidence of rehabilitation; amending s. 39.201, F.S.;
24 requiring that any person who knows or suspects that a
25 child is in need of supervision and care and has no
26 parent, legal custodian, or responsible adult relative
27 immediately known and available to provide supervision and
28 care must report this information to the central abuse

29 hotline of the Department of Children and Family Services;
30 amending s. 39.301, F.S.; redefining the term "criminal
31 conduct" to include a child who is known or suspected to
32 be a victim of human trafficking; requiring each child
33 protective investigator to inform the person who is the
34 subject of a child protective investigation that he or she
35 has a duty to report any change in the residence or
36 location of the child to the investigator and that the
37 duty to report continues until the investigation is
38 closed; providing that the department may rely upon a
39 previous report to indicate that child abuse has occurred;
40 providing that if the child has moved to a different
41 residence or location, a report may be filed with a law
42 enforcement agency under certain circumstances; amending
43 39.303, F.S.; conforming provisions to changes made by the
44 act; amending s. 39.402, F.S.; requiring that a shelter
45 hearing order contain specified information relating to
46 the availability of services to prevent removal from the
47 home; requiring notification of certain parties regarding
48 case plan or family team conferences or mediation;
49 providing a timeframe for the conference or mediation;
50 requiring a parent to provide certain information
51 regarding relatives with whom a child may be placed under
52 certain circumstances; providing circumstances under which
53 parental rights may be terminated and the child's out-of-
54 home placement may become permanent; amending s. 39.507,
55 F.S.; requiring the court to inquire of the parents
56 whether the parents have relatives who might be considered

57 as a placement for the child; directing the court to
58 advise the parents that, if the child is not returned to
59 their custody within 12 months, their parental rights may
60 be terminated and the child's out-of-home placement may
61 become permanent; amending s. 39.5085, F.S.; conforming
62 provisions to changes made by the act; correcting cross-
63 references; amending s. 39.521, F.S.; revising the content
64 of an order of disposition issued by the court; amending
65 s. 39.522, F.S.; requiring the court to consider the
66 continuity of the child's placement in the same out-of-
67 home residence as a factor when determining the best
68 interest of the child in a postdisposition proceeding to
69 modify custody; creating s. 39.6011, F.S.; providing
70 procedures for drafting and implementing a case plan;
71 requiring certain face-to-face meetings; specifying
72 contents of a case plan; requiring the department to
73 prepare a case plan for each child receiving services from
74 the department; requiring all parties, except the child
75 under certain circumstances, to sign the case plan;
76 requiring the case plan to provide certain documentation
77 when the permanency goal for the child is adoption;
78 requiring the department to follow certain procedures;
79 requiring the case plan to be filed with the court and
80 copies to be provided to all parties; requiring certain
81 information to follow a child until permanency is
82 achieved; creating s. 39.6012, F.S.; providing for case
83 plan tasks and services; requiring a parent to complete
84 certain tasks in order to receive certain services;

85 providing for the content of case plans; creating s.
86 39.6013, F.S.; providing for amendments to a case plan;
87 describing the circumstances under which a case plan may
88 be modified; requiring certain information to be included
89 in amendments to a case plan; requiring copies to be
90 distributed to specified parties; amending s. 39.603,
91 F.S.; requiring that case plans and amendments be approved
92 by the court and that copies of the amended plan be
93 provided to certain parties; amending s. 39.621, F.S.;
94 providing a legislative finding; requiring a permanency
95 hearing to be held within a specified timeframe;
96 specifying permanency goals; providing prehearing
97 procedures; directing the court to make certain findings
98 at the permanency hearing; requiring certain factors to be
99 considered by the court in determining the permanency goal
100 for the child; permitting parents to make a motion for
101 reunification or increased contact under certain
102 circumstances; creating s. 39.6221, F.S.; providing for
103 the permanent guardianship for a dependent child;
104 authorizing the court to consider a permanent guardian as
105 a long-term option for a dependent child; requiring a
106 written order; providing for the contents of the permanent
107 guardianship order; exempting the permanent guardianship
108 of a child from the requirements of ch. 744, F.S., under
109 certain circumstances; providing for the court to retain
110 jurisdiction; providing that placement in permanent
111 guardianship does not terminate the relationship between
112 the parent and the child; creating s. 39.6231, F.S.;

113 providing circumstances for placement of a child with a
114 fit and willing relative; requiring the court to specify
115 the reasons to place a child with a relative; requiring
116 the court to establish the relative's authority to care
117 for the child; providing for the department to supervise
118 the placement for a specified time period; requiring the
119 court to continue to conduct permanency hearings; creating
120 s. 39.6241, F.S.; authorizing the court to place a child
121 in another planned permanent living arrangement under
122 certain circumstances; requiring the department and
123 guardian ad litem to provide the court with certain
124 information regarding the needs of the child; amending s.
125 39.701, F.S.; requiring that a child's current health,
126 mental health, and education records be included in the
127 documentation for the judicial review report; authorizing
128 the court and citizen review panel to make certain
129 determinations; providing for amendments to a case plan;
130 removing a provision relating to the extension of a time
131 limitation or the modification of terms of a case plan;
132 requiring the court to conduct a judicial review 6 months
133 after the child is placed in shelter care; amending s.
134 39.703, F.S.; providing when the department may file a
135 petition for termination of parental rights; providing
136 circumstances under which the department may choose not to
137 file a petition; providing for court review of a
138 determination by the department not to file a petition;
139 amending s. 39.806, F.S.; authorizing a material breach of
140 the case plan as a ground to terminate parental rights;

141 requiring that the department show, and the court find,
142 the material breach by clear and convincing evidence;
143 amending s. 39.810, F.S.; providing certain factors for
144 the court to consider for the best interest of the child;
145 amending ss. 39.811 and 409.165, F.S.; conforming
146 provisions to changes made by the act; amending ss.
147 39.0015, 39.205, 39.302, 39.828, 63.092, and 419.001,
148 F.S.; correcting cross-references; reenacting s.
149 39.802(5), F.S., relating to the filing of a petition to
150 terminate parental rights, to incorporate the amendments
151 made to s. 39.806, F.S., in a reference thereto; repealing
152 ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S.,
153 relating to case plan requirements, long-term custody of a
154 dependent child, long-term licensed custody of a dependent
155 child, independent living, and background screening of
156 certain persons before a dependent child is placed in
157 their home; providing an effective date.
158
159 Be It Enacted by the Legislature of the State of Florida:
160
161 Section 1. Section 39.01, Florida Statutes, is amended to
162 read:
163 39.01 Definitions.--When used in this chapter, unless the
164 context otherwise requires:
165 (1) "Abandoned" means a situation in which the parent or
166 legal custodian of a child or, in the absence of a parent or
167 legal custodian, the caregiver responsible for the child's
168 welfare, while being able, makes no provision for the child's

169 support and makes no effort to communicate with the child, which
170 situation is sufficient to evince a willful rejection of
171 parental obligations. If the efforts of the ~~such~~ parent or legal
172 custodian, or caregiver primarily responsible for the child's
173 welfare, to support and communicate with the child are, in the
174 opinion of the court, only marginal efforts that do not evince a
175 settled purpose to assume all parental duties, the court may
176 declare the child to be abandoned. The term "abandoned" does not
177 include an abandoned newborn infant as described in s. 383.50, a
178 "child in need of services" as defined in chapter 984, or a
179 "family in need of services" as defined in chapter 984. The
180 incarceration of a parent, legal custodian, or caregiver
181 responsible for a child's welfare may support a finding of
182 abandonment.
183 (2) "Abuse" means any willful act or threatened act that
184 results in any physical, mental, or sexual injury or harm that
185 causes or is likely to cause the child's physical, mental, or
186 emotional health to be significantly impaired. Abuse of a child
187 includes acts or omissions. Corporal discipline of a child by a
188 parent or legal custodian for disciplinary purposes does not in
189 itself constitute abuse when it does not result in harm to the
190 child.
191 (3) "Addictions receiving facility" means a substance
192 abuse service provider as defined in chapter 397.
193 (4) "Adjudicatory hearing" means a hearing for the court
194 to determine whether or not the facts support the allegations
195 stated in the petition in dependency cases or in termination of
196 parental rights cases.

197 (5) "Adult" means any natural person other than a child.
198 (6) "Adoption" means the act of creating the legal
199 relationship between parent and child where it did not exist,
200 thereby declaring the child to be legally the child of the
201 adoptive parents and their heir at law, and entitled to all the
202 rights and privileges and subject to all the obligations of a
203 child born to the ~~such~~ adoptive parents in lawful wedlock.
204 (7) "Alleged juvenile sexual offender" means:
205 (a) A child 12 years of age or younger who is alleged to
206 have committed a violation of chapter 794, chapter 796, chapter
207 800, s. 827.071, or s. 847.0133; or
208 (b) A child who is alleged to have committed any violation
209 of law or delinquent act involving juvenile sexual abuse.
210 "Juvenile sexual abuse" means any sexual behavior which occurs
211 without consent, without equality, or as a result of coercion.
212 For purposes of this paragraph, the following definitions apply:
213 1. "Coercion" means the exploitation of authority or the
214 use of bribes, threats of force, or intimidation to gain
215 cooperation or compliance.
216 2. "Equality" means two participants operating with the
217 same level of power in a relationship, neither being controlled
218 nor coerced by the other.
219 3. "Consent" means an agreement, including all of the
220 following:
221 a. Understanding what is proposed based on age, maturity,
222 developmental level, functioning, and experience.
223 b. Knowledge of societal standards for what is being
224 proposed.

225 c. Awareness of potential consequences and alternatives.
226 d. Assumption that agreement or disagreement will be
227 accepted equally.
228 e. Voluntary decision.
229 f. Mental competence.
230
231 Juvenile sexual offender behavior ranges from noncontact sexual
232 behavior such as making obscene phone calls, exhibitionism,
233 voyeurism, and the showing or taking of lewd photographs to
234 varying degrees of direct sexual contact, such as frottage,
235 fondling, digital penetration, rape, fellatio, sodomy, and
236 various other sexually aggressive acts.
237 (8) "Arbitration" means a process whereby a neutral third
238 person or panel, called an arbitrator or an arbitration panel,
239 considers the facts and arguments presented by the parties and
240 renders a decision which may be binding or nonbinding.
241 (9) "Authorized agent" or "designee" of the department
242 means an employee, volunteer, or other person or agency
243 determined by the state to be eligible for state-funded risk
244 management coverage, which ~~that~~ is assigned or designated by the
245 department to perform duties or exercise powers under ~~pursuant~~
246 ~~to~~ this chapter.
247 (10) "Caregiver" means the parent, legal custodian,
248 permanent guardian, adult household member, or other person
249 responsible for a child's welfare as defined in subsection (46)
250 ~~(47)~~.
251 (11) "Case plan" ~~or "plan"~~ means a document, as described
252 in s. 39.6011 ~~s. 39.601~~, prepared by the department with input

253 from all parties. The case plan follows the child from the
254 provision of voluntary services through any dependency, foster
255 care, or termination of parental rights proceeding or related
256 activity or process.
257 (12) "Child" or "youth" means any unmarried person under
258 the age of 18 years who has not been emancipated by order of the
259 court.
260 (13) "Child protection team" means a team of professionals
261 established by the Department of Health to receive referrals
262 from the protective investigators and protective supervision
263 staff of the department and to provide specialized and
264 supportive services to the program in processing child abuse,
265 abandonment, or neglect cases. A child protection team shall
266 provide consultation to other programs of the department and
267 other persons regarding child abuse, abandonment, or neglect
268 cases.
269 (14) "Child who is found to be dependent" means a child
270 who, pursuant to this chapter, is found by the court:
271 (a) To have been abandoned, abused, or neglected by the
272 child's parent or parents or legal custodians;
273 (b) To have been surrendered to the department, the former
274 Department of Health and Rehabilitative Services, or a licensed
275 child-placing agency for purpose of adoption;
276 (c) To have been voluntarily placed with a licensed child-
277 caring agency, a licensed child-placing agency, an adult
278 relative, the department, or the former Department of Health and
279 Rehabilitative Services, after which placement, under the
280 requirements of this chapter, a case plan has expired and the

281 parent or parents or legal custodians have failed to
282 substantially comply with the requirements of the plan;
283 (d) To have been voluntarily placed with a licensed child-
284 placing agency for the purposes of subsequent adoption, and a
285 parent or parents have signed a consent pursuant to the Florida
286 Rules of Juvenile Procedure;
287 (e) To have no parent or legal custodians capable of
288 providing supervision and care; or
289 (f) To be at substantial risk of imminent abuse,
290 abandonment, or neglect by the parent or parents or legal
291 custodians.
292 (15) "Child support" means a court-ordered obligation,
293 enforced under chapter 61 and ss. 409.2551-409.2597, for
294 monetary support for the care, maintenance, training, and
295 education of a child.
296 (16) "Circuit" means any of the 20 judicial circuits as
297 set forth in s. 26.021.
298 (17) "Comprehensive assessment" or "assessment" means the
299 gathering of information for the evaluation of a child's and
300 caregiver's physical, psychiatric, psychological or mental
301 health, educational, vocational, and social condition and family
302 environment as they relate to the child's and caregiver's need
303 for rehabilitative and treatment services, including substance
304 abuse treatment services, mental health services, developmental
305 services, literacy services, medical services, family services,
306 and other specialized services, as appropriate.
307 (18) "Concurrent planning" means establishing a permanency
308 goal in a case plan that uses reasonable efforts to reunify the

309 child with the parent, while at the same time establishing
310 another goal that must be one of the following options:
311 (a) Adoption when a petition for termination of parental
312 rights has been filed or will be filed;
313 (b) Permanent guardianship of a dependent child under s.
314 39.6221;
315 (c) Permanent placement with a fit and willing relative
316 under s. 39.6231; or
317 (d) Placement in another planned permanent living
318 arrangement under s. 39.6241.
319 (19) ~~(18)~~ "Court," unless otherwise expressly stated, means
320 the circuit court assigned to exercise jurisdiction under this
321 chapter.
322 (20) ~~(19)~~ "Department" means the Department of Children and
323 Family Services.
324 (21) ~~(20)~~ "Diligent efforts by a parent" means a course of
325 conduct which results in a reduction in risk to the child in the
326 child's home that would allow the child to be safely placed
327 permanently back in the home as set forth in the case plan.
328 (22) ~~(21)~~ "Diligent efforts of social service agency" means
329 reasonable efforts to provide social services or reunification
330 services made by any social service agency that is a party to a
331 case plan.
332 (23) ~~(22)~~ "Diligent search" means the efforts of a social
333 service agency to locate a parent or prospective parent whose
334 identity or location is unknown, initiated as soon as the social
335 service agency is made aware of the existence of such parent,
336 with the search progress reported at each court hearing until

337 the parent is either identified and located or the court excuses
338 further search.
339 (24) ~~(23)~~ "Disposition hearing" means a hearing in which
340 the court determines the most appropriate protections, services,
341 and placement for the child in dependency cases.
342 (25) ~~(24)~~ "District" means any one of the 15 service
343 districts of the department established pursuant to s. 20.19.
344 (26) ~~(25)~~ "District administrator" means the chief
345 operating officer of each service district of the department as
346 defined in s. 20.19(5) and, where appropriate, includes any
347 district administrator whose service district falls within the
348 boundaries of a judicial circuit.
349 (27) ~~(26)~~ "Expedited termination of parental rights" means
350 proceedings wherein a case plan with the goal of reunification
351 is not being offered.
352 (28) ~~(27)~~ "False report" means a report of abuse, neglect,
353 or abandonment of a child to the central abuse hotline, which
354 report is maliciously made for the purpose of:
355 (a) Harassing, embarrassing, or harming another person;
356 (b) Personal financial gain for the reporting person;
357 (c) Acquiring custody of a child; or
358 (d) Personal benefit for the reporting person in any other
359 private dispute involving a child.
360
361 The term "false report" does not include a report of abuse,
362 neglect, or abandonment of a child made in good faith to the
363 central abuse hotline.
364 (29) ~~(28)~~ "Family" means a collective body of persons,

365 consisting of a child and a parent, legal custodian, or adult
366 relative, in which:
367 (a) The persons reside in the same house or living unit;
368 or
369 (b) The parent, legal custodian, or adult relative has a
370 legal responsibility by blood, marriage, or court order to
371 support or care for the child.
372 (30) "Family team conference" means a process for family-
373 focused intervention facilitated by professional staff which is
374 designed to develop a plan for the care, safety, and well-being
375 of a child and the child's family.
376 (31) ~~(29)~~ "Foster care" means care provided a child in a
377 foster family or boarding home, group home, agency boarding
378 home, child care institution, or any combination thereof.
379 (32) ~~(30)~~ "Harm" to a child's health or welfare can occur
380 when any person:
381 (a) Inflicts or allows to be inflicted upon the child
382 physical, mental, or emotional injury. In determining whether
383 harm has occurred, the following factors must be considered in
384 evaluating any physical, mental, or emotional injury to a child:
385 the age of the child; any prior history of injuries to the
386 child; the location of the injury on the body of the child; the
387 multiplicity of the injury; and the type of trauma inflicted.
388 Such injury includes, but is not limited to:
389 1. Willful acts that produce the following specific
390 injuries:
391 a. Sprains, dislocations, or cartilage damage.
392 b. Bone or skull fractures.

393 c. Brain or spinal cord damage.
394 d. Intracranial hemorrhage or injury to other internal
395 organs.
396 e. Asphyxiation, suffocation, or drowning.
397 f. Injury resulting from the use of a deadly weapon.
398 g. Burns or scalding.
399 h. Cuts, lacerations, punctures, or bites.
400 i. Permanent or temporary disfigurement.
401 j. Permanent or temporary loss or impairment of a body
402 part or function.
403
404 As used in this subparagraph, the term "willful" refers to the
405 intent to perform an action, not to the intent to achieve a
406 result or to cause an injury.
407 2. Purposely giving a child poison, alcohol, drugs, or
408 other substances that substantially affect the child's behavior,
409 motor coordination, or judgment or that result in sickness or
410 internal injury. For the purposes of this subparagraph, the term
411 "drugs" means prescription drugs not prescribed for the child or
412 not administered as prescribed, and controlled substances as
413 outlined in Schedule I or Schedule II of s. 893.03.
414 3. Leaving a child without adult supervision or
415 arrangement appropriate for the child's age or mental or
416 physical condition, so that the child is unable to care for the
417 child's own needs or another's basic needs or is unable to
418 exercise good judgment in responding to any kind of physical or
419 emotional crisis.
420 4. Inappropriate or excessively harsh disciplinary action

421 that is likely to result in physical injury, mental injury as
422 defined in this section, or emotional injury. The significance
423 of any injury must be evaluated in light of the following
424 factors: the age of the child; any prior history of injuries to
425 the child; the location of the injury on the body of the child;
426 the multiplicity of the injury; and the type of trauma
427 inflicted. Corporal discipline may be considered excessive or
428 abusive when it results in any of the following or other similar
429 injuries:
430 a. Sprains, dislocations, or cartilage damage.
431 b. Bone or skull fractures.
432 c. Brain or spinal cord damage.
433 d. Intracranial hemorrhage or injury to other internal
434 organs.
435 e. Asphyxiation, suffocation, or drowning.
436 f. Injury resulting from the use of a deadly weapon.
437 g. Burns or scalding.
438 h. Cuts, lacerations, punctures, or bites.
439 i. Permanent or temporary disfigurement.
440 j. Permanent or temporary loss or impairment of a body
441 part or function.
442 k. Significant bruises or welts.
443 (b) Commits, or allows to be committed, sexual battery, as
444 defined in chapter 794, or lewd or lascivious acts, as defined
445 in chapter 800, against the child.
446 (c) Allows, encourages, or forces the sexual exploitation
447 of a child, which includes allowing, encouraging, or forcing a
448 child to:

449 1. Solicit for or engage in prostitution; or
450 2. Engage in a sexual performance, as defined by chapter
451 827.
452 (d) Exploits a child, or allows a child to be exploited,
453 as provided in s. 450.151.
454 (e) Abandons the child. Within the context of the
455 definition of "harm," the term "abandons the child" means that
456 the parent or legal custodian of a child or, in the absence of a
457 parent or legal custodian, the person responsible for the
458 child's welfare, while being able, makes no provision for the
459 child's support and makes no effort to communicate with the
460 child, which situation is sufficient to evince a willful
461 rejection of parental obligation. If the efforts of the ~~such a~~
462 parent or legal custodian or person primarily responsible for
463 the child's welfare to support and communicate with the child
464 are only marginal efforts that do not evince a settled purpose
465 to assume all parental duties, the child may be determined to
466 have been abandoned. The term "abandoned" does not include an
467 abandoned newborn infant as described in s. 383.50.
468 (f) Neglects the child. Within the context of the
469 definition of "harm," the term "neglects the child" means that
470 the parent or other person responsible for the child's welfare
471 fails to supply the child with adequate food, clothing, shelter,
472 or health care, although financially able to do so or although
473 offered financial or other means to do so. However, a parent or
474 legal custodian who, by reason of the legitimate practice of
475 religious beliefs, does not provide specified medical treatment
476 for a child may not be considered abusive or neglectful for that

477 reason alone, but such an exception does not:
478 1. Eliminate the requirement that such a case be reported
479 to the department;
480 2. Prevent the department from investigating such a case;
481 or
482 3. Preclude a court from ordering, when the health of the
483 child requires it, the provision of medical services by a
484 physician, as defined in this section, or treatment by a duly
485 accredited practitioner who relies solely on spiritual means for
486 healing in accordance with the tenets and practices of a well-
487 recognized church or religious organization.
488 (g) Exposes a child to a controlled substance or alcohol.
489 Exposure to a controlled substance or alcohol is established by:
490 1. Use by the mother of a controlled substance or alcohol
491 during pregnancy when the child, at birth, is demonstrably
492 adversely affected by such usage; or
493 2. Continued chronic and severe use of a controlled
494 substance or alcohol by a parent when the child is demonstrably
495 adversely affected by such usage.
496
497 As used in this paragraph, the term "controlled substance" means
498 prescription drugs not prescribed for the parent or not
499 administered as prescribed and controlled substances as outlined
500 in Schedule I or Schedule II of s. 893.03.
501 (h) Uses mechanical devices, unreasonable restraints, or
502 extended periods of isolation to control a child.
503 (i) Engages in violent behavior that demonstrates a wanton
504 disregard for the presence of a child and could reasonably

505 result in serious injury to the child.
506 (j) Negligently fails to protect a child in his or her
507 care from inflicted physical, mental, or sexual injury caused by
508 the acts of another.
509 (k) Has allowed a child's sibling to die as a result of
510 abuse, abandonment, or neglect.
511 (l) Makes the child unavailable for the purpose of
512 impeding or avoiding a protective investigation unless the court
513 determines that the parent, legal custodian, or caregiver was
514 fleeing from a situation involving domestic violence.
515 (33) ~~(31)~~ "Institutional child abuse or neglect" means
516 situations of known or suspected child abuse or neglect in which
517 the person allegedly perpetrating the child abuse or neglect is
518 an employee of a private school, public or private day care
519 center, residential home, institution, facility, or agency or
520 any other person at such institution responsible for the child's
521 care.
522 (34) ~~(32)~~ "Judge" means the circuit judge exercising
523 jurisdiction pursuant to this chapter.
524 (35) ~~(33)~~ "Legal custody" means a legal status created by a
525 court ~~order or letter of guardianship~~ which vests in a custodian
526 of the person or guardian, whether an agency or an individual,
527 the right to have physical custody of the child and the right
528 and duty to protect, nurture, guide ~~train~~, and discipline the
529 child and to provide him or her with food, shelter, education,
530 and ordinary medical, dental, psychiatric, and psychological
531 care. ~~The legal custodian is the person or entity in whom the~~
532 ~~legal right to custody is vested. For purposes of this chapter~~

533 ~~only, when the phrase "parent or legal custodian" is used, it~~
534 ~~refers to rights or responsibilities of the parent and, only if~~
535 ~~there is no living parent with intact parental rights, to the~~
536 ~~rights or responsibilities of the legal custodian who has~~
537 ~~assumed the role of the parent.~~
538 ~~(34) "Legal guardianship" means a judicially created~~
539 ~~relationship between the child and caregiver which is intended~~
540 ~~to be permanent and self-sustaining and is provided pursuant to~~
541 ~~the procedures in chapter 744.~~
542 (36) ~~(35)~~ "Licensed child-caring agency" means a person,
543 society, association, or agency licensed by the department to
544 care for, receive, and board children.
545 (37) ~~(36)~~ "Licensed child-placing agency" means a person,
546 society, association, or institution licensed by the department
547 to care for, receive, or board children and to place children in
548 a licensed child-caring institution or a foster or adoptive
549 home.
550 (38) ~~(37)~~ "Licensed health care professional" means a
551 physician licensed under chapter 458, an osteopathic physician
552 licensed under chapter 459, a nurse licensed under part I of
553 chapter 464, a physician assistant licensed under chapter 458 or
554 chapter 459, or a dentist licensed under chapter 466.
555 (39) ~~(38)~~ "Likely to injure oneself" means that, as
556 evidenced by violent or other actively self-destructive
557 behavior, it is more likely than not that within a 24-hour
558 period the child will attempt to commit suicide or inflict
559 serious bodily harm on himself or herself.
560 (40) ~~(39)~~ "Likely to injure others" means that it is more

561 likely than not that within a 24-hour period the child will
562 inflict serious and unjustified bodily harm on another person.
563 ~~(40) "Long-term relative custodian" means an adult~~
564 ~~relative who is a party to a long-term custodial relationship~~
565 ~~created by a court order pursuant to this chapter.~~
566 ~~(41) "Long-term custody" or "long-term custodial~~
567 ~~relationship" means the relationship that a juvenile court order~~
568 ~~creates between a child and an adult relative of the child or~~
569 ~~other legal custodian approved by the court when the child~~
570 ~~cannot be placed in the custody of a parent and adoption is not~~
571 ~~deemed to be in the best interest of the child. Long-term~~
572 ~~custody confers upon the relative or other legal custodian,~~
573 ~~other than the department, the right to physical custody of the~~
574 ~~child, a right which will not be disturbed by the court except~~
575 ~~upon request of the legal custodian or upon a showing that the~~
576 ~~best interest of the child necessitates a change of custody for~~
577 ~~the child. A relative or other legal custodian who has been~~
578 ~~designated as a long-term custodian shall have all of the rights~~
579 ~~and duties of a parent, including, but not limited to, the right~~
580 ~~and duty to protect, train, and discipline the child and to~~
581 ~~provide the child with food, shelter, and education, and~~
582 ~~ordinary medical, dental, psychiatric, and psychological care,~~
583 ~~unless these rights and duties are otherwise enlarged or limited~~
584 ~~by the court order establishing the long-term custodial~~
585 ~~relationship.~~
586 (41) ~~(42)~~ "Mediation" means a process whereby a neutral
587 third person called a mediator acts to encourage and facilitate
588 the resolution of a dispute between two or more parties. It is

589 an informal and nonadversarial process with the objective of
590 helping the disputing parties reach a mutually acceptable and
591 voluntary agreement. The role of the mediator includes, but is
592 not limited to, assisting the parties in identifying issues,
593 fostering joint problem solving, and exploring settlement
594 alternatives.
595 (42) ~~(43)~~ "Mental injury" means an injury to the
596 intellectual or psychological capacity of a child as evidenced
597 by a discernible and substantial impairment in the ability to
598 function within the normal range of performance and behavior.
599 (43) ~~(44)~~ "Necessary medical treatment" means care which is
600 necessary within a reasonable degree of medical certainty to
601 prevent the deterioration of a child's condition or to alleviate
602 immediate pain of a child.
603 (44) ~~(45)~~ "Neglect" occurs when a child is deprived of, or
604 is allowed to be deprived of, necessary food, clothing, shelter,
605 or medical treatment or a child is permitted to live in an
606 environment when such deprivation or environment causes the
607 child's physical, mental, or emotional health to be
608 significantly impaired or to be in danger of being significantly
609 impaired. The foregoing circumstances shall not be considered
610 neglect if caused primarily by financial inability unless actual
611 services for relief have been offered to and rejected by such
612 person. A parent or legal custodian legitimately practicing
613 religious beliefs in accordance with a recognized church or
614 religious organization who thereby does not provide specific
615 medical treatment for a child may ~~shall~~ not, for that reason
616 alone, be considered a negligent parent or legal custodian;

617 however, such an exception does not preclude a court from
618 ordering the following services to be provided, when the health
619 of the child so requires:
620 (a) Medical services from a licensed physician, dentist,
621 optometrist, podiatric physician, or other qualified health care
622 provider; or
623 (b) Treatment by a duly accredited practitioner who relies
624 solely on spiritual means for healing in accordance with the
625 tenets and practices of a well-recognized church or religious
626 organization.
627
628 Neglect of a child includes acts or omissions.
629 (45) ~~(46)~~ "Next of kin" means an adult relative of a child
630 who is the child's brother, sister, grandparent, aunt, uncle, or
631 first cousin.
632 (46) ~~(47)~~ "Other person responsible for a child's welfare"
633 includes the child's legal guardian~~, legal custodian,~~ or foster
634 parent; an employee of a private school, public or private child
635 day care center, residential home, institution, facility, or
636 agency; or any other person legally responsible for the child's
637 welfare in a residential setting; and also includes an adult
638 sitter or relative entrusted with a child's care. For the
639 purpose of departmental investigative jurisdiction, this
640 definition does not include law enforcement officers, or
641 employees of municipal or county detention facilities or the
642 Department of Corrections, while acting in an official capacity.
643 (47) ~~(48)~~ "Out-of-home" means a placement outside of the
644 home of the parents or a parent.

645 (48) ~~(49)~~ "Parent" means a woman who gives birth to a child
646 and a man who was married to the mother at the time the child
647 was conceived or born, who has been determined by a court to be
648 the father of the child, who has filed an affidavit of paternity
649 under s. 382.013(2), or who has claimed to be the father of the
650 child and has provided, or has attempted to provide, the child,
651 or the mother during her pregnancy, with support in a
652 repetitive, customary manner ~~whose consent to the adoption of~~
653 ~~the child would be required under s. 63.062(1)~~. If a child has
654 been legally adopted, the term "parent" means the adoptive
655 mother or father of the child. The term does not include an
656 individual whose parental relationship to the child has been
657 legally terminated, or an alleged or prospective parent, unless
658 the parental status falls within the terms of s. 39.503(1) or
659 this subsection ~~s. 63.062(1)~~. For purposes of this chapter only,
660 when the phrase "parent or legal custodian" is used, it refers
661 to rights or responsibilities of the parent and, only if there
662 is no living parent with intact parental rights, to the rights
663 or responsibilities of the legal custodian who has assumed the
664 role of the parent.
665 (49) ~~(50)~~ "Participant," for purposes of a shelter
666 proceeding, dependency proceeding, or termination of parental
667 rights proceeding, means any person who is not a party but who
668 should receive notice of hearings involving the child, including
669 the actual custodian of the child, the foster parents or the
670 legal custodian of the child, identified prospective parents,
671 ~~grandparents entitled to priority for adoption consideration~~
672 ~~under s. 63.0425, actual custodians of the child,~~ and any other

673 person whose participation may be in the best interest of the
674 child. A community-based agency under contract with the
675 department to provide protective services may be designated as a
676 participant at the discretion of the court. Participants may be
677 granted leave by the court to be heard without the necessity of
678 filing a motion to intervene.
679 (50) ~~(51)~~ "Party" means the parent or parents of the child,
680 the petitioner, the department, the guardian ad litem or the
681 representative of the guardian ad litem program when the program
682 has been appointed, and the child. The presence of the child may
683 be excused by order of the court when presence would not be in
684 the child's best interest. Notice to the child may be excused by
685 order of the court when the age, capacity, or other condition of
686 the child is such that the notice would be meaningless or
687 detrimental to the child.
688 (51) "Permanency goal" means the living arrangement
689 identified for the child to return to or identified as the
690 permanent living arrangement of the child. Permanency goals
691 applicable under this chapter are:
692 (a) Reunification;
693 (b) Adoption when a petition for termination of parental
694 rights has been or will be filed;
695 (c) Permanent guardianship of a dependent child under s.
696 39.6221;
697 (d) Permanent placement with a fit and willing relative
698 under s. 39.6231; or
699 (e) Placement in another planned permanent living
700 arrangement under s. 39.6241.

701
702 The permanency goal is also the case plan goal. If concurrent
703 case planning is being used, reunification may be pursued at the
704 same time that another permanency goal is pursued.
705 (52) "Permanency plan" means the plan that establishes the
706 placement intended to serve as the child's permanent home.
707 (53) "Permanent guardian" means the relative or other
708 adult in a permanent guardianship of a dependent child under s.
709 39.6221.
710 (54) "Permanent guardianship of a dependent child" means a
711 legal relationship that a court creates under s. 39.6221 between
712 a child and a relative or other adult approved by the court
713 which is intended to be permanent and self-sustaining through
714 the transfer of parental rights with respect to the child
715 relating to protection, education, care, and control of the
716 child, custody of the child, and decisionmaking on behalf of the
717 child.
718 (55) ~~(52)~~ "Physical injury" means death, permanent or
719 temporary disfigurement, or impairment of any bodily part.
720 (56) ~~(53)~~ "Physician" means any licensed physician,
721 dentist, podiatric physician, or optometrist and includes any
722 intern or resident.
723 (57) ~~(54)~~ "Preliminary screening" means the gathering of
724 preliminary information to be used in determining a child's need
725 for further evaluation or assessment or for referral for other
726 substance abuse services through means such as psychosocial
727 interviews; urine and breathalyzer screenings; and reviews of
728 available educational, delinquency, and dependency records of

729 the child.
730 (58) ~~(55)~~ "Preventive services" means social services and
731 other supportive and rehabilitative services provided to the
732 parent or legal custodian of the child and to the child for the
733 purpose of averting the removal of the child from the home or
734 disruption of a family which will or could result in the
735 placement of a child in foster care. Social services and other
736 supportive and rehabilitative services shall promote the child's
737 need for physical, mental, and emotional health and a safe,
738 stable, living environment, shall promote family autonomy, and
739 shall strengthen family life, whenever possible.
740 (59) ~~(56)~~ "Prospective parent" means a person who claims to
741 be, or has been identified as, a person who may be a mother or a
742 father of a child.
743 (60) ~~(57)~~ "Protective investigation" means the acceptance
744 of a report alleging child abuse, abandonment, or neglect, as
745 defined in this chapter, by the central abuse hotline or the
746 acceptance of a report of other dependency by the department;
747 the investigation of each report; the determination of whether
748 action by the court is warranted; the determination of the
749 disposition of each report without court or public agency action
750 when appropriate; and the referral of a child to another public
751 or private agency when appropriate.
752 (61) ~~(58)~~ "Protective investigator" means an authorized
753 agent of the department who receives and investigates reports of
754 child abuse, abandonment, or neglect; who, as a result of the
755 investigation, may recommend that a dependency petition be filed
756 for the child; and who performs other duties necessary to carry

757 out the required actions of the protective investigation
758 function.
759 (62) ~~(59)~~ "Protective supervision" means a legal status in
760 dependency cases which permits the child to remain safely in his
761 or her own home or other nonlicensed placement under the
762 supervision of an agent of the department and which must be
763 reviewed by the court during the period of supervision.
764 (63) ~~(60)~~ "Relative" means a grandparent, great-
765 grandparent, sibling, first cousin, aunt, uncle, great-aunt,
766 great-uncle, niece, or nephew, whether related by the whole or
767 half blood, by affinity, or by adoption. The term does not
768 include a stepparent.
769 (64) ~~(61)~~ "Reunification services" means social services
770 and other supportive and rehabilitative services provided to the
771 parent of the child, to the child, and, where appropriate, to
772 the relative placement, nonrelative placement, or foster parents
773 of the child, for the purpose of enabling a child who has been
774 placed in out-of-home care to safely return to his or her parent
775 at the earliest possible time. The health and safety of the
776 child shall be the paramount goal of social services and other
777 supportive and rehabilitative services. The ~~Such~~ services shall
778 promote the child's need for physical, mental, and emotional
779 health and a safe, stable, living environment, shall promote
780 family autonomy, and shall strengthen family life, whenever
781 possible.
782 (65) ~~(62)~~ "Secretary" means the Secretary of Children and
783 Family Services.
784 (66) ~~(63)~~ "Sexual abuse of a child" means one or more of

785 the following acts:
786 (a) Any penetration, however slight, of the vagina or anal
787 opening of one person by the penis of another person, whether or
788 not there is the emission of semen.
789 (b) Any sexual contact between the genitals or anal
790 opening of one person and the mouth or tongue of another person.
791 (c) Any intrusion by one person into the genitals or anal
792 opening of another person, including the use of any object for
793 this purpose, except that this does not include any act intended
794 for a valid medical purpose.
795 (d) The intentional touching of the genitals or intimate
796 parts, including the breasts, genital area, groin, inner thighs,
797 and buttocks, or the clothing covering them, of either the child
798 or the perpetrator, except that this does not include:
799 1. Any act which may reasonably be construed to be a
800 normal caregiver responsibility, any interaction with, or
801 affection for a child; or
802 2. Any act intended for a valid medical purpose.
803 (e) The intentional masturbation of the perpetrator's
804 genitals in the presence of a child.
805 (f) The intentional exposure of the perpetrator's genitals
806 in the presence of a child, or any other sexual act
807 intentionally perpetrated in the presence of a child, if such
808 exposure or sexual act is for the purpose of sexual arousal or
809 gratification, aggression, degradation, or other similar
810 purpose.
811 (g) The sexual exploitation of a child, which includes
812 allowing, encouraging, or forcing a child to:

813 1. Solicit for or engage in prostitution; or
814 2. Engage in a sexual performance, as defined by chapter
815 827.
816 (67) ~~(64)~~ "Shelter" means a placement with a relative or a
817 nonrelative, or in a licensed home or facility, for the
818 temporary care of a child who is alleged to be or who has been
819 found to be dependent, pending court disposition before or after
820 adjudication.
821 (68) ~~(65)~~ "Shelter hearing" means a hearing in which the
822 court determines whether probable cause exists to keep a child
823 in shelter status pending further investigation of the case.
824 (69) ~~(66)~~ "Social service agency" means the department, a
825 licensed child-caring agency, or a licensed child-placing
826 agency.
827 (70) ~~(67)~~ "Substance abuse" means using, without medical
828 reason, any psychoactive or mood-altering drug, including
829 alcohol, in such a manner as to induce impairment resulting in
830 dysfunctional social behavior.
831 (71) ~~(68)~~ "Substantial compliance" means that the
832 circumstances which caused the creation of the case plan have
833 been significantly remedied to the extent that the well-being
834 and safety of the child will not be endangered upon the child's
835 remaining with or being returned to the child's parent.
836 (72) ~~(69)~~ "Taken into custody" means the status of a child
837 immediately when temporary physical control over the child is
838 attained by a person authorized by law, pending the child's
839 release or placement.
840 (73) ~~(70)~~ "Temporary legal custody" means the relationship

841 that a ~~juvenile~~ court creates between a child and an adult
842 relative of the child, legal custodian, agency, or other person
843 approved by the court until a more permanent arrangement is
844 ordered. Temporary legal custody confers upon the custodian the
845 right to have temporary physical custody of the child and the
846 right and duty to protect, nurture, guide ~~train~~, and discipline
847 the child and to provide the child with food, shelter, and
848 education, and ordinary medical, dental, psychiatric, and
849 psychological care, unless these rights and duties are otherwise
850 enlarged or limited by the court order establishing the
851 temporary legal custody relationship.
852 (74) ~~(71)~~ "Victim" means any child who has sustained or is
853 threatened with physical, mental, or emotional injury identified
854 in a report involving child abuse, neglect, or abandonment, or
855 child-on-child sexual abuse.
856 ~~(72) "Long-term licensed custody" means the relationship~~
857 ~~that a juvenile court order creates between a child and a~~
858 ~~placement licensed by the state to provide residential care for~~
859 ~~dependent children, if the licensed placement is willing and~~
860 ~~able to continue to care for the child until the child reaches~~
861 ~~the age of majority.~~
862 Section 2. Subsection (15) is added to section 39.0121,
863 Florida Statutes, to read:
864 39.0121 Specific rulemaking authority.--Pursuant to the
865 requirements of s. 120.536, the department is specifically
866 authorized to adopt, amend, and repeal administrative rules
867 which implement or interpret law or policy, or describe the
868 procedure and practice requirements necessary to implement this

869 chapter, including, but not limited to, the following:
870 (15) Provision for making available to all physical
871 custodians and family services counselors the information
872 required by s. 39.6012(2) and for ensuring that this information
873 follows the child until permanency has been achieved.
874 Section 3. Section 39.013, Florida Statutes, is amended to
875 read:
876 39.013 Procedures and jurisdiction; right to counsel.--
877 (1) All procedures, including petitions, pleadings,
878 subpoenas, summonses, and hearings, in this chapter shall be
879 conducted according to the Florida Rules of Juvenile Procedure
880 unless otherwise provided by law. Parents must be informed by
881 the court of their right to counsel in dependency proceedings at
882 each stage of the dependency proceedings. Parents who are unable
883 to afford counsel must be appointed counsel.
884 (2) The circuit court has ~~shall have~~ exclusive original
885 jurisdiction of all proceedings under this chapter, of a child
886 voluntarily placed with a licensed child-caring agency, a
887 licensed child-placing agency, or the department, and of the
888 adoption of children whose parental rights have been terminated
889 under this chapter. Jurisdiction attaches when the initial
890 shelter petition, dependency petition, or termination of
891 parental rights petition is filed or when a child is taken into
892 the custody of the department. The circuit court may assume
893 jurisdiction over any such proceeding regardless of whether the
894 child was in the physical custody of both parents, was in the
895 sole legal or physical custody of only one parent, caregiver, or
896 some other person, or was in the physical or legal custody of no

897 person when the event or condition occurred that brought the
898 child to the attention of the court. When the court obtains
899 jurisdiction of any child who has been found to be dependent,
900 the court shall retain jurisdiction, unless relinquished by its
901 order, until the child reaches 18 years of age. However, if a
902 youth petitions the court at any time before his or her 19th
903 birthday requesting the court's continued jurisdiction, the
904 juvenile court may retain jurisdiction under this chapter for a
905 period not to exceed 1 year following the youth's 18th birthday
906 for the purpose of determining whether appropriate aftercare
907 support, Road-to-Independence Scholarship, transitional support,
908 mental health, and developmental disability services, to the
909 extent otherwise authorized by law, have been provided to the
910 formerly dependent child who was in the legal custody of the
911 department immediately before his or her 18th birthday. If a
912 petition for special immigrant juvenile status and an
913 application for adjustment of status have been filed on behalf
914 of a foster child and the petition and application have not been
915 granted by the time the child reaches 18 years of age, the court
916 may retain jurisdiction over the dependency case solely for the
917 purpose of allowing the continued consideration of the petition
918 and application by federal authorities. Review hearings for the
919 child shall be set solely for the purpose of determining the
920 status of the petition and application. The court's jurisdiction
921 terminates upon the final decision of the federal authorities.
922 Retention of jurisdiction in this instance does not affect the
923 services available to a young adult under s. 409.1451. The court
924 may not retain jurisdiction of the case after the immigrant

925 child's 22nd birthday.
926 (3) When a child is under the jurisdiction of the circuit
927 court pursuant to ~~the provisions of~~ this chapter, the circuit
928 court assigned to handle dependency matters may exercise the
929 general and equitable jurisdiction over guardianship proceedings
930 under ~~pursuant to the provisions of~~ chapter 744 and proceedings
931 for temporary custody of minor children by extended family under
932 ~~pursuant to the provisions of~~ chapter 751.
933 (4) Orders entered pursuant to this chapter which affect
934 the placement of, access to, parental time with, adoption of, or
935 parental rights and responsibilities for a minor child shall
936 take precedence over other orders entered in civil actions or
937 proceedings. However, if the court has terminated jurisdiction,
938 the ~~such~~ order may be subsequently modified by a court of
939 competent jurisdiction in any other civil action or proceeding
940 affecting placement of, access to, parental time with, adoption
941 of, or parental rights and responsibilities for the same minor
942 child.
943 (5) The court shall expedite the resolution of the
944 placement issue in cases involving a child who has been removed
945 from the parent and placed in an out-of-home placement.
946 (6) The court shall expedite the judicial handling of all
947 cases when the child has been removed from the parent and placed
948 in an out-of-home placement.
949 (7) Children removed from their homes shall be provided
950 equal treatment with respect to goals, objectives, services, and
951 case plans, without regard to the location of their placement.
952 (8) For any child who remains in the custody of the

953 department, the court shall, within the month which constitutes
954 the beginning of the 6-month period before the child's 18th
955 birthday, hold a hearing to review the progress of the child
956 while in the custody of the department.
957 (9)(a) At each stage of the proceedings under this
958 chapter, the court shall advise the parents of the right to
959 counsel. The court shall appoint counsel for indigent parents.
960 The court shall ascertain whether the right to counsel is
961 understood. When right to counsel is waived, the court shall
962 determine whether the waiver is knowing and intelligent. The
963 court shall enter its findings in writing with respect to the
964 appointment or waiver of counsel for indigent parents or the
965 waiver of counsel by nonindigent parents.
966 (b) Once counsel has entered an appearance or been
967 appointed by the court to represent the parent of the child, the
968 attorney shall continue to represent the parent throughout the
969 proceedings. If the attorney-client relationship is
970 discontinued, the court shall advise the parent of the right to
971 have new counsel retained or appointed for the remainder of the
972 proceedings.
973 (c)1. A ~~No~~ waiver of counsel may not be accepted if it
974 appears that the parent is unable to make an intelligent and
975 understanding choice because of mental condition, age,
976 education, experience, the nature or complexity of the case, or
977 other factors.
978 2. A waiver of counsel made in court must be of record.
979 3. If a waiver of counsel is accepted at any hearing or
980 proceeding, the offer of assistance of counsel must be renewed

981 by the court at each subsequent stage of the proceedings at
982 which the parent appears without counsel.
983 (d) This subsection does not apply to any parent who has
984 voluntarily executed a written surrender of the child and
985 consents to the entry of a court order terminating parental
986 rights.
987 ~~(10) The time limitations in this chapter do not include:~~
988 ~~(a) Periods of delay resulting from a continuance granted~~
989 ~~at the request or with the consent of the child's counsel or the~~
990 ~~child's guardian ad litem, if one has been appointed by the~~
991 ~~court, or, if the child is of sufficient capacity to express~~
992 ~~reasonable consent, at the request or with the consent of the~~
993 ~~child.~~
994 ~~(b) Periods of delay resulting from a continuance granted~~
995 ~~at the request of any party, if the continuance is granted:~~
996 ~~1. Because of an unavailability of evidence material to~~
997 ~~the case when the requesting party has exercised due diligence~~
998 ~~to obtain such evidence and there are substantial grounds to~~
999 ~~believe that such evidence will be available within 30 days.~~
1000 ~~However, if the requesting party is not prepared to proceed~~
1001 ~~within 30 days, any other party, inclusive of the parent or~~
1002 ~~legal custodian, may move for issuance of an order to show cause~~
1003 ~~or the court on its own motion may impose appropriate sanctions,~~
1004 ~~which may include dismissal of the petition.~~
1005 ~~2. To allow the requesting party additional time to~~
1006 ~~prepare the case and additional time is justified because of an~~
1007 ~~exceptional circumstance.~~
1008 ~~(c) Reasonable periods of delay necessary to accomplish~~

1009 ~~notice of the hearing to the child's parent or legal custodian;~~
1010 ~~however, the petitioner shall continue regular efforts to~~
1011 ~~provide notice to the parents during such periods of delay.~~
1012 ~~(d) Reasonable periods of delay resulting from a~~
1013 ~~continuance granted at the request of the parent or legal~~
1014 ~~custodian of a subject child.~~
1015 ~~(e) Notwithstanding the foregoing, continuances and~~
1016 ~~extensions of time are limited to the number of days absolutely~~
1017 ~~necessary to complete a necessary task in order to preserve the~~
1018 ~~rights of a party or the best interests of a child. Time is of~~
1019 ~~the essence for the best interests of dependent children in~~
1020 ~~conducting dependency proceedings in accordance with the time~~
1021 ~~limitations set forth in this chapter. Time limitations are a~~
1022 ~~right of the child which may not be waived, extended, or~~
1023 ~~continued at the request of any party in advance of the~~
1024 ~~particular circumstances or need arising upon which delay of the~~
1025 ~~proceedings may be warranted.~~
1026 ~~(f) Continuances or extensions of time may not total more~~
1027 ~~than 60 days for all parties within any 12-month period during~~
1028 ~~proceedings under this chapter. A continuance or extension of~~
1029 ~~time beyond the 60 days may be granted only for extraordinary~~
1030 ~~circumstances necessary to preserve the constitutional rights of~~
1031 ~~a party or when substantial evidence demonstrates that the~~
1032 ~~child's best interests will be affirmatively harmed without the~~
1033 ~~granting of a continuance or extension of time.~~
1034 (10) ~~(11)~~ Court-appointed counsel representing indigent
1035 parents at shelter hearings shall be paid from state funds
1036 appropriated by general law.

1037 (11) ~~(12)~~ The court shall encourage the Statewide Guardian
1038 Ad Litem Office to provide greater representation to those
1039 children who are within 1 year of transferring out of foster
1040 care.
1041 Section 4. Section 39.0136, Florida Statutes, is created
1042 to read:
1043 39.0136 Time limitations; continuances.--
1044 (1) The Legislature finds that time is of the essence for
1045 establishing permanency for a child in the dependency system.
1046 Time limitations are a right of the child which may not be
1047 waived, extended, or continued at the request of any party
1048 except as provided in this section.
1049 (2) The time limitations in this chapter do not include:
1050 (a) Periods of delay resulting from a continuance granted
1051 at the request of the child's counsel or the child's guardian ad
1052 litem or, if the child is of sufficient capacity to express
1053 reasonable consent, at the request or with the consent of the
1054 child. The court must consider the best interest of the child
1055 when determining periods of delay under this section.
1056 (b) Periods of delay resulting from a continuance granted
1057 at the request of any party if the continuance is granted:
1058 1. Because of an unavailability of evidence that is
1059 material to the case if the requesting party has exercised due
1060 diligence to obtain evidence and there are substantial grounds
1061 to believe that the evidence will be available within 30 days.
1062 However, if the requesting party is not prepared to proceed
1063 within 30 days, any other party may move for issuance of an
1064 order to show cause or the court, on its own motion, may impose

1065 appropriate sanctions, which may include dismissal of the
1066 petition.
1067 2. To allow the requesting party additional time to
1068 prepare the case and additional time is justified because of an
1069 exceptional circumstance.
1070 (c) Reasonable periods of delay necessary to accomplish
1071 notice of the hearing to the child's parent or legal custodian;
1072 however, the petitioner shall continue regular efforts to
1073 provide notice to the parents during the periods of delay.
1074 (3) Notwithstanding subsection (2), in order to expedite
1075 permanency for a child, the total time allowed for continuances
1076 or extensions of time may not exceed 60 days within any 12-month
1077 period for proceedings conducted under this chapter. A
1078 continuance or extension of time may be granted only for
1079 extraordinary circumstances in which it is necessary to preserve
1080 the constitutional rights of a party or if substantial evidence
1081 exists to demonstrate that without granting a continuance or
1082 extension of time the child's best interest will be harmed.
1083 (4) Notwithstanding subsection (2), a continuance or an
1084 extension of time is limited to the number of days absolutely
1085 necessary to complete a necessary task in order to preserve the
1086 rights of a party or the best interest of a child.
1087 Section 5. Section 39.0137, Florida Statutes, is created
1088 to read:
1089 39.0137 Federal law; rulemaking authority.--
1090 (1) This chapter does not supersede the requirements of
1091 the Indian Child Welfare Act, 25 U.S.C. ss. 1901 et seq., or the
1092 Multi-Ethnic Placement Act of 1994, Pub. L. No. 103-382, as

1093 amended, or the implementing regulations.
1094 (2) The department shall adopt rules no later than July 1,
1095 2007, to ensure that the provisions of these federal laws are
1096 enforced in this state. The department is encouraged to enter
1097 into agreements with recognized American Indian tribes in order
1098 to facilitate the implementation of the Indian Child Welfare
1099 Act.
1100 Section 6. Section 39.0138, Florida Statutes, is created
1101 to read:
1102 39.0138 Requirements for placement of children; exemptions
1103 from disqualification.--
1104 (1)(a) The department may conduct criminal records checks
1105 equivalent to the level 2 screening required in s. 435.04 for
1106 any person being considered by the department for approval for
1107 placement of a child subject to a placement decision under this
1108 chapter. Approval for placement with any person other than a
1109 parent may not be granted in any case in which a criminal
1110 records check reveals a felony conviction in a court of
1111 competent jurisdiction for:
1112 1. Child abuse, abandonment, or neglect; spousal abuse; a
1113 crime against children, including child pornography, or a crime
1114 involving violence, including sexual battery, sexual assault, or
1115 homicide, but not including other physical assault or battery,
1116 if the felony was committed at any time; or
1117 2. Physical assault, battery, or a drug-related offense if
1118 the felony was committed within the past 5 years.
1119 (b) Notwithstanding paragraph (a), the department may
1120 place a child in a home that otherwise meets placement

1121 requirements if state and local criminal records checks do not
1122 disqualify the applicant and if the department has submitted
1123 fingerprint information to the Department of Law Enforcement for
1124 forwarding to the Federal Bureau of Investigation and is
1125 awaiting the results of the federal criminal records check.
1126 (c) Persons with whom placement of a child is being
1127 considered or approved must disclose to the department any prior
1128 or pending local, state, or federal criminal proceedings in
1129 which they are or have been involved.
1130 (d) The results of any criminal records check of a parent
1131 conducted under this section must be considered in determining
1132 whether placement with the parent will jeopardize the safety of
1133 the child being placed.
1134 (2)(a) The court may review the decision of the department
1135 to grant or deny an exemption upon the motion of any party, the
1136 request of any person who has been denied an exemption by the
1137 department, or on its own motion. The court shall prepare
1138 written findings to support its decision in this matter.
1139 (b) A person seeking placement of a child when the
1140 department has denied the placement based on a disqualifying
1141 criminal offense has the burden of setting forth sufficient
1142 evidence of rehabilitation, including, but not limited to, the
1143 circumstances surrounding the incident for which an exemption
1144 from disqualification is sought, the time period that has
1145 elapsed since the incident, the nature of the harm caused to the
1146 victim, the history of the person since the incident, and any
1147 other evidence or circumstances indicating that the person will
1148 not present a danger if the placement of the child is allowed.

1149 Section 7. Paragraph (a) of subsection (1), paragraph (a)
1150 of subsection (2), and subsection (5) of section 39.201, Florida
1151 Statutes, are amended to read:
1152 39.201 Mandatory reports of child abuse, abandonment, or
1153 neglect; mandatory reports of death; central abuse hotline.--
1154 (1)(a) Any person who knows, or has reasonable cause to
1155 suspect, that a child is abused, abandoned, or neglected by a
1156 parent, legal custodian, caregiver, or other person responsible
1157 for the child's welfare, as defined in this chapter, <u>or that a</u>
1158 <u>child is in need of supervision and care and has no parent,</u>
1159 <u>legal custodian, or responsible adult relative immediately known</u>
1160 <u>and available to provide supervision and care</u> shall report such
1161 knowledge or suspicion to the department in the manner
1162 prescribed in subsection (2).
1163 (2)(a) Each report of known or suspected child abuse,
1164 abandonment, or neglect by a parent, legal custodian, caregiver,
1165 or other person responsible for the child's welfare as defined
1166 in this chapter, except those solely under s. 827.04(3), <u>and</u>
1167 <u>each report that a child is in need of supervision and care and</u>
1168 <u>has no parent, legal custodian, or responsible adult relative</u>
1169 <u>immediately known and available to provide supervision and care</u>
1170 shall be made immediately to the department's central abuse
1171 hotline on the single statewide toll-free telephone number.
1172 Personnel at the department's central abuse hotline shall
1173 determine if the report received meets the statutory definition
1174 of child abuse, abandonment, or neglect. Any report meeting one
1175 of these definitions shall be accepted for the protective
1176 investigation pursuant to part III of this chapter.

1177 (5) The department shall be capable of receiving and
1178 investigating, 24 hours a day, 7 days a week, reports of known
1179 or suspected child abuse, abandonment, or neglect and reports
1180 that a child is in need of supervision and care and has no
1181 parent, legal custodian, or responsible adult relative
1182 immediately known and available to provide supervision and care
1183 ~~24 hours a day, 7 days a week~~. If it appears that the immediate
1184 safety or well-being of a child is endangered, that the family
1185 may flee or the child will be unavailable for purposes of
1186 conducting a child protective investigation, or that the facts
1187 otherwise so warrant, the department shall commence an
1188 investigation immediately, regardless of the time of day or
1189 night. In all other child abuse, abandonment, or neglect cases,
1190 a child protective investigation shall be commenced within 24
1191 hours after receipt of the report. In an institutional
1192 investigation, the alleged perpetrator may be represented by an
1193 attorney, at his or her own expense, or accompanied by another
1194 person, if the person or the attorney executes an affidavit of
1195 understanding with the department and agrees to comply with the
1196 confidentiality provisions of s. 39.202. The absence of an
1197 attorney or other person does not prevent the department from
1198 proceeding with other aspects of the investigation, including
1199 interviews with other persons. In institutional child abuse
1200 cases when the institution is not operating and the child cannot
1201 otherwise be located, the investigation shall commence
1202 immediately upon the resumption of operation. If requested by a
1203 state attorney or local law enforcement agency, the department
1204 shall furnish all investigative reports to that agency.

1205 Section 8. Subsections (1), (2), (5), and (22) of section
1206 39.301, Florida Statutes, are amended, and subsection (23) is
1207 added to that section, to read:
1208 39.301 Initiation of protective investigations.--
1209 (1) Upon receiving an oral or written report of known or
1210 suspected child abuse, abandonment, or neglect, <u>or that a child</u>
1211 <u>is in need of supervision and care and has no parent, legal</u>
1212 <u>custodian, or responsible adult relative immediately known and</u>
1213 <u>available to provide supervision and care,</u> the central abuse
1214 hotline shall determine if the report requires an immediate
1215 onsite protective investigation. For reports requiring an
1216 immediate onsite protective investigation, the central abuse
1217 hotline shall immediately notify the department's designated
1218 children and families district staff responsible for protective
1219 investigations to ensure that an onsite investigation is
1220 promptly initiated. For reports not requiring an immediate
1221 onsite protective investigation, the central abuse hotline shall
1222 notify the department's designated children and families
1223 district staff responsible for protective investigations in
1224 sufficient time to allow for an investigation. At the time of
1225 notification of district staff with respect to the report, the
1226 central abuse hotline shall also provide information on any
1227 previous report concerning a subject of the present report or
1228 any pertinent information relative to the present report or any
1229 noted earlier reports.
1230 (2)(a) The department shall immediately forward
1231 allegations of criminal conduct to the municipal or county law
1232 enforcement agency of the municipality or county in which the

1233 alleged conduct has occurred.
1234 (b) As used in this subsection, the term "criminal
1235 conduct" means:
1236 1. A child is known or suspected to be the victim of child
1237 abuse, as defined in s. 827.03, or of neglect of a child, as
1238 defined in s. 827.03.
1239 2. A child is known or suspected to have died as a result
1240 of abuse or neglect.
1241 3. A child is known or suspected to be the victim of
1242 aggravated child abuse, as defined in s. 827.03.
1243 4. A child is known or suspected to be the victim of
1244 sexual battery, as defined in s. 827.071, or of sexual abuse, as
1245 defined in s. 39.01.
1246 5. A child is known or suspected to be the victim of
1247 institutional child abuse or neglect, as defined in s. 39.01,
1248 and as provided for in s. 39.302(1).
1249 6. A child is known or suspected to be a victim of human
1250 trafficking, as provided in s. 787.06.
1251 (c) Upon receiving a written report of an allegation of
1252 criminal conduct from the department, the law enforcement agency
1253 shall review the information in the written report to determine
1254 whether a criminal investigation is warranted. If the law
1255 enforcement agency accepts the case for criminal investigation,
1256 it shall coordinate its investigative activities with the
1257 department, whenever feasible. If the law enforcement agency
1258 does not accept the case for criminal investigation, the agency
1259 shall notify the department in writing.
1260 (d) The local law enforcement agreement required in s.

1261 39.306 shall describe the specific local protocols for
1262 implementing this section.
1263 (5)(a) Upon commencing an investigation under this part,
1264 the child protective investigator shall inform any subject of
1265 the investigation of the following:
1266 1. The names of the investigators and identifying
1267 credentials from the department.
1268 2. The purpose of the investigation.
1269 3. The right to obtain his or her own attorney and ways
1270 that the information provided by the subject may be used.
1271 4. The possible outcomes and services of the department's
1272 response, which shall be explained to the parent or legal
1273 custodian.
1274 5. The right of the parent or legal custodian to be
1275 involved to the fullest extent possible in determining the
1276 nature of the allegation and the nature of any identified
1277 problem.
1278 6. The duty of the parent or legal custodian to report any
1279 change in the residence or location of the child to the
1280 investigator and that the duty to report continues until the
1281 investigation is closed.
1282 (b) The department's training program shall ensure that
1283 protective investigators know how to fully inform parents or
1284 legal custodians of their rights and options, including
1285 opportunities for audio or video recording of investigators'
1286 interviews with parents or legal custodians or children.
1287 (22) When an investigation is closed and a person is not
1288 identified as a caregiver responsible for the abuse, neglect, or

1289 abandonment alleged in the report, the fact that the person is
1290 named in some capacity in the report may not be used in any way
1291 to adversely affect the interests of that person. This
1292 prohibition applies to any use of the information in employment
1293 screening, licensing, child placement, adoption, or any other
1294 decisions by a private adoption agency or a state agency or its
1295 contracted providers, except that a previous report may be used
1296 to determine whether a child is safe and what the known risk is
1297 to the child at any stage of a child protection proceeding.
1298 (23) If, after having been notified of the requirement to
1299 report a change in residence or location of the child to the
1300 protective investigator, a parent or legal custodian causes the
1301 child to move, or allows the child to be moved, to a different
1302 residence or location, or if the child leaves the residence on
1303 his or her own accord and the parent or legal custodian does not
1304 notify the protective investigator of the move within 2 business
1305 days, the child may be considered to be a missing child for the
1306 purposes of filing a report with a law enforcement agency under
1307 s. 937.021.
1308 Section 9. Subsection (2) of section 39.303, Florida
1309 Statutes, is amended to read:
1310 39.303 Child protection teams; services; eligible
1311 cases.--The Children's Medical Services Program in the
1312 Department of Health shall develop, maintain, and coordinate the
1313 services of one or more multidisciplinary child protection teams
1314 in each of the service districts of the Department of Children
1315 and Family Services. Such teams may be composed of appropriate
1316 representatives of school districts and appropriate health,

1317 mental health, social service, legal service, and law
1318 enforcement agencies. The Legislature finds that optimal
1319 coordination of child protection teams and sexual abuse
1320 treatment programs requires collaboration between the Department
1321 of Health and the Department of Children and Family Services.
1322 The two departments shall maintain an interagency agreement that
1323 establishes protocols for oversight and operations of child
1324 protection teams and sexual abuse treatment programs. The
1325 Secretary of Health and the Deputy Secretary for Children's
1326 Medical Services, in consultation with the Secretary of Children
1327 and Family Services, shall maintain the responsibility for the
1328 screening, employment, and, if necessary, the termination of
1329 child protection team medical directors, at headquarters and in
1330 the 15 districts. Child protection team medical directors shall
1331 be responsible for oversight of the teams in the districts.
1332 (2) The child abuse, abandonment, and neglect reports that
1333 must be referred by the department ~~of Children and Family~~
1334 ~~Services~~ to child protection teams of the Department of Health
1335 for an assessment and other appropriate available support
1336 services as set forth in subsection (1) must include cases
1337 involving:
1338 (a) Injuries to the head, bruises to the neck or head,
1339 burns, or fractures in a child of any age.
1340 (b) Bruises anywhere on a child 5 years of age or under.
1341 (c) Any report alleging sexual abuse of a child ~~in which~~
1342 ~~vaginal or anal penetration is alleged or in which other~~
1343 ~~unlawful sexual conduct has been determined to have occurred~~.
1344 (d) Any sexually transmitted disease in a prepubescent

1345 child.
1346 (e) Reported malnutrition of a child and failure of a
1347 child to thrive.
1348 (f) Reported medical neglect of a child.
1349 (g) Any family in which one or more children have been
1350 pronounced dead on arrival at a hospital or other health care
1351 facility, or have been injured and later died, as a result of
1352 suspected abuse, abandonment, or neglect, when any sibling or
1353 other child remains in the home.
1354 (h) Symptoms of serious emotional problems in a child when
1355 emotional or other abuse, abandonment, or neglect is suspected.
1356 Section 10. Subsections (10) and (16) of section 39.402,
1357 Florida Statutes, are amended, and subsections (17) and (18) are
1358 added to that section, to read:
1359 39.402 Placement in a shelter.--
1360 (10)(a) The shelter hearing order shall contain a written
1361 determination as to whether the department has made a reasonable
1362 effort to prevent or eliminate the need for removal or continued
1363 removal of the child from the home. This determination must
1364 include a description of which specific services, if available,
1365 could prevent or eliminate the need for removal or continued
1366 removal from the home and the date by which the services are
1367 expected to become available.
1368 (b) If services are not available to prevent or eliminate
1369 the need for removal or continued removal of the child from the
1370 home, the written determination must also contain a explanation
1371 describing why the services are not available for the child.
1372 (c) If the department has not made ~~such~~ an effort to

1373 prevent or eliminate the need for removal, the court shall order
1374 the department to provide appropriate and available services to
1375 ensure the protection of the child in the home when the ~~such~~
1376 services are necessary for the child's health and safety.
1377 (16) At the conclusion of a shelter hearing, the court
1378 shall:
1379 (a) Notify all parties in writing of the next scheduled
1380 hearing to review the shelter placement. The ~~Such~~ hearing shall
1381 be held no later than 30 days after placement of the child in
1382 shelter status, in conjunction with the arraignment hearing, and
1383 at such times as are otherwise provided by law or determined by
1384 the court to be necessary; and~~.~~
1385 (b) Notify all parties in writing of the date, time, and
1386 place of the case plan conference, family team conference, or
1387 mediation that will be used to develop the case plan. The case
1388 plan conference, family team conference, or mediation must take
1389 place no later than 30 days after placing the child in shelter
1390 status.
1391 (17) At the shelter hearing, the court shall inquire of
1392 the parent whether the parent has relatives who might be
1393 considered as a placement for the child. The parent shall
1394 provide to the court and all parties identification and location
1395 information regarding the relatives. The court shall advise the
1396 parent that the parent has a continuing duty to inform the
1397 department of any relative who should be considered as a
1398 placement for the child.
1399 (18) The court shall advise the parents that, if the
1400 parents fail to substantially comply with the case plan, their

1401 parental rights may be terminated and that the child's out-of-
1402 home placement may become permanent.
1403 Section 11. Present subsections (7) and (8) of section
1404 39.507, Florida Statutes, are redesignated as subsections (8)
1405 and (9), respectively, and a new subsection (7) is added to that
1406 section, to read:
1407 39.507 Adjudicatory hearings; orders of adjudication.--
1408 (7) If a court adjudicates a child dependent and the child
1409 is in out-of-home care, the court shall inquire of the parent or
1410 parents whether the parents have relatives who might be
1411 considered as a placement for the child. The court shall advise
1412 the parents that, if the parents fail to substantially comply
1413 with the case plan, their parental rights may be terminated and
1414 that the child's out-of-home placement may become permanent. The
1415 parent or parents shall provide to the court and all parties
1416 identification and location information of the relatives.
1417 Section 12. Paragraph (c) of subsection (1) and paragraph
1418 (a) of subsection (2) of section 39.5085, Florida Statutes, are
1419 amended to read:
1420 39.5085 Relative Caregiver Program.--
1421 (1) It is the intent of the Legislature in enacting this
1422 section to:
1423 (c) Recognize that permanency in the best interests of the
1424 child can be achieved through a variety of permanency options,
1425 including permanent guardianship under s. 39.6221 if the
1426 guardian is a relative, permanent placement with a fit and
1427 willing relative ~~long-term relative custody~~, guardianship under
1428 chapter 744, or adoption, by providing additional placement

1429 options and incentives that will achieve permanency and
1430 stability for many children who are otherwise at risk of foster
1431 care placement because of abuse, abandonment, or neglect, but
1432 who may successfully be able to be placed by the dependency
1433 court in the care of such relatives.
1434 (2)(a) The Department of Children and Family Services
1435 shall establish and operate the Relative Caregiver Program under
1436 ~~pursuant to~~ eligibility guidelines established in this section
1437 as further implemented by rule of the department. The Relative
1438 Caregiver Program shall, within the limits of available funding,
1439 provide financial assistance to:
1440 1. Relatives who are within the fifth degree by blood or
1441 marriage to the parent or stepparent of a child and who are
1442 caring full-time for that dependent child in the role of
1443 substitute parent as a result of a court's determination of
1444 child abuse, neglect, or abandonment and subsequent placement
1445 with the relative under ~~pursuant to~~ this chapter.
1446 2. Relatives who are within the fifth degree by blood or
1447 marriage to the parent or stepparent of a child and who are
1448 caring full-time for that dependent child, and a dependent half-
1449 brother or half-sister of that dependent child, in the role of
1450 substitute parent as a result of a court's determination of
1451 child abuse, neglect, or abandonment and subsequent placement
1452 with the relative under ~~pursuant to~~ this chapter.
1453
1454 The ~~Such~~ placement may be either court-ordered temporary legal
1455 custody to the relative under protective supervision of the
1456 department under ~~pursuant to~~ s. 39.521(1)(b)3., or court-ordered

1457 placement in the home of a relative as a permanency option under
1458 s. 39.6221 or s. 39.6231, or under former ~~pursuant to~~ s. 39.622.
1459 The Relative Caregiver Program shall offer financial assistance
1460 to caregivers who are relatives and who would be unable to serve
1461 in that capacity without the relative caregiver payment because
1462 of financial burden, thus exposing the child to the trauma of
1463 placement in a shelter or in foster care.
1464 Section 13. Paragraph (d) of subsection (1) of section
1465 39.521, Florida Statutes, is amended to read:
1466 39.521 Disposition hearings; powers of disposition.--
1467 (1) A disposition hearing shall be conducted by the court,
1468 if the court finds that the facts alleged in the petition for
1469 dependency were proven in the adjudicatory hearing, or if the
1470 parents or legal custodians have consented to the finding of
1471 dependency or admitted the allegations in the petition, have
1472 failed to appear for the arraignment hearing after proper
1473 notice, or have not been located despite a diligent search
1474 having been conducted.
1475 (d) The court shall, in its written order of disposition,
1476 include all of the following:
1477 1. The placement or custody of the child.
1478 2. Special conditions of placement and visitation.
1479 3. Evaluation, counseling, treatment activities, and other
1480 actions to be taken by the parties, if ordered.
1481 4. The persons or entities responsible for supervising or
1482 monitoring services to the child and parent.
1483 5. Continuation or discharge of the guardian ad litem, as
1484 appropriate.

1485 6. The date, time, and location of the next scheduled
1486 review hearing, which must occur within the earlier of:
1487 a. Ninety days after the disposition hearing;
1488 b. Ninety days after the court accepts the case plan;
1489 c. Six months after the date of the last review hearing;
1490 or
1491 d. Six months after the date of the child's removal from
1492 his or her home, if no review hearing has been held since the
1493 child's removal from the home.
1494 7. If the child is in an out-of-home placement, child
1495 support to be paid by the parents, or the guardian of the
1496 child's estate if possessed of assets which under law may be
1497 disbursed for the care, support, and maintenance of the child.
1498 The court may exercise jurisdiction over all child support
1499 matters, shall adjudicate the financial obligation, including
1500 health insurance, of the child's parents or guardian, and shall
1501 enforce the financial obligation as provided in chapter 61. The
1502 state's child support enforcement agency shall enforce child
1503 support orders under this section in the same manner as child
1504 support orders under chapter 61. Placement of the child shall
1505 not be contingent upon issuance of a support order.
1506 8.a. If the court does not commit the child to the
1507 temporary legal custody of an adult relative, legal custodian,
1508 or other adult approved by the court, the disposition order
1509 shall include the reasons for such a decision and shall include
1510 a determination as to whether diligent efforts were made by the
1511 department to locate an adult relative, legal custodian, or
1512 other adult willing to care for the child in order to present

1513 that placement option to the court instead of placement with the
1514 department.
1515 b. If ~~diligent efforts are made to locate an adult~~
1516 ~~relative willing and able to care for the child but, because~~ no
1517 suitable relative is found and~~,~~ the child is placed with the
1518 department or a legal custodian or other adult approved by the
1519 court, both the department and the court shall consider
1520 transferring temporary legal custody to an adult relative
1521 approved by the court at a later date, but neither the
1522 department nor the court is obligated to so place the child if
1523 it is in the child's best interest to remain in the current
1524 placement.
1525
1526 For the purposes of this subparagraph, "diligent efforts to
1527 locate an adult relative" means a search similar to the diligent
1528 search for a parent, but without the continuing obligation to
1529 search after an initial adequate search is completed.
1530 9. Other requirements necessary to protect the health,
1531 safety, and well-being of the child, to preserve the stability
1532 of the child's educational placement, and to promote family
1533 preservation or reunification whenever possible.
1534 Section 14. Subsection (1) of section 39.522, Florida
1535 Statutes, is amended to read:
1536 39.522 Postdisposition change of custody.--The court may
1537 change the temporary legal custody or the conditions of
1538 protective supervision at a postdisposition hearing, without the
1539 necessity of another adjudicatory hearing.
1540 (1) A child who has been placed in the child's own home

1541 under the protective supervision of an authorized agent of the
1542 department, in the home of a relative, in the home of a legal
1543 custodian, or in some other place may be brought before the
1544 court by the department or by any other interested person, upon
1545 the filing of a petition alleging a need for a change in the
1546 conditions of protective supervision or the placement. If the
1547 parents or other legal custodians deny the need for a change,
1548 the court shall hear all parties in person or by counsel, or
1549 both. Upon the admission of a need for a change or after such
1550 hearing, the court shall enter an order changing the placement,
1551 modifying the conditions of protective supervision, or
1552 continuing the conditions of protective supervision as ordered.
1553 The standard for changing custody of the child shall be the best
1554 interest of the child. When applying this standard, the court
1555 shall consider the continuity of the child's placement in the
1556 same out-of-home residence as a factor when determining the best
1557 interest of the child. If the child is not placed in foster
1558 care, then the new placement for the child must meet the home
1559 study criteria and court approval pursuant to this chapter.
1560 Section 15. Section 39.6011, Florida Statutes, is created
1561 to read:
1562 39.6011 Case plan development.--
1563 (1) The department shall prepare a draft of the case plan
1564 for each child receiving services under this chapter. A parent
1565 of a child may not be threatened or coerced with the loss of
1566 custody or parental rights for failing to admit in the case plan
1567 to abusing, neglecting, or abandoning a child. Participating in
1568 the development of a case plan is not an admission to any

1569 allegation of abuse, abandonment, or neglect, and it is not a
1570 consent to a finding of dependency or termination of parental
1571 rights. The case plan shall be developed subject to the
1572 following requirements:
1573 (a) The case plan must be developed in a face-to-face
1574 conference with the parent of the child, any court-appointed
1575 guardian ad litem, and, if appropriate, the child and the
1576 temporary custodian of the child. The conference to prepare a
1577 case plan must be scheduled under s. 39.402(16)(b) and must be
1578 conducted according to one of the following procedures:
1579 1. A case plan conference that is a meeting among the
1580 parties described in this subsection.
1581 2. A mediation if dependency mediation services are
1582 available and appropriate and in the best interest of the child.
1583 3. A family team conference if a family team conference is
1584 available.
1585 (b) The parent may receive assistance from any person or
1586 social service agency in preparing the case plan. The social
1587 service agency, the department, and the court, when applicable,
1588 shall inform the parent of the right to receive such assistance,
1589 including the right to assistance of counsel.
1590 (c) If a parent is unwilling or unable to participate in
1591 developing a case plan, the department shall document that
1592 unwillingness or inability to participate. The documentation
1593 must be provided in writing to the parent when available for the
1594 court record, and the department shall prepare a case plan
1595 conforming as nearly as possible with the requirements set forth
1596 in this section. The unwillingness or inability of the parent to

1597 participate in developing a case plan does not preclude the
1598 filing of a petition for dependency or for termination of
1599 parental rights. The parent, if available, must be provided a
1600 copy of the case plan and be advised that he or she may, at any
1601 time before the filing of a petition for termination of parental
1602 rights, enter into a case plan and that he or she may request
1603 judicial review of any provision of the case plan with which he
1604 or she disagrees at any court hearing set for the child.
1605 (2) The case plan must be written simply and clearly in
1606 English and, if English is not the principal language of the
1607 child's parent, to the extent possible in the parent's principal
1608 language. Each case plan must contain:
1609 (a) A description of the identified problem being
1610 addressed, including the parent's behavior or acts resulting in
1611 risk to the child and the reason for the intervention by the
1612 department.
1613 (b) The permanency goal as defined in s. 39.01(51).
1614 (c) If concurrent planning is being used, a description of
1615 the permanency goal of reunification with the parent or legal
1616 custodian in addition to a description of one of the remaining
1617 permanency goals described in s. 39.01(51).
1618 (d) The date the compliance period expires. The case plan
1619 must be limited to as short a period as possible for
1620 accomplishing its provisions. The plan's compliance period
1621 expires no later than 12 months after the date the child was
1622 initially removed from the home or the date the case plan was
1623 accepted by the court, whichever occurs sooner.
1624 (e) A written notice to the parent that failure of the

1625 parent to substantially comply with the case plan may result in
1626 the termination of parental rights and that a material breach of
1627 the case plan may result in the filing of a petition for
1628 termination of parental rights sooner than the compliance period
1629 set forth in the case plan.
1630 (3) The case plan must be signed by all parties, except
1631 that the signature of a child may be waived if the child is not
1632 of an age or capacity to participate in the case planning
1633 process. Signing the case plan constitutes an acknowledgement
1634 that the case plan has been developed by the parties and that
1635 they are in agreement as to the terms and conditions contained
1636 in the case plan. The refusal of a parent to sign the case plan
1637 does not prevent the court from accepting the case plan if the
1638 case plan is otherwise acceptable to the court. Signing the case
1639 plan does not constitute an admission to any allegation of
1640 abuse, abandonment, or neglect and does not constitute consent
1641 to a finding of dependency or termination of parental rights.
1642 Before signing the case plan, the department shall explain the
1643 provisions of the plan to all persons involved in its
1644 implementation, including, when appropriate, the child.
1645 (4) The case plan must describe:
1646 (a) The role of the foster parents or legal custodians
1647 when developing the services that are to be provided to the
1648 child, foster parents, or legal custodians.
1649 (b) The minimum number of face-to-face meetings to be held
1650 each month between the parents and the department's family
1651 services counselors to review the progress of the plan, to
1652 eliminate barriers to progress, and to resolve conflicts or

1653 disagreements.
1654 (c) The parent's responsibility for financial support of
1655 the child, including, but not limited to, health insurance and
1656 child support. The case plan must list the costs associated with
1657 any services or treatment that the parent and child are expected
1658 to receive which are the financial responsibility of the parent.
1659 The determination of child support and other financial support
1660 shall be made independently of any determination of indigency
1661 under s. 39.013.
1662 (5) When the permanency goal for a child is adoption, the
1663 case plan must include documentation of the steps the agency is
1664 taking to find an adoptive family or other permanent living
1665 arrangement for the child. At a minimum, the documentation shall
1666 include recruitment efforts that are specific to the child, such
1667 as the use of state, regional, and national adoption exchanges,
1668 including electronic exchange systems.
1669 (6) After the case plan has been developed, the department
1670 shall adhere to the following procedural requirements:
1671 (a) If the parent's substantial compliance with the case
1672 plan requires the department to provide services to the parents
1673 or the child and the parents agree to begin compliance with the
1674 case plan before the case plan's acceptance by the court, the
1675 department shall make the appropriate referrals for services
1676 that will allow the parents to immediately begin the agreed upon
1677 tasks and services.
1678 (b) After the case plan has been agreed upon and signed by
1679 the parties, a copy of the plan must immediately be given to the
1680 parties, including the child, if appropriate, and to other

1681 persons as directed by the court.
1682 1. A case plan must be prepared, but need not be submitted
1683 to the court, for a child who will be in care no longer than 30
1684 days unless that child is placed in out-of-home care a second
1685 time within a 12-month period.
1686 2. In each case in which a child has been placed in out-
1687 of-home care, a case plan must be prepared within 60 days after
1688 the department removes the child from the home and shall be
1689 submitted to the court before the disposition hearing for the
1690 court to review and approve.
1691 3. After jurisdiction attaches, all case plans must be
1692 filed with the court and a copy provided to all the parties
1693 whose whereabouts are known not less than 3 business days before
1694 the disposition hearing. The department shall file with the
1695 court, and provide copies to the parties, all case plans
1696 prepared before jurisdiction of the court attached.
1697 (7) The case plan must be filed with the court and copies
1698 provided to all parties, including the child, if appropriate,
1699 not less than 3 business days before the disposition hearing.
1700 (8) The case plan must describe a process for making
1701 available to all physical custodians and family services
1702 counselors the information required by s. 39.6012(2) and for
1703 ensuring that this information follows the child until
1704 permanency has been achieved.
1705 Section 16. Section 39.6012, Florida Statutes, is created
1706 to read:
1707 39.6012 Case plan tasks; services.--
1708 (1) The services to be provided to the parent and the

1709 tasks that must be completed are subject to the following:
1710 (a) The services described in the case plan must be
1711 designed to improve the conditions in the home and aid in
1712 maintaining the child in the home, facilitate the child's safe
1713 return to the home, ensure proper care of the child, or
1714 facilitate the child's permanent placement. The services offered
1715 must be the least intrusive possible into the life of the parent
1716 and child, must focus on clearly defined objectives, and must
1717 provide the most efficient path to quick reunification or
1718 permanent placement given the circumstances of the case and the
1719 child's need for safe and proper care.
1720 (b) The case plan must describe each of the tasks with
1721 which the parent must comply and the services to be provided to
1722 the parent, specifically addressing the identified problem,
1723 including:
1724 1. The type of services or treatment.
1725 2. The date the department will provide each service or
1726 referral for the service if the service is being provided by the
1727 department or its agent.
1728 3. The date by which the parent must complete each task.
1729 4. The frequency of services or treatment provided. The
1730 frequency of the delivery of services or treatment provided
1731 shall be determined by the professionals providing the services
1732 or treatment on a case-by-case basis and adjusted according to
1733 their best professional judgment.
1734 5. The location of the delivery of the services.
1735 6. The staff of the department or service provider
1736 accountable for the services or treatment.

1737 7. A description of the measurable objectives, including
1738 the timeframes specified for achieving the objectives of the
1739 case plan and addressing the identified problem.
1740 (2) The case plan must include all available information
1741 relevant to the child's care, including, at a minimum:
1742 (a) A description of the identified needs of the child
1743 while in care.
1744 (b) A description of the plan for ensuring that the child
1745 receives safe and proper care and that services are provided to
1746 the child in order to address the child's needs. To the extent
1747 available and accessible, the following health, mental health,
1748 and education information and records of the child must be
1749 attached to the case plan and updated throughout the judicial
1750 review process:
1751 1. The names and addresses of the child's health, mental
1752 health, and education providers.
1753 2. The child's grade-level performance.
1754 3. The child's school record.
1755 4. Assurances that the child's placement takes into
1756 account proximity to the school in which the child is enrolled
1757 at the time of placement.
1758 5. A record of the child's immunizations.
1759 6. The child's known medical history, including any known
1760 problems.
1761 7. The child's medications, if any.
1762 8. Any other relevant health, mental health, and education
1763 information concerning the child.
1764 (3) In addition to any other requirement, if the child is

1765 in an out-of-home placement, the case plan must include:
1766 (a) A description of the type of placement in which the
1767 child is to be living.
1768 (b) A description of the parent's visitation rights and
1769 obligations and the plan for sibling visitation if the child has
1770 siblings and is separated from them.
1771 (c) When appropriate, for a child who is 13 years of age
1772 or older, a written description of the programs and services
1773 that will help the child prepare for the transition from foster
1774 care to independent living.
1775 (d) A discussion of the safety and the appropriateness of
1776 the child's placement, which placement is intended to be safe,
1777 the least restrictive and the most family-like setting available
1778 consistent with the best interest and special needs of the
1779 child, and in as close proximity as possible to the child's
1780 home.
1781 Section 17. Section 39.6013, Florida Statutes, is created
1782 to read:
1783 39.6013 Case plan amendments.--
1784 (1) After the case plan has been developed under s.
1785 39.6011, the tasks and services agreed upon in the plan may not
1786 be changed or altered in any way except as provided in this
1787 section.
1788 (2) The case plan may be amended at any time in order to
1789 change the goal of the plan, employ the use of concurrent
1790 planning, add or remove tasks the parent must complete to
1791 substantially comply with the plan, provide appropriate services
1792 for the child, and update the child's health, mental health, and

1793 education records required by s. 39.6012.
1794 (3) The case plan may be amended upon approval of the
1795 court if all parties are in agreement regarding the amendments
1796 to the plan and the amended plan is signed by all parties and
1797 submitted to the court with a memorandum of explanation.
1798 (4) The case plan may be amended by the court or upon
1799 motion of any party at any hearing to change the goal of the
1800 plan, employ the use of concurrent planning, or add or remove
1801 tasks the parent must complete in order to substantially comply
1802 with the plan if there is a preponderance of evidence
1803 demonstrating the need for the amendment. The need to amend the
1804 case plan may be based on information discovered or
1805 circumstances arising after the approval of the case plan for:
1806 (a) A previously unaddressed condition that, without
1807 services, may prevent the child from safely returning to the
1808 home or may prevent the child from safely remaining in the home;
1809 (b) The child's need for permanency, taking into
1810 consideration the child's age and developmental needs;
1811 (c) The failure of a party to substantially comply with a
1812 task in the original case plan, including the ineffectiveness of
1813 a previously offered service; or
1814 (d) An error or oversight in the case plan.
1815 (5) The case plan may be amended by the court or upon the
1816 motion of any party at any hearing to provide appropriate
1817 services to the child if there is competent evidence
1818 demonstrating the need for the amendment. The reason for
1819 amending the case plan may be based on information discovered or
1820 circumstances arising after the approval of the case plan

1821 regarding the provision of safe and proper care to the child.
1822 (6) The case plan is deemed amended as to the child's
1823 health, mental health, and education records required by s.
1824 39.6012 when the child's updated health, mental health, and
1825 education records are filed by the department under s.
1826 39.701(7)(a).
1827 (7) Amendments must include service interventions that are
1828 the least intrusive into the life of the parent and child, must
1829 focus on clearly defined objectives, and must provide the most
1830 efficient path to quick reunification or permanent placement
1831 given the circumstances of the case and the child's need for
1832 safe and proper care. A copy of the amended plan must
1833 immediately be given to the persons identified in s. 39.6011.
1834 Section 18. Subsections (1) and (2) of section 39.603,
1835 Florida Statutes, are amended to read:
1836 39.603 Court approvals of case planning.--
1837 (1) All case plans and amendments to case plans must be
1838 approved by the court. At the hearing on the case plan, which
1839 shall occur in conjunction with the disposition hearing unless
1840 otherwise directed by the court, the court shall determine:
1841 (a) All parties who were notified and are in attendance at
1842 the hearing, either in person or through a legal representative.
1843 The court may appoint a guardian ad litem under Rule 1.210,
1844 Florida Rules of Civil Procedure, to represent the interests of
1845 any parent, if the location of the parent is known but the
1846 parent is not present at the hearing and the development of the
1847 plan is based upon the physical, emotional, or mental condition
1848 or physical location of the parent.

1849 (b) If the plan is consistent with previous orders of the
1850 court placing the child in care.
1851 (c) If the plan is consistent with the requirements for
1852 the content of a plan as specified in this chapter.
1853 (d) In involuntary placements, whether each parent was
1854 notified of the right to counsel at each stage of the dependency
1855 proceedings, in accordance with the Florida Rules of Juvenile
1856 Procedure.
1857 (e) Whether each parent whose location was known was
1858 notified of the right to participate in the preparation of a
1859 case plan and of the right to receive assistance from any other
1860 person in the preparation of the case plan.
1861 (f) Whether the plan is meaningful and designed to address
1862 facts and circumstances upon which the court based the finding
1863 of dependency in involuntary placements or the plan is
1864 meaningful and designed to address facts and circumstances upon
1865 which the child was placed in out-of-home care voluntarily.
1866 (2) When the court determines that any of the elements
1867 considered at the hearing related to the plan have not been met,
1868 the court shall require the parties to make necessary amendments
1869 to the plan under s. 39.6013. The amended plan must be submitted
1870 to the court for review and approval within 30 days after the
1871 hearing. A copy of the amended plan must also be provided to
1872 each party, if the location of the party is known, at least 3
1873 business days before ~~72 hours prior to~~ filing with the court.
1874 Section 19. Section 39.621, Florida Statutes, is amended
1875 to read:
1876 39.621 Permanency determination by the court.--

1877 (1) The Legislature finds that time is of the essence for
1878 permanency of children in the dependency system. A permanency
1879 hearing must be held no later than 12 months after the date the
1880 child was removed from the home or no later than 30 days after a
1881 court determines that reasonable efforts to return a child to
1882 either parent are not required, whichever occurs first. The
1883 purpose of the permanency hearing is to determine when the child
1884 will achieve the permanency goal or whether modifying the
1885 current goal is in the best interest of the child. A permanency
1886 hearing must be held at least every 12 months for any child who
1887 continues to receive supervision from the department or awaits
1888 adoption. ~~When the court has determined that reunification with~~
1889 ~~either parent is not appropriate, then the court must make a~~
1890 ~~permanency determination for the child.~~
1891 (2) The permanency goals available under this chapter are:
1892 (a) Reunification;
1893 (b) Adoption, if a petition for termination of parental
1894 rights has been or will be filed;
1895 (c) Permanent guardianship of a dependent child under s.
1896 39.6221;
1897 (d) Permanent placement with a fit and willing relative
1898 under s. 39.6231; or
1899 (e) Placement in another planned permanent living
1900 arrangement under s. 39.6241.
1901 (3)(a) At least 3 business days before the permanency
1902 hearing, the department shall file its judicial review social
1903 services report with the court and provide copies of the report
1904 to all parties. The report must include a recommended permanency

1905 goal for the child, suggest changes to the case plan, if needed,
1906 and describe why the recommended goal is in the best interest of
1907 the child.
1908 (b) Before the permanency hearing, the department shall
1909 advise the child and the individuals with whom the child will be
1910 placed about the availability of more permanent and legally
1911 secure placements and what type of financial assistance is
1912 associated with each placement.
1913 (4) At the permanency hearing, the court shall determine:
1914 (a) Whether the current permanency goal for the child is
1915 appropriate or should be changed.
1916 (b) When the child will achieve one of the permanency
1917 goals.
1918 (c) Whether the department has made reasonable efforts to
1919 finalize the permanency plan currently in effect.
1920 (5) The best interest of the child is the primary
1921 consideration in determining the permanency goal for the child.
1922 The court must also consider:
1923 (a) The reasonable preference of the child if the court
1924 has found the child to be of sufficient intelligence,
1925 understanding, and experience to express a preference.
1926 (b) Any recommendation of the guardian ad litem.
1927 (6)(a) ~~(2)~~ If a child will not be reunited with a parent,
1928 adoption, under ~~pursuant to~~ chapter 63, is the primary
1929 permanency option ~~available to the court~~. If the child is placed
1930 with a relative or with a relative of the child's half-brother
1931 or half-sister as a permanency option, the court may ~~shall~~
1932 recognize the permanency of this placement without requiring the

1933 relative to adopt the child.
1934 (b) If the court approves a permanency goal of permanent
1935 guardianship of a dependent child, placement with a fit and
1936 willing relative, or another planned permanent living
1937 arrangement, the court shall make findings as to why this
1938 permanent placement is established without adoption of the child
1939 to follow. If the court approves a permanency goal of another
1940 planned permanent living arrangement, the court shall document
1941 the compelling reasons for choosing this goal.
1942 (7) The findings of the court regarding reasonable efforts
1943 to finalize the permanency plan must be explicitly documented,
1944 made on a case-by-case basis, and stated in the court order.
1945 (8) The case plan must list the tasks necessary to
1946 finalize the permanency placement and shall be updated at the
1947 permanency hearing if necessary. If a concurrent case plan is in
1948 place, the court may choose between the permanency goal options
1949 presented and shall approve the goal that is in the child's best
1950 interest.
1951 (9) The permanency placement is intended to continue until
1952 the child reaches the age of majority and may not be disturbed
1953 absent a finding by the court that the circumstances of the
1954 permanency placement are no longer in the best interest of the
1955 child. If a parent who has not had his or her parental rights
1956 terminated makes a motion for reunification or increased contact
1957 with the child, the court shall hold a hearing to determine
1958 whether the dependency case should be reopened and whether there
1959 should be a modification of the order. At the hearing, the
1960 parent must demonstrate that the safety, well-being, and

1961 physical, mental, and emotional health of the child is not
1962 endangered by the modification.
1963 (10) The court shall base its decision concerning any
1964 motion by a parent for reunification or increased contact with a
1965 child on the effect of the decision on the safety, well-being,
1966 and physical and emotional health of the child. Factors that
1967 must be considered and addressed in the findings of fact of the
1968 order on the motion must include:
1969 (a) The compliance or noncompliance of the parent with the
1970 case plan.
1971 (b) The circumstances which caused the child's dependency
1972 and whether those circumstances have been resolved.
1973 (c) The stability and longevity of the child's placement;
1974 (d) The preferences of the child, if the child is of
1975 sufficient age and understanding to express a preference;
1976 (e) The recommendation of the current custodian.
1977 (f) The recommendation of the guardian ad litem, if one
1978 has been appointed.
1979 ~~(3) The permanency options listed in the following~~
1980 ~~paragraphs shall only be considered by the court if adoption is~~
1981 ~~determined by the court to not be in the child's best interest,~~
1982 ~~except as otherwise provided in subsection (2):~~
1983 ~~(a) Guardianship pursuant to chapter 744.~~
1984 ~~(b) Long-term custody.~~
1985 ~~(c) Long-term licensed custody.~~
1986 ~~(d) Independent living.~~
1987
1988 ~~The permanency placement is intended to continue until the child~~

1989 ~~reaches the age of majority and shall not be disturbed absent a~~
1990 ~~finding by the court that the circumstances of the permanency~~
1991 ~~placement are no longer in the best interest of the child.~~
1992 Section 20. Section 39.6221, Florida Statutes, is created
1993 to read:
1994 39.6221 Permanent guardianship of a dependent child.--
1995 (1) If a court determines that reunification or adoption
1996 is not in the best interest of the child, the court may place
1997 the child in a permanent guardianship with a relative or other
1998 adult approved by the court if all of the following conditions
1999 are met:
2000 (a) The child has been in the placement for not less than
2001 the preceding 6 months.
2002 (b) The permanent guardian is suitable and able to provide
2003 a safe and permanent home for the child.
2004 (c) The court determines that the child and the relative
2005 or other adult are not likely to need supervision or services of
2006 the department to ensure the stability of the permanent
2007 guardianship.
2008 (d) The permanent guardian has made a commitment to
2009 provide for the child until the child reaches the age of
2010 majority and to prepare the child for adulthood and
2011 independence.
2012 (e) The permanent guardian agrees to give notice of any
2013 change in his or her residential address or the residence of the
2014 child by filing a written document in the dependency file of the
2015 child with the clerk of the court.
2016 (2) In its written order establishing a permanent

2017 guardianship, the court shall:
2018 (a) List the circumstances or reasons the child's parents
2019 are not fit to care for the child and why reunification is not
2020 possible by referring to specific findings of fact made in its
2021 order adjudicating the child dependent or by making separate
2022 findings of fact.
2023 (b) State the reasons a permanent guardianship is being
2024 established instead of adoption.
2025 (c) Specify the frequency and nature of visitation or
2026 contact between the child and his or her parents.
2027 (d) Specify the frequency and nature of visitation or
2028 contact between the child and his or her grandparents, under s.
2029 39.509.
2030 (e) Specify the frequency and nature of visitation or
2031 contact between the child and his or her siblings.
2032 (f) Require that the permanent guardian not return the
2033 child to the physical care and custody of the person from whom
2034 the child was removed without the approval of the court.
2035 (g) List the powers and duties of the permanent guardian
2036 which shall include the rights and duties of a parent,
2037 including, but not limited to:
2038 1. The right to physical and legal custody of the child.
2039 2. The right and duty to protect, nurture, guide, and
2040 discipline the child.
2041 3. The right and duty to provide the child with food,
2042 shelter, and education.
2043 4. The right and duty to provide the child with ordinary
2044 medical, dental, psychiatric, and psychological care, unless

2045 these rights and duties are otherwise enlarged or limited by
2046 court order.
2047 (3) The court shall give the permanent guardian a separate
2048 order establishing the authority of the permanent guardian to
2049 care for the child, specifying what powers and duties listed in
2050 paragraph (2)(g) belong to the permanent guardian, and providing
2051 any other information the court deems proper which can be
2052 provided to persons who are not parties to the proceeding as
2053 necessary, notwithstanding the confidentiality provisions of s.
2054 39.202.
2055 (4) A permanent guardianship of a dependent child
2056 established under this chapter is not a plenary guardianship and
2057 is not subject to the requirements of chapter 744.
2058 (5) The court shall retain jurisdiction over the case and
2059 the child shall remain in the custody of the permanent guardian
2060 unless the order creating the permanent guardianship is modified
2061 by the court. The court shall discontinue regular review
2062 hearings and relieve the department of the responsibility for
2063 supervising the placement of the child. Notwithstanding the
2064 retention of jurisdiction, the placement shall be considered
2065 permanency for the child.
2066 (6) Placement of a child in a permanent guardianship does
2067 not terminate the parent-child relationship, including:
2068 (a) The right of the child to inherit from his or her
2069 parents.
2070 (b) The parents' right to consent to the child's adoption.
2071 (c) The parents' responsibility to provide financial,
2072 medical, and other support for the child as ordered by the

2073 court.
2074 Section 21. Section 39.6231, Florida Statutes, is created
2075 to read:
2076 39.6231 Permanent placement with a fit and willing
2077 relative.--
2078 (1) If a court finds that reunification or adoption are
2079 not in the best interest of a child, the court may place the
2080 child with a fit and willing relative as a permanency option if:
2081 (a) The child has been in the placement for at least the
2082 preceding 6 months.
2083 (b) The relative has made a commitment to provide for the
2084 child until the child reaches the age of majority and to prepare
2085 the child for adulthood and independence.
2086 (c) The relative is suitable and able to provide a safe
2087 and permanent home for the child.
2088 (d) The relative agrees to give notice of any change in
2089 his or her residence or the residence of the child by filing a
2090 written document with the clerk of court.
2091 (2) The department and the guardian ad litem shall provide
2092 the court with a recommended list and description of services
2093 needed by the child and the family in order to ensure the
2094 permanency of the placement.
2095 (3) In its written order placing the child with a fit and
2096 willing relative, the court shall:
2097 (a) List the circumstances or reasons reunification is not
2098 possible by referring to specific findings of fact made in its
2099 order adjudicating the child dependent or by making separate
2100 findings of fact.

2101 (b) State the reasons permanent placement with a fit and
2102 willing relative is being established instead of adoption;
2103 (c) Specify the frequency and nature of visitation or
2104 contact between the child and his or her parents.
2105 (d) Specify the frequency and nature of visitation or
2106 contact between the child and his or her grandparents, under s.
2107 39.509.
2108 (e) Specify the frequency and nature of visitation or
2109 contact between the child and his or her siblings.
2110 (f) Require that the relative not return the child to the
2111 physical care and custody of the person from whom the child was
2112 removed without the approval of the court.
2113 (4) The court shall give the relative a separate order
2114 establishing his or her authority to care for the child and
2115 providing other information the court deems proper which can be
2116 provided to entities and individuals who are not parties to the
2117 proceeding as necessary, notwithstanding the confidentiality of
2118 s. 39.202.
2119 (5) The department shall continue to supervise the
2120 placement with the relative until further court order. The court
2121 shall continue to review the placement at least once every 6
2122 months.
2123 (6) Each party to the proceeding must be advised by the
2124 department and the court that placement with a fit and willing
2125 relative does not preclude the possibility of the child
2126 returning to the custody of the parent.
2127 (7) The court shall continue to conduct permanency
2128 hearings in order to reevaluate the possibility of adoption or

2129 permanent guardianship of the child.
2130 Section 22. Section 39.6241, Florida Statutes, is created
2131 to read:
2132 39.6241 Another planned permanent living arrangement.--
2133 (1) If a court finds that reunification is not in the best
2134 interest of a child, the court may approve placement of the
2135 child in another planned permanent living arrangement if:
2136 (a) The court finds a more permanent placement, such as
2137 adoption, permanent guardianship, or placement with a fit and
2138 willing relative, is not in the best interest of the child.
2139 (b) The department documents reasons the placement will
2140 endure and how the proposed arrangement will be more stable and
2141 secure than ordinary foster care.
2142 (c) The court finds that the health, safety, and well-
2143 being of the child will not be jeopardized by such an
2144 arrangement.
2145 (d) There are compelling reasons to show that another
2146 placement is the most appropriate permanency goal. Compelling
2147 reasons for another placement may include, but are not limited
2148 to:
2149 1. The case of a parent and child who have a significant
2150 bond but the parent is unable to care for the child because of
2151 an emotional or physical disability and the child's foster
2152 parents have committed to raising him or her to the age of
2153 majority and to facilitate visitation with the disabled parent;
2154 2. The case of a child for whom an Indian tribe has
2155 identified another planned permanent living arrangement for the
2156 child; or

2157 3. The case of a foster child who is 16 years of age or
2158 older who chooses to remain in foster care and the child's
2159 foster parents are willing to care for the child until the child
2160 reaches 18 years of age.
2161 (2) The department and the guardian ad litem must provide
2162 the court with a recommended list and description of services
2163 needed by the child, such as independent living services and
2164 medical, dental, educational, or psychological referrals, and a
2165 recommended list and description of services needed by his or
2166 her caregiver.
2167 Section 23. Paragraphs (a) and (c) of subsection (7),
2168 paragraph (g) of subsection (8), and subsection (9) of section
2169 39.701, Florida Statutes, are amended, and paragraph (k) is
2170 added to subsection (8) of that section, to read:
2171 39.701 Judicial review.--
2172 (7)(a) Before ~~Prior to~~ every judicial review hearing or
2173 citizen review panel hearing, the social service agency shall
2174 make an investigation and social study concerning all pertinent
2175 details relating to the child and shall furnish to the court or
2176 citizen review panel a written report that includes, but is not
2177 limited to:
2178 1. A description of the type of placement the child is in
2179 at the time of the hearing, including the safety of the child
2180 and the continuing necessity for and appropriateness of the
2181 placement.
2182 2. Documentation of the diligent efforts made by all
2183 parties to the case plan to comply with each applicable
2184 provision of the plan.

2185 3. The amount of fees assessed and collected during the
2186 period of time being reported.
2187 4. The services provided to the foster family or legal
2188 custodian in an effort to address the needs of the child as
2189 indicated in the case plan.
2190 5. A statement that either:
2191 a. The parent, though able to do so, did not comply
2192 substantially with the ~~provisions of the~~ case plan, and the
2193 agency recommendations;
2194 b. The parent did substantially comply with the ~~provisions~~
2195 ~~of the~~ case plan; or
2196 c. The parent has partially complied with the ~~provisions~~
2197 ~~of the~~ case plan, with a summary of additional progress needed
2198 and the agency recommendations.
2199 6. A statement from the foster parent or legal custodian
2200 providing any material evidence concerning the return of the
2201 child to the parent or parents.
2202 7. A statement concerning the frequency, duration, and
2203 results of the parent-child visitation, if any, and the agency
2204 recommendations for an expansion or restriction of future
2205 visitation.
2206 8. The number of times a child has been removed from his
2207 or her home and placed elsewhere, the number and types of
2208 placements that have occurred, and the reason for the changes in
2209 placement.
2210 9. The number of times a child's educational placement has
2211 been changed, the number and types of educational placements
2212 which have occurred, and the reason for any change in placement.

2213 10. If the child has reached 13 years of age but is not
2214 yet 18 years of age, the results of the preindependent living,
2215 life skills, or independent living assessment; the specific
2216 services needed; and the status of the delivery of the
2217 identified services.
2218 11. Copies of all medical, psychological, and educational
2219 records that support the terms of the case plan and that have
2220 been produced concerning the ~~child,~~ parents~~,~~ or any caregiver
2221 since the last judicial review hearing.
2222 12. Copies of the child's current health, mental health,
2223 and education records as identified in s. 39.6012.
2224 (c) In a case in which the child has been permanently
2225 placed with the social service agency, the agency shall furnish
2226 to the court a written report concerning the progress being made
2227 to place the child for adoption. If the child cannot be placed
2228 for adoption, a report on the progress made by the child towards
2229 alternative permanency goals or placements, including, but not
2230 limited to, guardianship, permanent guardianship under s.
2231 39.6221, permanent placement under s. 39.6231 ~~long-term custody,~~
2232 ~~long-term licensed custody~~, or independent living, must be
2233 submitted to the court. The report must be submitted to the
2234 court at least 72 hours before each scheduled judicial review.
2235 (8) The court and any citizen review panel shall take into
2236 consideration the information contained in the social services
2237 study and investigation and all medical, psychological, and
2238 educational records that support the terms of the case plan;
2239 testimony by the social services agency, the parent, the foster
2240 parent or legal custodian, the guardian ad litem if one has been

2241 appointed for the child, and any other person deemed
2242 appropriate; and any relevant and material evidence submitted to
2243 the court, including written and oral reports to the extent of
2244 their probative value. These reports and evidence may be
2245 received by the court in its effort to determine the action to
2246 be taken with regard to the child and may be relied upon to the
2247 extent of their probative value, even though not competent in an
2248 adjudicatory hearing. In its deliberations, the court and any
2249 citizen review panel shall seek to determine:
2250 (g) Whether the child is receiving safe and proper care
2251 according to s. 39.6012, including, but not limited to, the
2252 appropriateness of the child's current placement, including
2253 whether the child is in a setting that ~~which~~ is as family-like
2254 and as close to the parent's home as possible, consistent with
2255 the child's best interests and special needs, and including
2256 maintaining stability in the child's educational placement.
2257 (k) If amendments to the case plan are required.
2258 Amendments to the case plan must be made under s. 39.6013.
2259 (9)(a) Based upon the criteria set forth in subsection (8)
2260 and the recommended order of the citizen review panel, if any,
2261 the court shall determine whether or not the social service
2262 agency shall initiate proceedings to have a child declared a
2263 dependent child, return the child to the parent, continue the
2264 child in out-of-home care for a specified period of time, or
2265 initiate termination of parental rights proceedings for
2266 subsequent placement in an adoptive home. Amendments
2267 ~~Modifications~~ to the case plan must be prepared ~~handled~~ as
2268 prescribed in s. 39.6013 ~~s. 39.601~~. If the court finds that the

2269 prevention or reunification efforts of the department will allow
2270 the child to remain safely at home or be safely returned to the
2271 home, the court shall allow the child to remain in or return to
2272 the home after making a specific finding of fact that the
2273 reasons for the creation of the case plan have been remedied to
2274 the extent that the child's safety, well-being, and physical,
2275 mental, and emotional health will not be endangered.
2276 (b) The court shall return the child to the custody of the
2277 parents at any time it determines that they have substantially
2278 complied with the case plan, if the court is satisfied that
2279 reunification will not be detrimental to the child's safety,
2280 well-being, and physical, mental, and emotional health.
2281 (c) If, in the opinion of the court, the social service
2282 agency has not complied with its obligations as specified in the
2283 written case plan, the court may find the social service agency
2284 in contempt, shall order the social service agency to submit its
2285 plans for compliance with the agreement, and shall require the
2286 social service agency to show why the child could not safely be
2287 returned to the home of the parents.
2288 ~~(d) The court may extend the time limitation of the case~~
2289 ~~plan, or may modify the terms of the plan, based upon~~
2290 ~~information provided by the social service agency, and the~~
2291 ~~guardian ad litem, if one has been appointed, the parent or~~
2292 ~~parents, and the foster parents or legal custodian, and any~~
2293 ~~other competent information on record demonstrating the need for~~
2294 ~~the amendment. If the court extends the time limitation of the~~
2295 ~~case plan, the court must make specific findings concerning the~~
2296 ~~frequency of past parent-child visitation, if any, and the court~~

2297 ~~may authorize the expansion or restriction of future visitation.~~
2298 ~~Modifications to the plan must be handled as prescribed in s.~~
2299 ~~39.601. Any extension of a case plan must comply with the time~~
2300 ~~requirements and other requirements specified by this chapter.~~
2301 (d) ~~(e)~~ If, at any judicial review, the court finds that
2302 the parents have failed to substantially comply with the case
2303 plan to the degree that further reunification efforts are
2304 without merit and not in the best interest of the child, on its
2305 own motion, the court ~~it~~ may order ~~authorize~~ the filing of a
2306 petition for termination of parental rights, whether or not the
2307 time period as contained in the case plan for substantial
2308 compliance has expired ~~elapsed~~.
2309 (e) ~~(f)~~ No later than 6 ~~12~~ months after the date that the
2310 child was placed in shelter care, the court shall conduct a
2311 judicial review hearing to review ~~plan for~~ the child's
2312 permanency goal as identified in the case plan. At the hearing,
2313 the court shall make findings regarding the likelihood of the
2314 child's reunification with the parent or legal custodian within
2315 12 months after the removal of the child from the home. If, at
2316 this hearing, the court makes a written finding that it is not
2317 likely that the child will be reunified with the parent or legal
2318 custodian within 12 months after the child was removed from the
2319 home, the department must file with the court and serve on all
2320 parties a motion to amend the case plan under s. 39.6013 and
2321 declare that it will use concurrent planning for the case plan.
2322 The department must file the motion no later than 10 business
2323 days after receiving the written finding of the court. The
2324 department must attach the proposed amended case plan to the

2325 motion. If concurrent planning is already being used, the case
2326 plan must document the efforts the department is taking to
2327 complete the concurrent goal. ~~At this hearing, if the child is~~
2328 ~~not returned to the physical custody of the parents, the case~~
2329 ~~plan may be extended with the same goals only if the court finds~~
2330 ~~that the situation of the child is so extraordinary that the~~
2331 ~~plan should be extended. The case plan must document steps the~~
2332 ~~department is taking to find an adoptive parent or other~~
2333 ~~permanent living arrangement for the child.~~
2334 (f) ~~(g)~~ The court may issue a protective order in
2335 assistance, or as a condition, of any other order made under
2336 this part. In addition to the requirements included in the case
2337 plan, the protective order may set forth requirements relating
2338 to reasonable conditions of behavior to be observed for a
2339 specified period of time by a person or agency who is before the
2340 court; and the ~~such~~ order may require any ~~such~~ person or agency
2341 to make periodic reports to the court containing such
2342 information as the court in its discretion may prescribe.
2343 Section 24. Section 39.703, Florida Statutes, is amended
2344 to read:
2345 39.703 Initiation of termination of parental rights
2346 proceedings; judicial review.--
2347 (1) If, in preparation for a ~~any~~ judicial review hearing
2348 under this chapter, it is the opinion of the social service
2349 agency that the parents of the child have not complied with
2350 their responsibilities as specified in the written case plan
2351 although able to do so, the department shall state its intent to
2352 initiate proceedings to terminate parental rights, unless the

2353 social service agency can demonstrate to the court that such a
2354 recommendation would not be in the child's best interests. If it
2355 is the intent of the department to initiate proceedings to
2356 terminate parental rights, the department shall file a petition
2357 for termination of parental rights no later than 3 months after
2358 the date of the previous judicial review hearing. If the
2359 petition cannot be filed within 3 months, the department shall
2360 provide a written report to the court outlining the reasons for
2361 delay, the progress made in the termination of parental rights
2362 process, and the anticipated date of completion of the process.
2363 (2) If, at the time of the 12-month judicial review
2364 hearing, a child is not returned to the physical custody of the
2365 parents, the department shall file a petition to terminate
2366 parental rights. The court shall set an advisory hearing at the
2367 judicial review hearing if an advisory hearing has not
2368 previously been set. ~~initiate termination of parental rights~~
2369 ~~proceedings under this chapter within 30 days. Only if the court~~
2370 ~~finds that the situation of the child is so extraordinary and~~
2371 ~~that the best interests of the child will be met by such action~~
2372 ~~at the time of the judicial review may the case plan be~~
2373 ~~extended. If the court decides to extend the plan, the court~~
2374 ~~shall enter detailed findings justifying the decision to extend,~~
2375 ~~as well as the length of the extension. A termination of~~
2376 ~~parental rights petition need not be filed if: the child is~~
2377 ~~being cared for by a relative who chooses not to adopt the child~~
2378 ~~but who is willing, able, and suitable to serve as the legal~~
2379 ~~custodian for the child until the child reaches 18 years of age;~~
2380 ~~the court determines that filing such a petition would not be in~~

2381 ~~the best interests of the child; or the state has not provided~~
2382 ~~the child's parent, when reasonable efforts to return a child~~
2383 ~~are required, consistent with the time period in the state's~~
2384 ~~case plan, such services as the state deems necessary for the~~
2385 ~~safe return of the child to his or her home. Failure to initiate~~
2386 ~~termination of parental rights proceedings at the time of the~~
2387 ~~12-month judicial review or within 30 days after such review~~
2388 ~~does not prohibit initiating termination of parental rights~~
2389 ~~proceedings at any other time.~~
2390 (3) Notwithstanding subsection (2), the department may
2391 choose to not file or join in a petition to terminate the
2392 parental rights of a parent under subsection (2) if:
2393 (a) The child is being cared for by a relative under s.
2394 39.6231;
2395 (b) The department has documented in the report to the
2396 court a compelling reason for determining that filing such a
2397 petition would not be in the best interest of the child.
2398 Compelling reasons for not filing or joining a petition to
2399 terminate parental rights may include, but are not limited to:
2400 1. Adoption is not the appropriate permanency goal for the
2401 child;
2402 2. No grounds to file a petition to terminate parental
2403 rights exist;
2404 3. The child is an unaccompanied refugee minor as defined
2405 in 45 C.F.R. 400.111;
2406 4. There are international legal obligations or compelling
2407 reasons relating to foreign policy that would preclude
2408 terminating parental rights; or

2409 5. The department has not provided to the family,
2410 consistent with the time period in the case plan, services that
2411 the department deems necessary for the safe return of the child
2412 to the home.
2413 (4) Upon good cause shown by any party or on its own
2414 motion, the court may review the determination by the department
2415 that compelling reasons exist for not filing a petition for
2416 termination of parental rights.
2417 Section 25. Subsections (1) and (2) of section 39.806,
2418 Florida Statutes, are amended to read:
2419 39.806 Grounds for termination of parental rights.--
2420 (1) ~~The department, the guardian ad litem, or any person~~
2421 ~~who has knowledge of the facts alleged or who is informed of~~
2422 ~~those facts and believes that they are true may petition~~ Grounds
2423 for the termination of parental rights may be established under
2424 any of the following circumstances:
2425 (a) When the parent or parents have voluntarily executed a
2426 written surrender of the child and consented to the entry of an
2427 order giving custody of the child to the department for
2428 subsequent adoption and the department is willing to accept
2429 custody of the child.
2430 1. The surrender document must be executed before two
2431 witnesses and a notary public or other person authorized to take
2432 acknowledgments.
2433 2. The surrender and consent may be withdrawn after
2434 acceptance by the department only after a finding by the court
2435 that the surrender and consent were obtained by fraud or under
2436 duress.

2437 (b) Abandonment as defined in s. 39.01(1) or when the
2438 identity or location of the parent or parents is unknown and
2439 cannot be ascertained by diligent search within 60 days.
2440 (c) When the parent or parents engaged in conduct toward
2441 the child or toward other children that demonstrates that the
2442 continuing involvement of the parent or parents in the parent-
2443 child relationship threatens the life, safety, well-being, or
2444 physical, mental, or emotional health of the child irrespective
2445 of the provision of services. Provision of services may be
2446 evidenced by proof that services were provided through a
2447 previous plan or offered as a case plan from a child welfare
2448 agency.
2449 (d) When the parent of a child is incarcerated in a state
2450 or federal correctional institution and either:
2451 1. The period of time for which the parent is expected to
2452 be incarcerated will constitute a substantial portion of the
2453 period of time before the child will attain the age of 18 years;
2454 2. The incarcerated parent has been determined by the
2455 court to be a violent career criminal as defined in s. 775.084,
2456 a habitual violent felony offender as defined in s. 775.084, or
2457 a sexual predator as defined in s. 775.21; has been convicted of
2458 first degree or second degree murder in violation of s. 782.04
2459 or a sexual battery that constitutes a capital, life, or first
2460 degree felony violation of s. 794.011; or has been convicted of
2461 an offense in another jurisdiction which is substantially
2462 similar to one of the offenses listed in this paragraph. As used
2463 in this section, the term "substantially similar offense" means
2464 any offense that is substantially similar in elements and

2465 penalties to one of those listed in this subparagraph, and that
2466 is in violation of a law of any other jurisdiction, whether that
2467 of another state, the District of Columbia, the United States or
2468 any possession or territory thereof, or any foreign
2469 jurisdiction; or
2470 3. The court determines by clear and convincing evidence
2471 that continuing the parental relationship with the incarcerated
2472 parent would be harmful to the child and, for this reason, that
2473 termination of the parental rights of the incarcerated parent is
2474 in the best interest of the child.
2475 (e) ~~A petition for termination of parental rights may also~~
2476 ~~be filed~~ When a child has been adjudicated dependent, a case
2477 plan has been filed with the court, and:
2478 1. The child continues to be abused, neglected, or
2479 abandoned by the parents. In this case, the failure of the
2480 parents to substantially comply for a period of 12 months after
2481 an adjudication of the child as a dependent child or the child's
2482 placement into shelter care, whichever came first, constitutes
2483 evidence of continuing abuse, neglect, or abandonment unless the
2484 failure to substantially comply with the case plan was due
2485 either to the lack of financial resources of the parents or to
2486 the failure of the department to make reasonable efforts to
2487 reunify the parent and child. The ~~Such~~ 12-month period begins
2488 ~~may begin~~ to run only after the child's placement into shelter
2489 care or the entry of a disposition order placing the custody of
2490 the child with the department or a person other than the parent
2491 and the approval by the court of a case plan with a goal of
2492 reunification with the parent, whichever came first; or

2493 2. The parent has materially breached the case plan by
2494 making it unlikely that he or she will be able to substantially
2495 comply with the case plan before the time for compliance
2496 expires. Because time is of the essence for permanency of
2497 children in the dependency system and, thus, in order to prove
2498 the parent has materially breached the case plan, the court must
2499 find by clear and convincing evidence that the parent is
2500 unlikely or unable to substantially comply with the case plan
2501 before time expires to comply with the case plan.
2502 (f) When the parent or parents engaged in egregious
2503 conduct or had the opportunity and capability to prevent and
2504 knowingly failed to prevent egregious conduct that threatens the
2505 life, safety, or physical, mental, or emotional health of the
2506 child or the child's sibling.
2507 1. As used in this subsection, the term "sibling" means
2508 another child who resides with or is cared for by the parent or
2509 parents regardless of whether the child is related legally or by
2510 consanguinity.
2511 2. As used in this subsection, the term "egregious
2512 conduct" means abuse, abandonment, neglect, or any other conduct
2513 of the parent or parents that is deplorable, flagrant, or
2514 outrageous by a normal standard of conduct. Egregious conduct
2515 may include an act or omission that occurred only once but was
2516 of such intensity, magnitude, or severity as to endanger the
2517 life of the child.
2518 (g) When the parent or parents have subjected the child to
2519 aggravated child abuse as defined in s. 827.03, sexual battery
2520 or sexual abuse as defined in s. 39.01, or chronic abuse.

2521 (h) When the parent or parents have committed murder or
2522 voluntary manslaughter of another child, or a felony assault
2523 that results in serious bodily injury to the child or another
2524 child, or aided or abetted, attempted, conspired, or solicited
2525 to commit such a murder or voluntary manslaughter or felony
2526 assault.
2527 (i) When the parental rights of the parent to a sibling
2528 have been terminated involuntarily.
2529 (2) Reasonable efforts to preserve and reunify families
2530 are ~~shall~~ not ~~be~~ required if a court of competent jurisdiction
2531 has determined that any of the events described in paragraphs
2532 (1)(e)-(i) have occurred.
2533 Section 26. Subsection (1) of section 39.810, Florida
2534 Statutes, is amended to read:
2535 39.810 Manifest best interests of the child.--In a hearing
2536 on a petition for termination of parental rights, the court
2537 shall consider the manifest best interests of the child. This
2538 consideration shall not include a comparison between the
2539 attributes of the parents and those of any persons providing a
2540 present or potential placement for the child. For the purpose of
2541 determining the manifest best interests of the child, the court
2542 shall consider and evaluate all relevant factors, including, but
2543 not limited to:
2544 (1) Any suitable permanent custody arrangement with a
2545 relative of the child. However, the availability of a
2546 nonadoptive placement with a relative may not receive greater
2547 consideration than any other factor weighing on the manifest
2548 best interest of the child and may not be considered as a factor

2549 weighing against termination of parental rights. If a child has
2550 been in a stable or preadoptive placement for not less than 6
2551 months, the availability of a different placement, including a
2552 placement with a relative, may not be considered as a ground to
2553 deny the termination of parental rights.
2554 Section 27. Subsection (4) of section 39.811, Florida
2555 Statutes, is amended to read:
2556 39.811 Powers of disposition; order of disposition.--
2557 (4) If the child is neither in the custody of the
2558 department nor in the custody of a parent and the court finds
2559 that the grounds for termination of parental rights have been
2560 established for either or both parents, the court shall enter an
2561 order terminating parental rights for the parent or parents for
2562 whom the grounds for termination have been established and
2563 placing the child with the department or an appropriate legal
2564 custodian. If the parental rights of both parents have been
2565 terminated, or if the parental rights of only one parent have
2566 been terminated and the court makes specific findings based on
2567 evidence presented that placement with the remaining parent is
2568 likely to be harmful to the child, the court may order that the
2569 child be placed with a legal custodian other than the department
2570 after hearing evidence of the suitability of the ~~such~~ intended
2571 placement. Suitability of the intended placement includes the
2572 fitness and capabilities of the proposed legal custodian to
2573 function as the primary caregiver for a particular child; and
2574 the compatibility of the child with the home in which the child
2575 is intended to be placed. If the court orders that a child be
2576 placed with a legal custodian under this subsection, the court

2577 shall appoint a ~~such~~ legal custodian ~~either~~ as the guardian for
2578 the child as provided in s. 744.3021 or s. 39.621 ~~or as the~~
2579 ~~long-term custodian of the child as provided in s. 39.622 so~~
2580 ~~long as the child has been residing with the legal custodian for~~
2581 ~~a minimum of 6 months~~. The court may modify the order placing
2582 the child in the custody of the legal custodian and revoke the
2583 guardianship established under s. 744.3021 or another ~~the long-~~
2584 ~~term custodial~~ relationship if the court subsequently finds the
2585 placement to be no longer in the best interest of the child.
2586 Section 28. Paragraph (b) of subsection (3) of section
2587 39.0015, Florida Statutes, is amended to read:
2588 39.0015 Child abuse prevention training in the district
2589 school system.--
2590 (3) DEFINITIONS.--As used in this section:
2591 (b) "Child abuse" means those acts as defined in ss.
2592 39.01(1), (2), (32), (42), (44), (55) ~~(30), (43), (45), (52)~~,
2593 and (66) ~~(63)~~, 827.04, and 984.03(1), (2), and (37).
2594 Section 29. Subsection (5) of section 39.205, Florida
2595 Statutes, is amended to read:
2596 39.205 Penalties relating to reporting of child abuse,
2597 abandonment, or neglect.--
2598 (5) If the department or its authorized agent has
2599 determined after its investigation that a report is false, the
2600 department shall, with the consent of the alleged perpetrator,
2601 refer the report to the local law enforcement agency having
2602 jurisdiction for an investigation to determine whether
2603 sufficient evidence exists to refer the case for prosecution for
2604 filing a false report as defined in s. 39.01(28) ~~s. 39.01(27)~~.

2605 During the pendency of the investigation by the local law
2606 enforcement agency, the department must notify the local law
2607 enforcement agency of, and the local law enforcement agency must
2608 respond to, all subsequent reports concerning children in that
2609 same family in accordance with s. 39.301. If the law enforcement
2610 agency believes that there are indicators of abuse, abandonment,
2611 or neglect, it must immediately notify the department, which
2612 must assure the safety of the children. If the law enforcement
2613 agency finds sufficient evidence for prosecution for filing a
2614 false report, it must refer the case to the appropriate state
2615 attorney for prosecution.
2616 Section 30. Subsection (1) of section 39.302, Florida
2617 Statutes, is amended to read:
2618 39.302 Protective investigations of institutional child
2619 abuse, abandonment, or neglect.--
2620 (1) The department shall conduct a child protective
2621 investigation of each report of institutional child abuse,
2622 abandonment, or neglect. Upon receipt of a report that alleges
2623 that an employee or agent of the department, or any other entity
2624 or person covered by s. 39.01(33) or (46) ~~s. 39.01(31) or (47)~~,
2625 acting in an official capacity, has committed an act of child
2626 abuse, abandonment, or neglect, the department shall initiate a
2627 child protective investigation within the timeframe established
2628 by the central abuse hotline under ~~pursuant to~~ s. 39.201(5) and
2629 orally notify the appropriate state attorney, law enforcement
2630 agency, and licensing agency. These agencies shall immediately
2631 conduct a joint investigation, unless independent investigations
2632 are more feasible. When conducting investigations onsite or

2633 having face-to-face interviews with the child, such
2634 investigation visits shall be unannounced unless it is
2635 determined by the department or its agent that the ~~such~~
2636 unannounced visits would threaten the safety of the child. When
2637 a facility is exempt from licensing, the department shall inform
2638 the owner or operator of the facility of the report. Each agency
2639 conducting a joint investigation is ~~shall be~~ entitled to full
2640 access to the information gathered by the department in the
2641 course of the investigation. A protective investigation must
2642 include an onsite visit of the child's place of residence. In
2643 all cases, the department shall make a full written report to
2644 the state attorney within 3 working days after making the oral
2645 report. A criminal investigation shall be coordinated, whenever
2646 possible, with the child protective investigation of the
2647 department. Any interested person who has information regarding
2648 the offenses described in this subsection may forward a
2649 statement to the state attorney as to whether prosecution is
2650 warranted and appropriate. Within 15 days after the completion
2651 of the investigation, the state attorney shall report the
2652 findings to the department and shall include in the ~~such~~ report
2653 a determination of whether or not prosecution is justified and
2654 appropriate in view of the circumstances of the specific case.
2655 Section 31. For the purpose of incorporating the
2656 amendments made by this act to section 39.806, Florida Statutes,
2657 in a reference thereto, subsection (5) of section 39.802,
2658 Florida Statutes, is reenacted to read:
2659 39.802 Petition for termination of parental rights;
2660 filing; elements.--

2661 (5) When a petition for termination of parental rights is
2662 filed under s. 39.806(1), a separate petition for dependency
2663 need not be filed and the department need not offer the parents
2664 a case plan with a goal of reunification, but may instead file
2665 with the court a case plan with a goal of termination of
2666 parental rights to allow continuation of services until the
2667 termination is granted or until further orders of the court are
2668 issued.
2669 Section 32. Subsection (1) of section 39.828, Florida
2670 Statutes, is amended to read:
2671 39.828 Grounds for appointment of a guardian advocate.--
2672 (1) The court shall appoint the person named in the
2673 petition as a guardian advocate with all the powers and duties
2674 specified in s. 39.829 for an initial term of 1 year upon a
2675 finding that:
2676 (a) The child named in the petition is or was a drug
2677 dependent newborn as described in s. 39.01(32)(g) ~~s.~~
2678 ~~39.01(30)(g)~~;
2679 (b) The parent or parents of the child have voluntarily
2680 relinquished temporary custody of the child to a relative or
2681 other responsible adult;
2682 (c) The person named in the petition to be appointed the
2683 guardian advocate is capable of carrying out the duties as
2684 provided in s. 39.829; and
2685 (d) A petition to adjudicate the child dependent under
2686 ~~pursuant to~~ this chapter has not been filed.
2687 Section 33. Subsection (3) of section 63.092, Florida
2688 Statutes, is amended to read:

2689 63.092 Report to the court of intended placement by an
2690 adoption entity; at-risk placement; preliminary study.--
2691 (3) PRELIMINARY HOME STUDY.--Before placing the minor in
2692 the intended adoptive home, a preliminary home study must be
2693 performed by a licensed child-placing agency, a child-caring
2694 agency registered under s. 409.176, a licensed professional, or
2695 agency described in s. 61.20(2), unless the adoptee is an adult
2696 or the petitioner is a stepparent or a relative. If the adoptee
2697 is an adult or the petitioner is a stepparent or a relative, a
2698 preliminary home study may be required by the court for good
2699 cause shown. The department is required to perform the
2700 preliminary home study only if there is no licensed child-
2701 placing agency, child-caring agency registered under s. 409.176,
2702 licensed professional, or agency described in s. 61.20(2), in
2703 the county where the prospective adoptive parents reside. The
2704 preliminary home study must be made to determine the suitability
2705 of the intended adoptive parents and may be completed prior to
2706 identification of a prospective adoptive minor. A favorable
2707 preliminary home study is valid for 1 year after the date of its
2708 completion. Upon its completion, a copy of the home study must
2709 be provided to the intended adoptive parents who were the
2710 subject of the home study. A minor may not be placed in an
2711 intended adoptive home before a favorable preliminary home study
2712 is completed unless the adoptive home is also a licensed foster
2713 home under s. 409.175. The preliminary home study must include,
2714 at a minimum:
2715 (a) An interview with the intended adoptive parents;
2716 (b) Records checks of the department's central abuse

2717 registry and criminal records ~~correspondence~~ checks under s.
2718 39.0138 ~~pursuant to s. 435.045~~ through the Department of Law
2719 Enforcement on the intended adoptive parents;
2720 (c) An assessment of the physical environment of the home;
2721 (d) A determination of the financial security of the
2722 intended adoptive parents;
2723 (e) Documentation of counseling and education of the
2724 intended adoptive parents on adoptive parenting;
2725 (f) Documentation that information on adoption and the
2726 adoption process has been provided to the intended adoptive
2727 parents;
2728 (g) Documentation that information on support services
2729 available in the community has been provided to the intended
2730 adoptive parents; and
2731 (h) A copy of each signed acknowledgment of receipt of
2732 disclosure required by s. 63.085.
2733
2734 If the preliminary home study is favorable, a minor may be
2735 placed in the home pending entry of the judgment of adoption. A
2736 minor may not be placed in the home if the preliminary home
2737 study is unfavorable. If the preliminary home study is
2738 unfavorable, the adoption entity may, within 20 days after
2739 receipt of a copy of the written recommendation, petition the
2740 court to determine the suitability of the intended adoptive
2741 home. A determination as to suitability under this subsection
2742 does not act as a presumption of suitability at the final
2743 hearing. In determining the suitability of the intended adoptive
2744 home, the court must consider the totality of the circumstances

2745 in the home. No minor may be placed in a home in which there
2746 resides any person determined by the court to be a sexual
2747 predator as defined in s. 775.21 or to have been convicted of an
2748 offense listed in s. 63.089(4)(b)2.
2749 Section 34. Paragraph (b) of subsection (3) of section
2750 409.165, Florida Statutes, is amended to read:
2751 409.165 Alternate care for children.--
2752 (3) With the written consent of parents, custodians, or
2753 guardians, or in accordance with those provisions in chapter 39
2754 that relate to dependent children, the department, under rules
2755 properly adopted, may place a child:
2756 (b) With an adult nonrelative approved by the court for
2757 permanent guardianship ~~long-term custody~~;
2758
2759 under such conditions as are determined to be for the best
2760 interests or the welfare of the child. Any child placed in an
2761 institution or in a family home by the department or its agency
2762 may be removed by the department or its agency, and such other
2763 disposition may be made as is for the best interest of the
2764 child, including transfer of the child to another institution,
2765 another home, or the home of the child. Expenditure of funds
2766 appropriated for out-of-home care can be used to meet the needs
2767 of a child in the child's own home or the home of a relative if
2768 the child can be safely served in the child's own home or that
2769 of a relative if placement can be avoided by the expenditure of
2770 such funds, and if the expenditure of such funds in this manner
2771 is calculated by the department to be a potential cost savings.
2772 Section 35. Paragraph (d) of subsection (1) of section

2773 419.001, Florida Statutes, is amended to read:
2774 419.001 Site selection of community residential homes.--
2775 (1) For the purposes of this section, the following
2776 definitions shall apply:
2777 (d) "Resident" means any of the following: a frail elder
2778 as defined in s. 400.618; a physically disabled or handicapped
2779 person as defined in s. 760.22(7)(a); a developmentally disabled
2780 person as defined in s. 393.063; a nondangerous mentally ill
2781 person as defined in s. 394.455(18); or a child <u>who is found to</u>
2782 <u>be dependent or a child in need of services</u> as defined in s.
2783 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).
2784 Section 36. <u>Sections 39.601, 39.622, 39.623, 39.624, and</u>
2785 <u>435.045, Florida Statutes, are repealed.</u>
2786 Section 37. This act shall take effect July 1, 2006.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7157 PCB EDTB 06-03 Internet Phishing
**SPONSOR(S):** Economic Development, Trade & Banking Committee; Bilivakis
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|
| Orig. Comm.: Economic Development, Trade & Banking Committee | 13 Y, 0 N | Olmedillo | Carlson |
| 1) Civil Justice Committee | | Blalock | Bond |
| 2) Criminal Justice Appropriations Committee | | | |
| 3) Commerce Council | | | |
| 4) | | | |
| 5) | | | |

## SUMMARY ANALYSIS


"Phishing" refers to obtaining personal identifying information from individuals via the Internet with the intent to possess or use such information fraudulently.

This bill creates the "Anti-Phishing Act" and will prohibit the acquisition of personal identifying information from a Florida resident through the use of a website or e-mail with the intent to possess or use such information fraudulently. To accomplish this goal the Anti-Phishing Act provides the following:

- Creates a civil cause of action for Internet access providers, financial institutions, web page or trademark owners harmed by a violation, and the Attorney General.
- Provides the plaintiffs with the power to seek injunctive relief and damages in the greater amount of the actual damages arising from the violation, or $5,000 for each violation of the same nature. A court may increase damages to three times the actual damages sustained if violations constitute a pattern. The bill does not preclude the award of damages otherwise available under federal or state law.
- Provides for an award of attorney's fees and costs to a prevailing plaintiff.
- Establishes personal jurisdiction for a violator, sets venue in any county where the plaintiff resides or where any part of the action occurred, and creates a three year statute of limitations.
- Provides that certain moneys received by the Attorney General shall be deposited in the Legal Affairs Revolving Trust Fund.
- Grants the Department of Legal Affairs (Department) rulemaking authority to implement the provisions of this act.

This bill appears to have an indeterminate increased fiscal impact on state revenues and an indeterminate increased fiscal impact on state expenditures. This bill does not appear to have a fiscal impact on local government.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility -- This bill increases personal accountability for unlawful actions and injurious behavior.

Provide limited government -- This bill creates a new civil cause of action designed to deter and punish identity theft.

B. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Identity theft is a substantial problem in the United States and "phishing" represents the cutting edge of this devious practice.

"Phishing" refers to obtaining personal identifying information from individuals via the Internet with the intent to possess or use such information fraudulently. Typically, a person attempting to obtain information sends an e-mail that appears to come from a bank or other trusted business requesting an individual to verify their account by typing personal identifying information, such as credit card information, social security numbers, account usernames, passwords, etc. A person may also use a phony web site to trick citizens into forfeiting sensitive personal information.

The Federal Trade Commission (FTC) reported that 27.3 million Americans have been victims of identity theft in the last five years, including 9.9 million people in 2003 alone.[1] According to the FTC, last year's identity theft losses to businesses and financial institutions totaled nearly $48 billion and consumer victims reported $5 billion in out-of-pocket expenses.[2]

Moreover, according to the Anti-Phishing Working Group, the volume of fraudulent phishing e-mail is growing at a rate in excess of 30 percent each month.[3]

Anti-Phishing Bills in Congress

The Subcommittee on Crime, Terrorism, and Homeland Security of the U.S. House of Representatives is currently reviewing H.R. 1099, which criminalizes internet scams involving the fraudulent obtaining of information, commonly known as "phishing".[4]

H.R. 1099 imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in an activity constituting fraud or identity theft under Federal or State law: (1) creates or procures the creation of a website or domain name that represents itself as a legitimate online business without the authority or approval of the registered owner of such business; and (2) uses that website or domain name to solicit means of identification from any person.

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[1] See article issued by Federal Trade Commission, dated September 3, 2003 "FTC Releases Survey of Identity Theft in U.S. 27.3 Million Victims in Past 5 Years, Billions in Losses for Businesses and Consumers". See also http://www.ftc.gov/opa/2003/idtheft.htm.

[2] Id.

[3] The Anti-Phishing Working Group (APWG) is a global pan-industrial and law enforcement association that focuses on eliminating fraud and identity theft that results from phishing and e-mail spoofing of all types.

[4] The Senate companion, S.472 is before the Judiciary Committee.

In addition, H.R. 1099 imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in activity constituting fraud or identity theft under Federal or State law sends an electronic mail message that: (1) falsely represents itself as being sent by a legitimate online business; (2) includes an Internet location tool referring or linking users to an online location on the World Wide Web that falsely purports to belong to or be associated with a legitimate online business; and (3) solicits means of identification from the recipient.

**Effect of bill**

Name

This bill creates the "Anti-Phishing Act".

Prohibited Acts

This bill prohibits obtaining identifying information from individuals through certain means via the Internet with the intent to possess or use such information fraudulently. This bill prohibits:

- Representing oneself, either directly or by implication to be another person, without the authority or approval of such other person, through the use of a web page or Internet domain name; and
- Using that web page, a link to the web page, or another site on the Internet to induce, request, or solicit another person to provide identifying information.

This bill also prohibits sending or causing to be sent an e-mail to a resident of this state that:

- Is falsely represented as being sent by another person, without the authority or approval of such other person;
- Refers or links the recipient to a falsely represented web site; and
- Directly or indirectly solicits from the recipient identifying information for a purpose that the recipient believed to be legitimate.

This bill defines or incorporates by reference definitions of terms as follows:

- "Department" means the Department of Legal Affairs.
- "Electronic mail message" means an electronic message or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval.[5]
- "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.[6]
- "Identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:
    - Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food stamp account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;

[5] s. 668.602(7), F.S.
[6] s. 668.602(6), F.S.

- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.[7]

- "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service, which is assigned through centralized Internet naming authorities and which is comprised of a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.[8]
- "Web page" means a location that has a single uniform resource locator (URL) with respect to the world wide web or another location that can be accessed on the Internet.

Remedies

This bill gives standing to bring a civil action under this part to:

- A person engaged in the business of providing Internet access to the public who was adversely affected by the violation;
- A financial institution as defined by s. 655.005(1)(h), F.S., adversely affected by the violation.
- An owner of a web page or trademark who was harmed by a violation under this bill; and
- The Attorney General.

A person bringing an action may seek injunctive relief to halt a violation under this bill, recover damages in the greater amount of the actual damages arising from the violation, or $5,000 for each violation of the same nature, or seek both injunctive relief and damages. Violations are considered of the same nature if they consisted of the same action or course of conduct regardless of how many times the act occurred. A court may increase damages to three times the actual damages sustained if violations constitute a pattern or practice.

This bill also provides for an award of attorney's fees and costs to a prevailing plaintiff.

This bill provides that the violator submits personally to the jurisdiction of the courts of the State of Florida by committing a violation of this Act. In addition, the bill establishes a 3 year statute of limitations to bring a suit under the Act.

This bill also provides that venue lies in any county in which the plaintiff resides or in which any part of the violation occurred.

This bill requires that any moneys received by the Attorney General for attorney's fees and costs, or not utilized to reimburse persons harmed under this act, shall be deposited in the Legal Affairs Revolving Trust Fund.

This bill does not preclude the award of damages otherwise available for the same conduct pursuant to federal or state law.

This bill grants the Department rulemaking authority to implement the provisions of this act.

Exemption

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[7] s. 817.568(1)(f), F.S.
[8] s. 668.602(10), F.S.

This bill exempts from liability a telecommunication provider's or an Internet service provider's good faith transmission or intermediate temporary storing of identifying information. The bill also exempts providers of an interactive computer service when removing or disabling access to content that resides on an Internet website or other online location controlled or operated by such provider if such provider believes in good faith that the content is used to engage in a violation of the provisions of this bill.

C. SECTION DIRECTORY:

Section 1 creates s. 668.701, F.S., to provide a title; s. 668.702, F.S., to provide definitions; s. 668.703, F.S., to provide prohibited acts; s. 668.704, F.S., to provide remedies and standing; and s. 668.705, F.S., to provide exemptions.

Section 2 provides an effective date of October 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:

None.

D. FISCAL COMMENTS:

This bill also provides that the Attorney General may bring a civil action against a person that violates the Act, and would be able to collect the greater of the actual damages or $5,000, which is to be deposited into the Legal Affairs Revolving Trust Fund.

The bill grants the Attorney General authority to enforce violations under this bill. Therefore, the Attorney General will incur costs in order to prosecute persons that violate this bill. The costs, however, are indeterminate.

According to the Department of Legal Affairs, it prosecuted only two cases under the 2004 Electronic Mail Communications Act, which creates criminal penalties for sending unsolicited false or misleading commercial electronic mail messages to an electronic mail address that is held by a resident of Florida. A number of persons filed additional complaints; however the Department of Legal Affairs has not been able to determine who sent the messages, preventing further action under the statute.

## 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:

This Act creates sections 668.701 – 668.705, F.S., to provide civil penalties for the acquisition of personal identifying information from a resident of this State with the intent to possess or use such information fraudulently. Under certain circumstances, it is possible that this bill could assert Florida's police power over non-residents of Florida, and therefore this bill could possibly violate the Commerce Clause of the U.S. Constitution.

The Commerce Clause empowers Congress to regulate commerce among the several states.[9] "This affirmative grant of authority to Congress also encompasses an implicit or dormant limitation on the authority of the States to enact legislation affecting interstate commerce."[10] The aspect of the Commerce Clause, which operates as an implied limitation upon state and local government authority is often referred to as the dormant Commerce Clause.[11]

In Pike v. Bruce Church Inc.,[12] the court devised a two prong test to determine if a state statute violates the dormant Commerce Clause:

> Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

The Supreme Court explained that the critical consideration is the overall effect of the statute on both local and interstate activity with respect to both parts of the Pike test.[13] The Supreme Court has invalidated statutes under the Pike test on the grounds that their extraterritorial effect renders them unconstitutional.

For instance, in Healy, the court held:

> [T]he extraterritorial effects of state economic regulation stand at a minimum for the following proposition:
>
> First, the "commerce clause . . . preludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State" . . . . Second, a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature. The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State. Third, the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other Sates and what effect would arise if not one, but

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[9] *See* U.S. Const., art. I, § 8, cl. 3.
[10] Healy v. The Beer Insitiute, 491 U.S. 324 (1989).
[11] MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); citing Bd. of Trs. of the Employees' Ret. Sys. of Baltimore City v. Mayor and City Council of Baltimore, 317 Md. 72 at 131 (1989).
[12] 397 U.S. 137 (1970).
[13] *See* Brown-Forman Distillers Corp. v. N.Y. State Liquor Authority, 476 U.S. 573 at 579 (1986).

> many or every, State adopted similar legislation. Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another state.[14]

In American Libraries Ass'n v. Pataki[15], the first case to apply the dormant Commerce Clause to a state law on Internet use[16], a federal trial court granted an injunction preventing the State of New York from enforcing a statute that criminalized intentional communications via the internet for the purpose of engaging in harmful sexual conduct with a minor. The court held that the New York Act is concerned with interstate commerce and contravenes the Commerce Clause for three reasons:

> First, the Act represents an unconstitutional projection of New York law into conduct that occurs wholly outside New York. Second, the Act is invalid because although protecting children from indecent material is a legitimate and indisputably worthy subject of state legislation, the burdens on interstate commerce resulting from the Act clearly exceed any local benefit derived from it. Finally, the Internet is one of those areas of commerce that must be marked off as a national preserve to protect users from inconsistent legislation that, taken to its most extreme, could paralyze development of the Internet altogether. Thus, the Commerce Clause ordains that only Congress can legislate in this area, subject, of course, to whatever limitations other provisions of the Constitution (such as the First Amendment) may require.[17]

"Many courts have followed the logic of American Libraries Ass'n."[18]

Moreover, courts have examined "spam" statutes, which prohibit unsolicited false or misleading commercial electronic mail under the dormant Commerce Clause and found those statutes to be constitutional.[19]

In Heckel, the court held that there was no sweeping extraterritorial effect that would outweigh the local benefits of the Act because the statute regulates only those emails directed to a Washington resident or sent from a computer located within Washington.[20] The Act specifically prohibited e-mail solicitors from using misleading information in the subject line or transmission path of any commercial e-mail message sent to Washington residents or from a computer located in Washington.[21] The court distinguished the case from American Libraries Ass'n stating that the Washington Act did not impose liability for messages that are merely routed through Washington or that are read by a Washington resident who was not the actual addressee.[22]

In MaryCle, the court held that a Maryland statute was facially neutral because it applies to all email advertisers, regardless of their geographic location. It does not discriminate against out-of-state senders.[23]

In Ferguson, the court held that a California statute did not violate the commerce clause because the only burden on interstate commerce is that the email be truthful and non-deceptive email.[24]

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[14] Healy at 336-37; *see also* MaryCle, at 15.
[15] Am. Libraries Ass'n, 969 F. Supp. 160 (S.D.N.Y. 1997).
[16] *See* State v. Heckel, 24 P.3d 404 (Wash 2001).
[17] Am. Libraries Ass'n, 969 F. Supp. at 169 (S.D.N.Y. 1997)
[18] *See* The Internet and the Dormant Commerce Clause, 110 The Yale Law Journal 787 (2001).
[19] *See* State v. Heckel, 24 P.3d 404 (Wash 2001); MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); Ferguson v. Friendfinders, Inc., 94 Cal.App.4th 1255 (1st Dist. 2002).
[20] Heckel ,at 412-13.
[21] Id at 413.
[22] Id.
[23] MaryCle, at 19.
[24] Feruson, at 1265.

Similarly, in Cashatt, a Florida court, using the Pike test, upheld a statute that criminalized the use of a computer on-line service or Internet service to seduce, lure or entice, a child to commit any illegal act.[25]

The Anti-Phishing Act, appears to apply evenhandedly to in-state and out-of-state transmitters. The local benefit of this Act is to protect the public and businesses from misleading and deceptive practices involving fraudulent use of personal information, a legitimate local public interest, and the only burden imposed is not using the Internet for the purpose of obtaining another's personal information for a fraudulent purpose.

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Legal Affairs rulemaking authority to implement the provisions of the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Economic Development, Trade and Banking Committee adopted an amendment to the bill. The amendment adds an exemption for providers of interactive computer services who remove or disable access to content due to a good faith belief that the content is being used to violate provisions of this bill. The bill was then reported favorably with a committee substitute.

[25] *See* Cashatt v. State, 873 So.2d 430 (1st DCA 2004).

1 A bill to be entitled
2 An act relating to fraudulent use or possession of
3 identifying information; creating part IV of ch. 668,
4 F.S.; providing a short title; providing definitions;
5 prohibiting certain acts relating to fraudulent use or
6 possession of identifying information; authorizing civil
7 actions for violations; providing for injunctive relief
8 and damages; authorizing courts to increase awards of
9 actual damages under certain circumstances; providing for
10 recovery of attorney's fees and court costs; providing for
11 jurisdiction and venue; providing for deposit of certain
12 moneys received by the Attorney General into the Legal
13 Affairs Revolving Trust Fund; authorizing the Department
14 of Legal Affairs to adopt rules; providing for
15 nonapplication to certain entities' good faith handling of
16 identifying information; specifying the absence of
17 liability for certain actions taken to prevent certain
18 violations; providing an effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Part IV of chapter 668, Florida Statutes,
23 consisting of sections 668.701, 668.702, 668.703, 668.704, and
24 668.705, Florida Statutes, is created to read:
25 PART IV
26 FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION
27 668.701 Short title.--This part may be cited as the "Anti-
28 Phishing Act."

29 668.702 Definitions.--As used in this part, the term:
30 (1) "Department" means the Department of Legal Affairs.
31 (2) "Electronic mail address" has the same meaning as
32 provided in s. 668.602.
33 (3) "Electronic mail message" has the same meaning as
34 provided in s. 668.602.
35 (4) "Identifying information" has the same meaning as the
36 term "personal identification information" as defined in s.
37 817.568(1).
38 (5) "Internet domain name" has the same meaning as
39 provided in s. 668.602.
40 (6) "Web page" means a location that has a single uniform
41 resource locator (URL) with respect to the World Wide Web or
42 another location that can be accessed on the Internet.
43 668.703 Prohibited acts.--
44 (1) A person with an intent to engage in conduct involving
45 the fraudulent use or possession of another person's identifying
46 information may not represent oneself, directly or by
47 implication, to be another person without the authority or
48 approval of such other person through the use of a web page or
49 Internet domain name and use that web page, Internet domain
50 name, or a link to that web page or domain name or another site
51 on the Internet to induce, request, or solicit a resident of
52 this state to provide identifying information.
53 (2) A person with an intent to engage in conduct involving
54 the fraudulent use or possession of identifying information may
55 not send or cause to be sent to an electronic mail address held
56 by a resident of this state an electronic mail message that is

57 falsely represented as being sent by another person without the
58 authority or approval of such other person, refers or links the
59 recipient of the message to a web page, and directly or
60 indirectly induces, requests, or solicits the recipient of the
61 electronic mail message to provide identifying information.
62 668.704 Remedies.--
63 (1) The following persons may bring a civil action against
64 a person who violates this part:
65 (a) A person engaged in the business of providing Internet
66 access service to the public who is adversely affected by the
67 violation.
68 (b) A financial institution as defined in s. 655.005(1)
69 that is adversely affected by the violation.
70 (c) An owner of a web page, trademark, or service mark who
71 is adversely affected by the violation.
72 (d) The Attorney General.
73 (2) A person bringing an action under this section may:
74 (a) Seek injunctive relief to restrain the violator from
75 continuing the violation.
76 (b) Recover damages in an amount equal to the greater of:
77 1. Actual damages arising from the violation; or
78 2. The sum of $5,000 for each violation of the same
79 nature.
80 (3) The court may increase an award of actual damages in
81 an action brought under this section to an amount not to exceed
82 three times the actual damages sustained if the court finds that
83 the violations have occurred with a frequency as to constitute a
84 pattern or practice.

85 (4) For purposes of this section, violations are of the
86 same nature if the violations consist of the same course of
87 conduct or action, regardless of the number of times the conduct
88 or action occurred.
89 (5) A plaintiff who prevails in an action filed under this
90 section is entitled to recover reasonable attorney's fees and
91 court costs.
92 (6) By committing a violation under this part, the
93 violator submits personally to the jurisdiction of the courts of
94 this state. This section does not preclude other methods of
95 obtaining jurisdiction over a person who commits a violation
96 under this part.
97 (7) An action under this part may be brought in any court
98 of competent jurisdiction to enforce such rights and to recover
99 damages as stated in this part.
100 (8) The venue for a civil action brought under this
101 section shall be the county in which the plaintiff resides or in
102 any county in which any part of the alleged violation under this
103 part took place, regardless of whether the defendant was ever
104 actually present in that county. A civil action filed under this
105 section must be brought within 3 years after the violation
106 occurred.
107 (9) The remedies available under this section are in
108 addition to remedies otherwise available for the same conduct
109 under federal or state law.
110 (10) Any moneys received by the Attorney General for
111 attorney's fees and costs of investigation or litigation in
112 proceedings brought under this section shall be deposited as

113 received into the Legal Affairs Revolving Trust Fund.
114 (11) Any moneys received by the Attorney General which are
115 not for attorney's fees and costs of investigation or litigation
116 or used for reimbursing persons found under this part to be
117 damaged shall accrue to the state and be deposited as received
118 into the Legal Affairs Revolving Trust Fund.
119 (12) The Department of Legal Affairs may adopt rules
120 pursuant to ss. 120.536(1) and 120.54 to implement the
121 provisions of this part.
122 668.705 Exemptions.--
123 (1) This part does not apply to a telecommunications
124 provider's or Internet service provider's good faith
125 transmission or routing of, or intermediate temporary storing or
126 caching of, identifying information.
127 (2) A provider of an interactive computer service is not
128 liable under the laws of this state for removing or disabling
129 access to content that resides on an Internet website or other
130 online location controlled or operated by such provider if such
131 provider believes in good faith that the content is used to
132 engage in a violation of this part.
133 Section 2. This act shall take effect July 1, 2006.