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# **Civil Justice & Claims Subcommittee**

**Tuesday, January 23, 2018  
3:30 – 6:30 PM  
404 HOB**

**Meeting Packet**

**Richard Corcoran  
Speaker**

**Heather Fitzenhagen  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Civil Justice & Claims Subcommittee

**Start Date and Time:** Tuesday, January 23, 2018 03:30 pm  
**End Date and Time:** Tuesday, January 23, 2018 06:30 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 3.00 hrs

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

PCB CJC 18-01 -- County Court Jurisdiction

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

HB 1043 Mediation by Metz  
HB 1059 Elder Abuse by Burton  
HB 1217 Deployed Parent Custody and Visitation by Metz  
HB 1323 Florida Guide to a Healthy Marriage by Yarborough, Burgess  
HB 1351 Early Childhood Court Program by Payne  
HB 1361 Unclaimed Funds Held by the Clerks of Court by Clemons  
HB 6543 Relief/Estate of Eric Scott Tenner/Miami-Dade County by Perez  
HB 6545 Relief/Ramiro Companioni, Jr./City of Tampa by Santiago

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, January 22, 2018.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, January 22, 2018.

**NOTICE FINALIZED on 01/19/2018 4:15PM by Ellerkamp.Donna**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1043 Mediation  
**SPONSOR(S):** Metz  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1034

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		MM MacNamara	Bond MB
2) Insurance & Banking Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Mediation is a process in which a neutral third person acts to facilitate the resolution of a lawsuit or other dispute between two or more parties. When a court refers an action to mediation, each party must attend the mediation conference and is subject to sanctions for failure to attend without good cause. A party is deemed to appear at a mediation conference if the following persons are physically present:

- The party or party representative having full authority to settle without further consultation;
- The party's counsel of record, if any; and
- A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle in an amount up to the amount of the plaintiff's last demand or policy limits, whichever is less.

HB 1043 requires an insurance carrier attending a circuit court mediation to have full authority to settle up to the insurance carrier's reserve on the claim and to have the ability to immediately consult during the mediation with a person having authority to approve a settlement above the insurance carrier's reserve. Additionally, the bill permits a court, upon motion of any party, to order a third party to attend and participate in a mediation conference if:

- The third party claims a lien or other asserted interest in the proceeds of any funds that a party may receive as a result of a mediated settlement agreement;
- The presence of the third party can be compelled by service of an order to appear for mediation served in the same manner as service of process under current law; and
- The presence of the third party will facilitate the mediation process

The bill further provides that a mediator's report to the court may only state that either a complete agreement was reached, a partial agreement was reached, or no agreement was reached. In the event the parties reach a partial agreement that eliminates claims or parties from the litigation, the bill allows the report to contain a list of those parties or claims.

The bill may have an indeterminate impact fiscal impact on state or local government.

The effective date for the bill is July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Mediation is a process in which a neutral third person acts to facilitate the resolution of a lawsuit or other dispute between two or more parties. The statutes currently authorize courts to use mediation to aid in resolving cases, but the statutes also provide that many of the procedural aspects of mediation are to be governed by court rule.<sup>1</sup>

Depending on the type of case, there are different circumstances under which a court would refer the matter to mediation. In a lawsuit for money damages, the court must refer the matter to mediation upon the request of a party if the party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties.<sup>2</sup>

A court is not required to refer a case to mediation if it concerns medical malpractice or debt collection, is a landlord-tenant dispute not involving personal injury, is governed by the Small Claims Act, or involves one of the few other circumstances set forth in statute.<sup>3</sup> However, a court may generally refer all or part of any civil action to mediation.

Rule 1.720, Florida Rules of Civil Procedure, governs the mediation process, including who exactly must attend the mediation conference and what settlement authority these persons must have. Each party must attend the mediation conference and is subject to sanctions for failure to attend without good cause.<sup>4</sup> These sanctions include awarding of mediation fees and attorneys' fees and costs, against the party failing to appear. Moreover, each party must provide to the court and all parties a written notice, 10 days prior to the conference, which identifies who will attend the conference as a party representative or insurance carrier representative. This notice must also confirm that these persons have the required settlement authority.<sup>5</sup>

Unless permitted by court order or stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present:

- The party or party representative having full authority to settle without further consultation;
- The party's counsel of record, if any; and
- A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle in an amount up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.<sup>6</sup>

A party representative having full authority to settle is defined in the rule as "the final decision maker with respect to all issues presented by the case who has the legal capacity to execute a binding settlement agreement on behalf of the party."<sup>7</sup>

At the conclusion of the mediation process, the mediator must report the result of the mediation to the court.<sup>8</sup> If the parties do not reach an agreement, the mediator must report the lack of agreement to the

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<sup>1</sup> S. 44.102(1), F.S.

<sup>2</sup> S. 44.102(2)(a), F.S.

<sup>3</sup> Id.

<sup>4</sup> Rule 1.720(f), Fla. R. Civ. P.

<sup>5</sup> Rule 1.720(e), Fla. R. Civ. P.

<sup>6</sup> Rule 1.720(b), Fla. R. Civ. P.

<sup>7</sup> Rule 1.720(c), Fla. R. Civ. P.

<sup>8</sup> However, if the agreement is not transcribed or signed, a stipulation of dismissal may be filed with the court instead of a report of the agreement. Rule 1.730(b), Fla. R. Civ. P.

court.<sup>9</sup> If the parties consent, the mediator's report may also identify pending motions, outstanding legal issues, or other actions which, "if resolved or completed, would facilitate the possibility of a settlement."<sup>10</sup> If the parties come to a partial or final agreement, a report of the agreement or a stipulation of dismissal must be filed with the court.<sup>11</sup>

There is no requirement that the parties negotiate in "good faith."<sup>12</sup>

## **Effect of Proposed Changes**

### Insurance Carrier Representative's Required Settlement Authority

Under the Florida Rules of Civil Procedure, one of the persons that must be physically present at a mediation conference is an insurance representative for any insured party. The insurance representative must have full authority to settle, without consultation, in an amount up to the lesser of the policy limits or the plaintiff's last demand.

HB 1043 provides that an insurance carrier attending a circuit court mediation must have full authority to settle up to the amount of the insurance carrier's reserve on the claim subject to mediation. The reserve on a claim is not defined under current law. However, the term generally refers the amount of money set aside by an insurance carrier to pay a claim that has not yet been settled.<sup>13</sup>

The insurance carrier representative must also have the ability to immediately consult during the mediation by electronic or telephonic consultation with the person having authority to settle above the reserve, up to the lesser of the policy limit or the plaintiff's last demand. The person or persons consulted by the insurance carrier must be available to teleconference with the mediator at his or her request.

An insurance carrier who does not comply with the bill's requirements in good faith is subject to sanctions in the same manner as a party who fails to appear.

### Compelling Interested Third Parties to Attend Mediation

Under the bill, the court may, upon motion of any party, order a third party to attend and participate in a mediation conference if:

- The third party claims a lien or other asserted interest in the proceeds of any funds that a party may receive as a result of a mediated settlement agreement;
- The presence of the third party can be compelled by service of an order to appear for mediation served in the same manner as service of process under current law; and
- The presence of the third party will facilitate the mediation process.

A third party cannot be required to pay any portion of the mediator's fees or costs when they are ordered to attend mediation as provided for in the bill and participate in good faith. Moreover, where a designated representative of a third party attends on the third parties behalf, the representative is required to have the ability to settle the entire claim of the third party or have the ability to immediately consult with a person who has this authority. The bill provides that the person consulted by the third-party representative must be available to teleconference with the mediator at the mediator's request.

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<sup>9</sup> Rule 1.730(a), Fla. R. Civ. P.

<sup>10</sup> Id.

<sup>11</sup> Rule 1.730(b), Fla. R. Civ. P.

<sup>12</sup> See *Avril v. Civilmar*, 605 So.2d 988 (Fla. 4th DCA 1992).

<sup>13</sup> See INTERNATIONAL RISK MANAGEMENT INSTITUTE, INC., *claims reserve*, *Glossary of Insurance & Risk management Terms*, <https://www.irmi.com/online/insurance-glossary/terms/c/claims-reserve.aspx> (last accessed on January 16, 2018).

A third party ordered to attend a mediation conference who fails to do so is subject to sanctions in the same manner as a party who fails to appear.

### Mediator's Report

The bill further provides that a mediator's report to the court may only state one of the following:

- A complete agreement was reached,
- A partial agreement was reached, or
- No agreement was reached.

In the event the parties reach a partial agreement that eliminates claims or parties from the litigation, the bill allows the report to contain a list of those parties or claims. However, no other information may be disclosed.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 44.407, F.S., relating to insurance carrier's settlement authority at circuit court mediation.

**Section 2:** Creates s. 44.408, F.S., relating to compelling interested third parties to attend circuit court mediation.

**Section 3:** Creates s. 44.409, F.S., relating to mediator's report.

**Section 4:** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

See Fiscal Comments, below.

##### 2. Expenditures:

See Fiscal Comments, below.

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

##### 1. Revenues:

See Fiscal Comments, below.

##### 2. Expenditures:

See Fiscal Comments, below.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate impact on the private sector. On one hand, where more parties are ordered to attend a mediation, it could delay scheduling and extend lawsuits. On the other hand, the bill could reduce the overall costs of fully resolving a case in the event the provisions of the bill result in more settlements occurring during mediation.

#### D. FISCAL COMMENTS:

The bill may reduce court expenditures in the event more lawsuits settle as a result of the provisions of the bill.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

##### 2. Other:

Art. 5 s. 2(a) - The Supreme Court has exclusive rulemaking authority with respect to judicial practice and procedural matters. The Florida Supreme Court has stated that where it "has promulgated rules that relate to practice and procedure, and a statute provides a contrary practice or procedure, the statute is unconstitutional to the extent of the conflict."<sup>14</sup> However, the rules regulating mediation practice were enacted with statutory authority<sup>15</sup> and the matters addressed by the bill may be considered substantive, not procedural.

#### B. RULE-MAKING AUTHORITY:

Not applicable.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill makes reference to a "insurance carrier's reserve on the claims" at line 26. While this term is common within the industry and thus arguably clear under the context of the bill, in order to avoid any potential confusion, a definition or reference to another source of law may act to eliminate any issues that may arise as a result of the term being used in the bill.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>14</sup> *Massey v. David*, 979 So.2d 931, 937 (Fla. 1998).

<sup>15</sup> S. 44.102(2), F.S.



1                                   A bill to be entitled  
 2       An act relating to mediation; creating s. 44.407,  
 3       F.S.; requiring an insurance carrier's representative  
 4       attending circuit court mediation to have specified  
 5       settlement authority; providing for sanctions for  
 6       failure to comply in good faith; creating s. 44.408,  
 7       F.S.; providing for third parties to be compelled to  
 8       attend mediation in circuit court in certain  
 9       circumstances; specifying that such persons may not be  
 10      required to pay a mediator's fees or costs; providing  
 11      requirements for such third parties ordered to attend;  
 12      providing for sanctions for a failure to appear;  
 13      creating s. 44.409, F.S.; providing requirements for  
 14      the contents of a mediator's report; providing an  
 15      effective date.

16  
 17   Be It Enacted by the Legislature of the State of Florida:

18  
 19       Section 1. Section 44.407, Florida Statutes, is created to  
 20      read:

21       44.407 Insurance carrier's settlement authority at circuit  
 22      court mediation.—

23       (1) An insurance carrier representative attending a  
 24      circuit court mediation must have:

25       (a) Full authority to settle up to the amount of the

26 insurance carrier's reserve on the claims subject to mediation;  
 27 and

28 (b) The ability to immediately consult during the  
 29 mediation by electronic or telephonic consultation with the  
 30 person having authority to settle above the amount of the  
 31 insurance carrier's reserve on the claims subject to mediation,  
 32 up to the applicable insurance policy limit or the amount of the  
 33 plaintiff's last demand, whichever is less.

34 (2) The person or persons consulted by the insurance  
 35 carrier representative in attendance must be available to  
 36 teleconference with the mediator at the mediator's request.

37 (3) An insurance carrier appearing for mediation that does  
 38 not comply in good faith with this section is subject to  
 39 sanctions in the same manner as a party that fails to appear  
 40 with the required settlement authority.

41 Section 2. Section 44.408, Florida Statutes, is created to  
 42 read:

43 44.408 Compelling interested third parties to attend  
 44 circuit court mediation.-

45 (1) Upon motion of any party, a court may order a third  
 46 party to attend a circuit court mediation and participate in  
 47 good faith in the mediation process if:

48 (a) The third party claims a lien or other asserted  
 49 interest in the proceeds of any funds that a party may receive  
 50 as part of a mediated settlement agreement;

51       (b) The presence of the third party can be compelled by  
 52 service of an order to appear for mediation served in the same  
 53 manner as service of process according to law; and

54       (c) The presence of the party at the mediation will  
 55 facilitate the mediation process.

56       (2) A third party ordered to attend a mediation who  
 57 appears and participates in good faith may not be compelled to  
 58 pay any portion of the mediator's fees or costs.

59       (3) The designated representative of a third party ordered  
 60 to attend a mediation who appears on behalf of the third party  
 61 must have full authority to settle the amount of the third  
 62 party's lien or other asserted interest or have the ability to  
 63 immediately consult with the person having such authority by  
 64 electronic or telephonic consultation during the mediation  
 65 conference.

66       (4) The person or persons consulted by the third party  
 67 representative in attendance must be available to teleconference  
 68 with the mediator at the mediator's request.

69       (5) A third party ordered to attend a mediation conference  
 70 who fails to appear is subject to sanctions in the same manner  
 71 as a party who fails to appear.

72       Section 3. Section 44.409, Florida Statutes, is created to  
 73 read:

74       44.409 Mediator's report.—

75       (1) Subject to subsection (2), the mediator's report to

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76 the court shall only state:

77 (a) A complete agreement was reached;

78 (b) A partial agreement was reached; or

79 (c) No agreement was reached.

80 (2) If a partial agreement was reached that eliminates

81 claims or parties from the litigation, then a list of such

82 claims and parties may be provided, but no other information may

83 be disclosed.

84 Section 4. This act shall take effect July 1, 2018.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Civil Justice & Claims  
2 Subcommittee

3 Representative Metz offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 44.408, Florida Statutes, is created to  
8 read:

9 44.408 Compelling interested third parties to attend  
10 circuit court mediation.-

11 (1) Upon motion of any party, a court may order a third  
12 party to attend a circuit court mediation and participate in the  
13 mediation process if the motion states sufficient grounds for  
14 exercising personal jurisdiction over the third party and:



Amendment No.

15       (a) The third party claims a lien or other asserted  
16 interest in the proceeds of any funds that a party may receive  
17 as part of a mediated settlement agreement;

18       (b) The presence of the third party can be compelled by  
19 service of an order to appear for mediation served in the same  
20 manner as service of process according to law; and

21       (c) The participation of the third party in the mediation  
22 will facilitate the mediation process.

23       (2) A third party or the designated representative of a  
24 third party ordered to attend a mediation may participate via  
25 telephone or videoconference unless the order expressly requires  
26 personal attendance. If participating via telephone or  
27 videoconference, a third party or the designated representative  
28 may complete and submit necessary documentation via electronic  
29 means during the mediation.

30       (3) The designated representative of a third party ordered  
31 to attend mediation who appears on behalf of the third party  
32 must either be the final decision maker regarding the third  
33 party's lien or other asserted interest or have the ability to  
34 immediately consult with the final decision maker by electronic  
35 or telephonic consultation during the mediation conference. The  
36 final decision maker consulted by the third party representative  
37 in attendance must be immediately available to teleconference  
38 with the mediator at the mediator's request.



Amendment No.

39       (4) A third party ordered to attend a mediation who  
40 complies with the order may not be compelled to pay any portion  
41 of the mediator's fees or costs.

42       (5) A third party ordered to attend a mediation who fails  
43 to comply with the order is subject to sanctions in the same  
44 manner as a party who fails to appear.

45       Section 2. This act shall take effect July 1, 2018.

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T I T L E   A M E N D M E N T

50       Remove everything before the enacting clause and insert:  
51 An act relating to mediation; creating s. 44.408, F.S.;  
52 providing for third parties to be compelled to attend mediation  
53 in circuit court in certain circumstances; specifying that such  
54 persons may not be required to pay a mediator's fees or costs;  
55 providing requirements for such third parties ordered to attend;  
56 providing for sanctions for a failure to appear; providing an  
57 effective date.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1059 Elder Abuse  
**SPONSOR(S):** Burton  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1562

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		MM MacNamara	Bond MB
2) Children, Families & Seniors Subcommittee			
3) Judiciary Committee			

**SUMMARY ANALYSIS**

A vulnerable adult is a person 18 years of age or older whose ability to perform the normal activities of daily living, or whose ability to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. Current law grants authority to the authority for the Department of Children and Families, to investigate reports of abuse, neglect or exploitation of a vulnerable adult.

HB 1059 creates a cause of action for an injunction prohibiting further exploitation and freezing the assets of the vulnerable adult and of the person alleged to be exploiting the vulnerable adult. Specifically, the bill:

- Provides definitions for the issuance of an injunction;
- Specifies individuals who may file for an injunction, provides for the proper venue to file an injunction, and provides a procedural framework for the parties and court;
- Requires the clerk of the circuit court to perform specific duties;
- Creates a sworn petition form that must be filed by individuals seeking an injunction;
- Allows the court to grant a temporary injunction under certain circumstances;
- Provides direction for effecting service of process for parties to the cause of action;
- Creates standards for the court to follow when issuing an injunction;
- Identifies forms of relief the court is allowed to grant to a vulnerable adult in issuing an injunction, including temporary and exclusive of a shared residence and the ability to freeze the assets of the vulnerable adult and those of an individual accused of exploiting the vulnerable adult;
- Requires the sheriff or a law enforcement agency to assist the court and clerks of court with specific tasks in issuing and executing an injunction;
- Creates criminal penalties for violating an injunction issued pursuant to the bill and grants law enforcement the authority to arrest an individual who has violated the terms of an injunction.

The bill may have an indeterminate fiscal impact on state and local governments.

The effective date for the bill is July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Florida is home to more than 5.2 million residents age 60 or older, and ranks first in the nation in number of residents over the age of 65.<sup>1</sup> Nationwide, life expectancies of individuals reaching the ages of 65 and 85 are increasing. However, with increasing age comes the increased likelihood of developing disabilities from chronic conditions. In 2016, 35.2% of individuals nationwide 65 years of age or older were reported to have a disability.<sup>2</sup> Moreover, in 2016, 19% of elders who participated in a study conducted by the state's Department of Elder Affairs indicated that they required assistance with activities of daily living, such as walking, bathing, and dressing.<sup>3</sup>

##### Vulnerable Adults

A large population of vulnerable adults greatly increases the pool of potential victims of abuse, neglect, or exploitation. The true incidence of abuse, neglect, or exploitation of the elderly or disabled adults is difficult to assess. While abuse, neglect, and exploitation of a vulnerable adult can take various forms, the Department of Elder Affairs has described the "Financial or Material Exploitation" of a vulnerable adult to include the following activities: "Improper use of an elder's funds, property, or assets; cashing checks without permission; forging signatures; forcing or deceiving an older person into signing a document; using an ATM/debit card without permission."<sup>4</sup>

Vulnerable adults residing in nursing homes, assisted living facilities, and adult family care homes are particularly affected by financial exploitation due to the risk of discharge or eviction because of the inability to pay for necessary care and services.<sup>5</sup> Under state and federal law, a nursing home may discharge or transfer a resident with 30 days written notice if the resident has failed, after reasonable and appropriate notice, to pay, or have paid under Medicare or Medicaid, for residence at the facility.<sup>6</sup> Assisted living facilities and adult family care homes may relocate or terminate the residency of a vulnerable adult with 45 days' notice or 30 days' notice, respectively.<sup>7</sup>

Consequently, the responsibility of caring for exploited vulnerable adults at risk of discharge or eviction may fall on various state and federal programs. In 2010, a review of 80 elder financial exploitation cases in Utah found the state's Medicaid program would potentially have to pay about \$900,000 to cover the cost of care for vulnerable adults who had suffered substantial losses due to financial exploitation.<sup>8</sup>

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<sup>1</sup>Florida Department of Elder Affairs, *2017 Summary of Programs and Services*, available at [http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2017/2017\\_SOPS\\_web.pdf](http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2017/2017_SOPS_web.pdf) (last visited January 18, 2018).

<sup>2</sup>U.S. Department of Commerce, U.S. Census Bureau, *American FactFinder, Selected Social Characteristics in the U.S.-Florida-2014 American Community Survey 1 year estimates*, available at

[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_14\\_1YR\\_S0201&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_S0201&prodType=table) (last visited January 18, 2018).

<sup>3</sup>Florida Department of Elder Affairs, *2016 Report Assessing the Needs of Elder Floridians*, available at [http://elderaffairs.state.fl.us/doea/pubs/pubs/2016\\_Assessing\\_the\\_Needs\\_of\\_Elder\\_Floridians.pdf](http://elderaffairs.state.fl.us/doea/pubs/pubs/2016_Assessing_the_Needs_of_Elder_Floridians.pdf) (last visited January 18, 2018).

<sup>4</sup>Florida Department of Elder Affairs, *The Power to Prevent Elder Abuse*, available at [http://elderaffairs.state.fl.us/doea/elderabuseprevention/Elder%20Abuse%20Brochure%20-%20English\\_web.pdf](http://elderaffairs.state.fl.us/doea/elderabuseprevention/Elder%20Abuse%20Brochure%20-%20English_web.pdf) (last visited January 18, 2018).

<sup>5</sup>Consumer Financial Protection Bureau, *We're helping long-term care facilities protect older Americans from financial exploitation*, available at, <http://www.consumerfinance.gov/blog/were-helping-long-term-care-facilities-protect-older-americans-from-financial-exploitation/> (last visited January 18, 2018).

<sup>6</sup>S. 400.022(1)(p), F.S.; 42 U.S.C. § 1396r.

<sup>7</sup>SS. 429.28(1)(k) and 429.85(1)(l), F.S.

<sup>8</sup>*Supra* at FN 5.

## Adult Protective Services Act

In 1977, the Legislature enacted the “Adult Protective Services Act,” (APSA) ch. 415, F.S., which provides statutory authority for the Department of Children and Families (DCF), to investigate reports of abuse, neglect or exploitation of a vulnerable adult. Upon a report of alleged abuse, neglect, or exploitation, an assessment of an individual’s need for protective services is initiated.

The APSA defines a “vulnerable adult” as a person 18 years of age or older whose ability to perform the normal activities of daily living, or whose ability to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.<sup>9</sup> Under the APSA, abuse, neglect, or exploitation constitutes the following conduct:

- **Abuse:**<sup>10</sup> Any willful act or threatened act by a relative, caregiver,<sup>11</sup> or household member which causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health.
- **Neglect:**<sup>12</sup> The failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. “Neglect” also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others.
- **Exploitation:**<sup>13</sup> Obtaining or using, or endeavoring to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult by a person who stands in a position of trust and confidence<sup>14</sup> with a vulnerable adult or by a person who knows or should know that the vulnerable adult lacks the capacity to consent. Exploitation may include breaches of fiduciary relationships, unauthorized taking of personal assets; misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or intentional or negligent failure to effectively use a vulnerable adult’s income and assets for the necessities required for that person’s support and maintenance.

In addition to DCF intervention and services, the APSA authorizes a vulnerable adult that has been abused, neglected, or exploited, to bring a civil action to recover actual and punitive damages against the perpetrator.<sup>15</sup> An action under s. 415.1111, F.S. may be brought within 4 years<sup>16</sup> of the injury in any court of competent jurisdiction by:

- The vulnerable adult,
- The vulnerable adult’s guardian;
- A person or organization acting on behalf of the vulnerable adult or the vulnerable adult’s guardian; or
- The personal representative of the estate of a deceased vulnerable adult.<sup>17</sup>

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<sup>9</sup> S. 415.102(28), F.S.

<sup>10</sup> S. 415.102(1), F.S.

<sup>11</sup> “Caregiver” means a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person’s guardian that a caregiver role exists. “Caregiver” includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities. s. 415.102(5), F.S.

<sup>12</sup> S. 415.102(16), F.S.

<sup>13</sup> S. 415.102(8), F.S.

<sup>14</sup> Must be done knowingly, by deception or intimidation. s. 415.102(8), F.S.

<sup>15</sup> S. 415.1111, F.S.

<sup>16</sup> S. 95.11(3)(f), F.S.

<sup>17</sup> S. 415.1111, F.S.

The prevailing party in an action under s. 415.1111, F.S., may be entitled to recover attorney fees and costs.<sup>18</sup> The action is considered an addition to and cumulative with other legal and administrative remedies available to the vulnerable adult.

Current law also provides criminal penalties for the abuse, neglect, and exploitation of elderly and disabled adults.<sup>19</sup> Under s. 825.103, F.S., a person is guilty of the "exploitation of an elderly person or disabled adult" when:

1. That person either stands in a position of trust and confidence, or has a business relationship, with an elderly person or a disabled adult and knowingly obtains or uses, or endeavors to obtain or use, the elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive that person of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult;
2. He or she obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, and he or she knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;
3. He or she, acting as the person's guardian, trustee who is an individual, or agent under a power of attorney, breaches a fiduciary duty to the elderly person or disabled adult and such breach results in an unauthorized appropriation, sale, or transfer of property;
4. That person misappropriates, misuses, or transfers without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer; or
5. He or she, acting as a caregiver or a person who stands in a position of trust and confidence with the elderly person or disabled adult, intentionally or negligently fails to effectively use an elderly person's or disabled adult's income and assets for the necessities required for that person's support and maintenance.

The term "lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property.<sup>20</sup>

If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$50,000 or more, the offender commits a felony of the first degree. If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at \$10,000 or more, but less than \$50,000, the offender commits a felony of the second degree. If the funds, assets, or property involved in the exploitation of an elderly person or disabled adult is valued at less than \$10,000, the offender commits a felony of the third degree.<sup>21</sup>

If a person is charged with financial exploitation of an elderly person or disabled adult that involves the taking of or loss of property valued at more than \$5,000 and property belonging to a victim is seized from the defendant pursuant to a search warrant, the court is required to hold an evidentiary hearing. The court must then determine, by a preponderance of the evidence, whether the defendant unlawfully obtained the victim's property. If the court finds that the property was unlawfully obtained, the court may order it returned to the victim for restitution purposes before trial.<sup>22</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> SS. 825.101-106, F.S.

<sup>20</sup> S. 825.101(7), F.S.

<sup>21</sup> S. 825.103(3), F.S.

<sup>22</sup> S. 825.103(4), F.S.

## **Effect of Bill**

### Cause of Action for Injunction

HB 1059 creates a cause of action for an injunction for protection against the exploitation of a vulnerable adult. The bill defines the term "vulnerable adult" to have the same meaning as provided in the APSA, and defines the term "exploitation" to mean the same as it does under s. 825.103, F.S. The cause of action does not require that a party be represented by an attorney, nor is a party prohibited from filing an action if another cause of action is currently pending between the parties. The bill provides that a petition can be filed by any of the following individuals:

- A vulnerable adult in imminent danger of being exploited or their guardian;
- A person or organization acting on behalf of the vulnerable adult with the consent of that person or that person's guardian; or
- A person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian.

A person's right to petition for an injunction is not affected by the fact that the person has left a residence or household to avoid exploitation of the vulnerable adult. Moreover, the petition may be filed in the circuit court in which the: Petitioner currently resides; vulnerable adult resides; respondent resides; or where the exploitation occurred.

In the event a guardianship proceeding is pending at the time of filing, then the petition must be filed in that proceeding. There is no minimum requirement of residency to petition, nor is there a requirement for actual conversation to have occurred for an injunction to be issued. Any person who offers evidence must either present the evidence under oath at a hearing at which all parties are given reasonable notice or must rely only on the sworn petition filed in the proceeding and affidavits attached to the petition. The fact that a separate order of protection is granted to each opposing party shall not be legally sufficient to deny any remedy to either party or to prove that the parties are equally at fault or equally endangered.

### Sworn Petition

A sworn petition must allege the existence of exploitation of the vulnerable adult and must include the specific facts and circumstances for which relief is sought. The bill contains a sworn petition that a party must submit, in substantially the same form. The sworn petition must contain the following general information:

- The address of the vulnerable adult;
- The address, last known place of employment, physical description, and any known aliases of the respondent;
- A description of the association between the vulnerable adult and the respondent;
- A description of any other actions pending between the parties;
- A list of the incidents of undue influence or exploitation;
- A statement that the petitioner genuinely fears imminent exploitation of the vulnerable adult by the respondent;
- The relief or protection the petitioner seeks in filing the injunction; and
- A statement that the petitioner has read every statement in the petition, that each statement is true and correct, and that the petitioner understands the statements made in the petition are made under penalty of perjury.

Upon the filing of the petition, the court is required set a hearing at the earliest possible time. The clerk of the circuit is required to furnish copies of the petition, financial affidavits, the notice of hearing, and any temporary injunction, if any, to the sheriffs or a law enforcement agencies of the county where the respondent resides or is located, as well as where the alleged victim resides or is located. The sheriff or law enforcement agency is then required to serve it upon the respondent and alleged victim as soon as

possible on any day of the week and at any time of the day or night. At the request of the sheriff, the clerk of the circuit court may transmit a facsimile copy of an injunction that has been certified by the clerk of the circuit court, and this facsimile copy may be served in the same manner as a certified copy.

Notwithstanding any other law, actual damages may be assessed in a proceeding under the bill, if the court determines that the petition was without substantial fact or legal support. Additionally, the court may require a bond prior to the entry of an injunction.

### Temporary Injunction

The bill allows a court to issue a temporary injunction prior to a full hearing on the petition. The temporary injunction cannot exceed 15 days and a full hearing is required prior to the expiration of those 15 days in the event the temporary injunction is issued. Before a court issues a temporary injunction, however, the court must find there is:

- An immediate and present danger of exploitation of the vulnerable adult exists,
- A likelihood of irreparable harm and non-availability of an adequate remedy at law,
- A substantial likelihood of success on the merits,
- Threatened injury to the vulnerable adult that outweighs the possible harm to the respondent, and
- No disservice to the public interest by granting the temporary injunction.

In a hearing for a temporary injunction, the only evidence that may be used are the verified pleadings or affidavits. A denial of a petition for temporary injunction must be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of exploitation of a vulnerable adult, the court must set a full hearing on the petition for injunction at the earliest possible time.

The court is allowed to grant any relief determined to be proper and for the protection of the vulnerable adult. The bill states that this relief may include any of the following:

- Restraining the respondent from committing any acts of exploitation;
- If the Court finds that the vulnerable adult is able to reside safely without the respondent, awarding to the vulnerable adult the temporary exclusive use and possession of the dwelling that the vulnerable adult and the respondent share, or barring the respondent from the residence of the vulnerable adult;
- Freezing any assets of the vulnerable adult in any depository or financial institution, if titled in the vulnerable adult's name only, jointly with the respondent, in guardianship in a Totten trust, in trust, or in respondent's name only;
- Restraining the respondent from committing any acts of undue influence against the vulnerable adult;
- Prohibiting the respondent from having any direct or indirect contact with the vulnerable adult; and
- Issue any injunctions or directives to law enforcement agencies the court determines to be for the protection of the vulnerable adult.

With respect to the freezing of assets, the bill provides that assets held by a guardian for the vulnerable adult may only be frozen by an order entered by the court overseeing the guardianship proceeding. Assets held by a trust may only be frozen by an order of the court if the trustees of the trust are served with process and given reasonable notice before a hearing on the petition.

The court is permitted to grant a continuance of the hearing before or during the hearing for good cause shown by any party, which must include a continuance to obtain service of process.

## Final Injunction

The bill allows for the issuance of an injunction, upon notice and hearing, when it appears to the court that:

- The vulnerable adult is a victim of exploitation or the court has reasonable cause to believe that the vulnerable adult is in imminent danger of becoming a victim of exploitation;
- There is a likelihood of irreparable harm and non-availability of an adequate remedy at law;
- There is a substantial likelihood of success on the merits;
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent; and
- Granting of a temporary injunction will not disserve the public interest.

In determining whether a petitioner has reasonable cause to believe that the vulnerable adult is in imminent danger of becoming a victim of exploitation, the court shall consider and evaluate all relevant factors, including, but not limited to the:

- Existence of a verifiable order of protection issued previously or from another jurisdiction;
- History of undue influence or exploitation by the respondent upon the vulnerable adult in the petition or any other vulnerable adult;
- History of the vulnerable adult being previously exploited or unduly influenced;
- Capacity of the vulnerable adult to make decisions related to his or her finances and property;
- Susceptibility of the vulnerable adult to undue influence; and
- Criminal history of the respondent or previous probable cause findings by the adult protective services program, if known.

The bill allows the court to grant any relief that it determines is proper for the protection and security of the vulnerable adult, including, but not limited to:

- Restraining the respondent from committing any acts of exploitation;
- Awarding to the vulnerable adult the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the vulnerable adult, if the court finds that the vulnerable adult is able to reside safely without the respondent;
- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Directing that assets under temporary freeze by injunction be returned to the vulnerable adult, or directing assets remain frozen until ownership can be determined;
- Ordering such other relief as the court deems necessary for the protection of a vulnerable adult from exploitation, including injunctions or directives to law enforcement agencies;

A temporary or final judgment on an injunction must, on its face indicate that the injunction is valid and enforceable in all counties of the state, that the court had jurisdiction over the parties and subject matter, and that reasonable notice and opportunity to be heard were given to the person against whom the order was sought. The bill also requires the final judgment to indicate on its face the date the respondent was served with the temporary or final order and a statement that law enforcement officers are allowed to use their arrest powers to enforce the terms of the injunction.

All proceedings conducted in connection with the issuance of the injunction must be recorded by electronic means. The bill also requires the court to allow an advocate from a state attorney's office, law enforcement agency, or adult protective services to be present with the petitioner or the respondent during any court proceedings or hearings related to the injunction, provided the petitioner or the respondent has made such a request and the advocate is able to be present.

## Service of Injunction

The chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency serving injunctions must use service and verification procedures consistent with those of the sheriff.

When an injunction is issued, the court may order that an officer from the appropriate law enforcement agency accompany the vulnerable adult and assist in placing the vulnerable adult in possession of the dwelling or residence, or otherwise assist in the execution or service of the injunction. A law enforcement officer must accept a copy of an injunction for protection against exploitation of a vulnerable adult, certified by the clerk of the court, from the petitioner and immediately serve it upon a respondent who has been located but not yet served. Law enforcement must also serve any injunction freezing assets on the financial institution where the assets are held, unless the court waives such requirement.

If the alleged victim is an alleged incapacitated person or incapacitated person in a guardianship matter, the sheriff is required to serve the guardian for the alleged victim, if any, with a copy of the petition, financial affidavit, notice of hearing, and temporary injunction. If there is no guardian appointed for the alleged incapacitated person or incapacitated person in a guardianship matter, or if the guardian is a respondent to the petition, the sheriff must serve the alleged incapacitated person.

All orders issued, changed, continued, extended, or vacated subsequent to the service of original documents, must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such an order in writing on the face of the original order. In the event a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk of the circuit court must note on the original petition that service was effected. If delivery at the hearing is not possible, the clerk of the circuit court is required to mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served, the clerk of the circuit court must prepare a written certification to be placed in the court file specifying the time, date, and method of service.

## Termination of Injunction

The terms of the injunction remain in effect until the injunction is modified or dissolved. The petitioner, vulnerable adult, or the respondent may move the court to modify or dissolve an injunction at any time and no specific allegations are required for modification or dissolution of the injunction. The modification or dissolution of the injunction may be granted in addition to other civil or criminal penalties.

Within 24 hours after an injunction is terminated, or otherwise rendered no longer effective, the clerk is required to notify the sheriff receiving original notification of the injunction. That agency must then, within 24 hours after receiving such notification from the clerk of the circuit court, notify the Department of Law Enforcement of such action of the court.

## Clerk of Court Duties

The bill provides various duties and responsibilities for the clerk of court in connection with assisting vulnerable adults and other parties seeking an injunction. Specifically, the bill requires the clerk of court in each county to:

- Assist petitioners in seeking injunctions for protection against exploitation of vulnerable adults and enforcement of a violation;
- Provide simplified petition forms, including instructions for completion, for the injunction, any modifications, and the enforcement of an injunction or modification;
- Ensure the petitioner's privacy to the extent practical while completing the forms for injunctions;



- Provide petitioners with a minimum of two certified copies of the order of injunction, one of which is serviceable and will inform the petitioner of the process for service and enforcement;
- Participate in training in the effective assistance of petitioners as provided or approved by the Florida Association of Court Clerks;
- Make available informational brochures on exploitation of vulnerable adults when brochures are provided by local senior centers, local aging and disability resource centers, or other state or federal agencies related to the exploitation or protection of elders or vulnerable adults;
- Distribute a statewide uniform informational brochure to petitioners at the time of filing for an injunction when such brochures become available. The brochure must include information about the effect of giving the court false information about exploitation; and
- Furnish that information to the sheriff on the respondent's or alleged victim's physical description and location as is required by the Department of Law Enforcement to comply with the verification procedures of the bill.

The clerk of the court is also required to provide a copy of all petitions filed and all orders entered to adult protective services. Adult protective services is directed to treat such petitions and orders in the same manner as a report of abuse, neglect, or exploitation of a vulnerable adult. Adult protective services must then submit to the court overseeing the proceedings on the petition, within 24 hours, the results of any previous investigations relating to the alleged victim.

The bill also prohibits the clerk of the circuit court from assessing a filing fee for petitions filed. Subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for the processing of such petitions, at the rate of \$40 per petition. The request for reimbursement must be submitted in the form and manner prescribed by the Office of the State Courts Administrator. From this reimbursement, the clerk of the circuit court must pay any law enforcement agency that served the injunction for protection against the exploitation of a vulnerable adult a fee of up to \$20, as determined by the agency.

#### Violation of an Injunction

The bill amends s. 741.31, F.S., and s. 901.15, F.S., making a violation of an injunction under the bill a first degree misdemeanor (or a third degree felony if the individual has two or more prior convictions for the violation of an injunction) and allowing law enforcement to arrest an individual, without a warrant, when there is probable cause to believe the injunction has been violated.

The bill grants the court authority to enforce a violation of an injunction for protection against the exploitation of a vulnerable adult through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a criminal violation under s. 741.31, F.S. The court may enforce the respondent's compliance with the injunction through any appropriate civil and criminal remedies, including, but not limited to, a monetary assessment or a fine. The clerk of the court is required to collect and receive such assessment or fine. On a monthly basis, the clerk is directed to transfer the moneys collected to the Department of Revenue for deposit in the Domestic Violence Trust Fund.

If the respondent is arrested by a law enforcement officer under s. 901.15(6), F.S., or for a violation of s. 741.31, F.S., the respondent must be held in custody until brought before the court as expeditiously as possible, to enforce the injunction for protection against the exploitation of a vulnerable adult and for admittance to bail in accordance with ch. 903, F.S., and the applicable rules of criminal procedure, pending a hearing.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 825.101, F.S., relating to definitions.

**Section 2:** Creates s. 825.1035, F.S., relating to injunction for protection against the exploitation of vulnerable adults.

**Section 3:** Amends s. 741.31, F.S., relating to violation of an injunction for protection against domestic violence.

**Section 4:** Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

**Section 5:** Provides an effective date of July 1, 2018.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will have an insignificant impact on state government expenditures. The Department of Revenue anticipates a minimal operational impact for the department in receiving and transferring funds under the bill.<sup>23</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate impact on local governments through the additional responsibilities imposed on the court, the clerk of court, and law enforcement agencies.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Due Process: No person shall be deprived of life, liberty or property without due process of law. The bill allows a court to freeze the assets of a respondent who has allegedly exploited a vulnerable adult. The due process clause of the United States Constitution forbids the issuance of a

<sup>23</sup> Department of Revenue, 2018 Agency Legislative Bill Analysis (January 12, 2018).

prejudgment writ<sup>24</sup> based on the plaintiff's conclusory allegations that he or she believes one of the statutory grounds exists. A writ of attachment will be upheld where the parties have an opportunity to be heard at an early hearing before the court, and the party seeking the attachment of the writ proves there is at least probable cause for the attachment.<sup>25</sup>

Title: Article III, s. 6, of the state constitution requires the subject of the law to be briefly expressed in the title. The title refers to "elder abuse," however, the substance of the bill appears to relate to the "exploitation of vulnerable adults." The elderly are only part of the group of persons classified as a vulnerable adult.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>24</sup> A prejudgment writ is used to freeze assets of a party while a legal action is pending.

<sup>25</sup> See e.g. *Unique Caterers, Inc. v. Rudy's Farm Company*, 338 So.2d 1067 (Fla. 1976).

1                                   A bill to be entitled  
 2           An act relating to elder abuse; amending s. 825.101,  
 3           F.S.; providing definitions; creating s. 825.1035,  
 4           F.S.; creating a cause of action for an injunction for  
 5           protection of a vulnerable adult from exploitation;  
 6           providing for standing to file a petition for an  
 7           injunction; providing that an injunction may be sought  
 8           regardless of any other action that may be pending  
 9           between specified parties; specifying that the right  
 10          to petition for an injunction is not affected by the  
 11          vulnerable adult's vacation of his or her residence or  
 12          household for certain purposes; providing that parties  
 13          to an injunction may not be required to be represented  
 14          by an attorney; providing for award of damages;  
 15          providing for the submission of evidence or  
 16          recommendations to the court; providing construction;  
 17          providing for venue; prohibiting the clerk of the  
 18          circuit court from assessing a filing fee under  
 19          certain circumstances; subject to the appropriation of  
 20          funds, authorizing the clerk of the circuit court to  
 21          request a reimbursement for such petitions; requiring  
 22          the clerk of the circuit court to reimburse law  
 23          enforcement agency up to a specified amount from such  
 24          reimbursement; prohibiting the court from requiring a

25 | bond for the entry of the injunction; requiring the  
26 | clerk of the circuit court to assist the petitioner in  
27 | filing an injunction or petition by providing certain  
28 | forms and instructions; requiring the clerk of court  
29 | to ensure the petitioner's privacy; requiring the  
30 | clerk of court to provide the petitioners with  
31 | certified copies of the injunction order; requiring  
32 | that the clerks of the court and appropriate staff  
33 | receive certain training; requiring that the clerk of  
34 | the circuit court make available certain informational  
35 | brochures and create and distribute a specified  
36 | brochure containing specified information to the  
37 | petitioner at the time of filing for an injunction;  
38 | requiring a sworn petition to contain certain  
39 | allegations and statements; requiring the court to set  
40 | a hearing at a certain time; requiring the respondent  
41 | to be personally served with certain documents before  
42 | the hearing; authorizing the court to grant a  
43 | temporary injunction ex parte under certain  
44 | circumstances; prohibiting the use of evidence other  
45 | than verified pleadings or affidavits in an ex parte  
46 | hearing; providing an exception; requiring the court  
47 | to follow certain procedures when issuing an order  
48 | denying a petition for an ex parte injunction;

49 prohibiting an ex parte temporary injunction from  
50 having a duration longer than a specified number of  
51 days; requiring that a full hearing be set for a date  
52 no later than the date the temporary injunction  
53 expires; authorizing continuance for good cause;  
54 requiring that an injunction be extended under certain  
55 circumstances; authorizing the court to grant  
56 specified relief under certain circumstances;  
57 providing factors that a court must consider when  
58 determining reasonable cause; requiring that the terms  
59 of certain injunctions remain in effect until modified  
60 or dissolved; authorizing motions to modify or  
61 dissolve an injunction; requiring that a temporary or  
62 final judgment on an injunction meet certain  
63 requirements; requiring that certain proceedings be  
64 recorded; requiring that the court allow certain  
65 advocates to be present under certain circumstances;  
66 providing requirements and options for service of  
67 process; requiring that the clerk of the circuit court  
68 deliver a certified copy of certain orders meeting  
69 certain criteria to the parties under certain  
70 circumstances; providing options for noting the  
71 service was effective; requiring that the clerk of the  
72 circuit court place a written certification in the

73 court file and notify the sheriff under certain  
 74 circumstances; requiring that the clerk of the circuit  
 75 court, law enforcement officers, and sheriffs follow  
 76 certain procedures within a certain timeframe after an  
 77 injunction has been issued or an injunction becomes  
 78 ineffective; providing options for enforcing and  
 79 prosecuting a violation of an injunction; requiring  
 80 that the clerk of the circuit court collect any  
 81 assessment or fine for deposit into a specified trust  
 82 fund; requiring that a respondent held in custody  
 83 after an arrest for violating an injunction be brought  
 84 before the court as expeditiously as possible;  
 85 authorizing motions to modify or dissolve an  
 86 injunction; amending ss. 741.31 and 901.15, F.S.;  
 87 conforming provisions to changes made by the act;  
 88 providing an effective date.

89

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

91

92 Section 1. Present subsections (6) through (12) of  
 93 section 825.101, Florida Statutes, are renumbered as subsections  
 94 (7) through (13), respectively, and a new subsection (6) and  
 95 subsection (14) are added to that section, to read:

96 825.101 Definitions.—As used in this chapter:

97           (6) "Exploitation" has the same meaning as the term  
 98 "exploitation of an elderly person or disabled adult" as  
 99 provided in s. 825.103(1).

100           (14) "Vulnerable adult" has the same meaning as provided  
 101 in s. 415.102.

102           Section 2. Section 825.1035, Florida Statutes, is created  
 103 to read:

104           825.1035 Injunction for protection against the  
 105 exploitation of vulnerable adults.-

106           (1) There is created a cause of action for an injunction  
 107 for protection against the exploitation of a vulnerable adult.

108           (a) Any person described in paragraph (d) has standing in  
 109 the circuit court to file a sworn petition for an injunction for  
 110 protection against exploitation of a vulnerable adult.

111           (b) This cause of action for an injunction may be sought  
 112 whether any other cause of action is currently pending between  
 113 the parties. However, the pendency of any such cause of action  
 114 shall be alleged in the petition.

115           (c) A person's right to petition for an injunction may  
 116 not be affected by the person having left a residence or  
 117 household to avoid exploitation of the vulnerable adult.

118           (d) This cause of action for an injunction against  
 119 exploitation of a vulnerable adult may be brought by a  
 120 vulnerable adult in imminent danger of being exploited, or by



121 that person's guardian, by a person or organization acting on  
122 behalf of the vulnerable adult with the consent of that person  
123 or that person's guardian, or by a person who simultaneously  
124 files a petition for determination of incapacity and appointment  
125 of an emergency temporary guardian with respect to the  
126 vulnerable adult.

127 (e) This cause of action for an injunction does not  
128 require that any party be represented by an attorney.

129 (f) Notwithstanding any other law, actual damages may be  
130 assessed in a proceeding under this section, if found that the  
131 petition was without substantial fact or legal support.

132 (g) Any person who offers evidence relating to the cause  
133 of action must either present the evidence under oath at a  
134 hearing at which all parties are given reasonable notice or must  
135 rely only on the sworn petition filed in the proceeding and  
136 affidavits attached to the petition.

137 (h) Nothing in this section shall affect the title to any  
138 real estate.

139 (i) Notwithstanding chapter 47, a petition for an  
140 injunction for protection against exploitation of a vulnerable  
141 adult may be filed in the circuit in which the petitioner  
142 currently resides, the vulnerable adult resides, the respondent  
143 resides, or the exploitation occurred. There is no minimum  
144 requirement of residency to petition for an injunction for

145 protection. There is no requirement for actual conversion to  
146 have occurred for an injunction to be issued. If a proceeding  
147 under chapter 744 is pending at the time of filing concerning  
148 the vulnerable adult, the petition must be filed in that  
149 proceeding.

150 (2) (a) Notwithstanding any other provision of law, the  
151 clerk of the circuit court may not assess a filing fee for  
152 petitions filed under this section. Subject to legislative  
153 appropriation, the clerk of the circuit court may, on a  
154 quarterly basis, submit to the Office of the State Courts  
155 Administrator a certified request for reimbursement for the  
156 processing of such petitions, at the rate of \$40 per petition.  
157 The request for reimbursement must be submitted in the form and  
158 manner prescribed by the Office of the State Courts  
159 Administrator. From this reimbursement, the clerk of the circuit  
160 court shall pay any law enforcement agency that served the  
161 injunction for protection against the exploitation of a  
162 vulnerable adult a fee of up to \$20, as determined by the  
163 agency.

164 (b) The court may require a bond for the entry of an  
165 injunction.

166 (c)1. The clerk of the court shall assist petitioners in  
167 seeking injunctions for protection against exploitation of  
168 vulnerable adults and enforcement of a violation thereof as

169 specified in this section.

170 2. All offices of the clerk of the court shall provide  
 171 simplified petition forms for the injunction, any modifications,  
 172 and the enforcement thereof, including instructions for  
 173 completion.

174 3. There is no filing fee for the filing, as provided in  
 175 paragraph (a).

176 4. The clerk of the court shall ensure the petitioner's  
 177 privacy to the extent practical while completing the forms for  
 178 injunctions for protections against exploitation of a vulnerable  
 179 adult.

180 5. The clerk of the court shall provide petitioners with  
 181 a minimum of two certified copies of the order of injunction,  
 182 one of which is serviceable and will inform the petitioner of  
 183 the process for service and enforcement.

184 6. Clerks of court and appropriate staff in each county  
 185 shall receive training in the effective assistance of  
 186 petitioners as provided or approved by the Florida Association  
 187 of Court Clerks.

188 7. The clerk of the court in each county shall make  
 189 available informational brochures on exploitation of vulnerable  
 190 adults when such brochures are provided by local senior centers,  
 191 local aging and disability resource centers, or other state or  
 192 federal agencies related to the exploitation or protection of

193 elders or vulnerable adults.

194 8. The clerk of the court in each county shall distribute  
 195 a statewide uniform informational brochure to petitioners at the  
 196 time of filing for an injunction for protection against  
 197 exploitation of vulnerable adults when such brochures become  
 198 available. The brochure must include information about the  
 199 effect of giving the court false information about exploitation.

200 (3) (a) A sworn petition must allege the existence of  
 201 exploitation of the vulnerable adult and must include the  
 202 specific facts and circumstances for which relief is sought.

203 (b) The sworn petition must be in substantially the  
 204 following form:

205  
 206 PETITION FOR INJUNCTION

207 FOR PROTECTION AGAINST EXPLOITATION OF A VULNERABLE ADULT

208  
 209 Before me, the undersigned authority, personally appeared  
 210 Petitioner ... (Name) ..., who has been sworn and says that the  
 211 following statements are true:

212 1. The vulnerable adult resides at: ... (address) ...  
 213 (The petitioner may furnish the address to the court in a  
 214 separate confidential filing if, for safety reasons, the  
 215 petitioner requires that the location of the current residence  
 216 be confidential.)

217 2. The respondent resides at: ...(last known address)...

218 3. The respondent's last known place of employment is:

219 ...(name of business and address)...

220 4. Physical description of the respondent:....

221 Race....

222 Sex....

223 Date of birth....

224 Height....

225 Weight....

226 Eye color....

227 Hair color....

228 Distinguishing marks or scars....

229 5. Aliases of the respondent:....

230 6. The respondent is associated with the vulnerable adult

231 as follows:....

232 7. The following describes any other cause of action  
 233 currently pending between the petitioner and the respondent,  
 234 including any proceeding under chapter 744, Florida Statutes,  
 235 concerning the vulnerable adult and any previous or pending  
 236 attempts by the petitioner to obtain an injunction for  
 237 protection against the exploitation of the vulnerable adult in  
 238 this or any other circuit; related case numbers, if available;  
 239 and the results of any such attempts:

240 8. The petitioner knows the vulnerable adult is either a

241 victim of exploitation or the petitioner has reasonable cause to  
 242 believe the vulnerable adult is in imminent danger of becoming a  
 243 victim of exploitation because the respondent has:....(describe  
 244 in the spaces below the incidents of undue influence or  
 245 exploitation) ....

246 9. The petitioner genuinely fears imminent exploitation  
 247 of the vulnerable adult by the respondent.

248 10. The petitioner seeks an injunction for protection of  
 249 a vulnerable adult, including: ...(mark appropriate section or  
 250 sections)....

251 ....Prohibiting the respondent from having any direct or  
 252 indirect contact with the vulnerable adult.

253 ....Immediately restraining the respondent from committing  
 254 any acts of exploitation or exercising undue influence against  
 255 the vulnerable adult.

256 ....Freezing the assets of the vulnerable adult held at  
 257 ...(name and address of financial institution)... even if titled  
 258 jointly with the respondent, or in the respondent's name only,  
 259 in the court's discretion.

260 ....Providing any terms the court deems necessary for the  
 261 protection of the vulnerable adult or his or her assets,  
 262 including any injunctions or directives to law enforcement  
 263 agencies.

264

265 (c) Each petition for an injunction for protection  
 266 against the exploitation of a vulnerable adult must contain,  
 267 directly above the signature line, a statement in all capital  
 268 letters and bold type not smaller than the surrounding text, as  
 269 follows:

271 I HAVE READ EVERY STATEMENT MADE IN  
 272 THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT.  
 273 I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION  
 274 ARE BEING MADE UNDER PENALTY OF PERJURY PUNISHABLE AS  
 275 PROVIDED IN SECTION 837.02, FLORIDA STATUTES.

276 ...(initials)...

277  
 278 (4) Upon the filing of the petition, the court shall set  
 279 a hearing to be held at the earliest possible time. The  
 280 respondent shall be personally served with a copy of the  
 281 petition, notice of hearing, and temporary injunction, if any,  
 282 before the hearing.

283 (5) (a) If it appears to the court that an immediate and  
 284 present danger of exploitation of the vulnerable adult exists;  
 285 there is a likelihood of irreparable harm and non-availability  
 286 of an adequate remedy at law; a substantial likelihood of  
 287 success on the merits; the threatened injury to the vulnerable  
 288 adult outweighs possible harm to respondent; and the granting of

289 a temporary injunction will not disserve the public interest;  
 290 the court may grant a temporary injunction ex parte, pending a  
 291 full hearing, and may grant such relief as the court deems  
 292 proper, including injunctions doing any of the following:

293 1. Restraining the respondent from committing any acts of  
 294 exploitation.

295 2. If the Court finds that the vulnerable adult is able  
 296 to reside safely without the respondent, awarding to the  
 297 vulnerable adult the temporary exclusive use and possession of  
 298 the dwelling that the vulnerable adult and the respondent share,  
 299 or barring the respondent from the residence of the vulnerable  
 300 adult.

301 3. Freezing any assets of the vulnerable adult in any  
 302 depository or financial institution, if titled in the vulnerable  
 303 adult's name only, jointly with the respondent, in guardianship  
 304 in a Totten trust, in trust, or in respondent's name only.

305 a. Assets held by a guardian for the vulnerable adult may  
 306 only be frozen by an order entered by the court overseeing the  
 307 guardianship proceeding.

308 b. Assets held by a trust may only be frozen by an order  
 309 of the court if the trustees of the trust are served with  
 310 process in compliance with Florida Rule of Civil Procedure 1.070  
 311 and are given reasonable notice before any hearing on the  
 312 petition.



313 4. Restraining the respondent from committing any acts of  
 314 undue influence against the vulnerable adult.

315 5. Prohibiting the respondent from having any direct or  
 316 indirect contact with the vulnerable adult.

317 6. Providing any other relief the court determines for  
 318 the vulnerable adult's protection, and any injunctions or  
 319 directives to law enforcement agencies.

320 (b) Except as provided in s. 90.204, in a hearing ex  
 321 parte for the purpose of obtaining an ex parte temporary  
 322 injunction, no evidence other than verified pleadings or  
 323 affidavits may be used as evidence. A denial of a petition for  
 324 an ex parte injunction must be by written order noting the legal  
 325 grounds for denial. When the only ground for denial is no  
 326 appearance of an immediate and present danger of exploitation of  
 327 a vulnerable adult, the court must set a full hearing on the  
 328 petition for injunction at the earliest possible time. Nothing  
 329 in this paragraph affects a petitioner's right to promptly amend  
 330 any petition, or otherwise be heard in person on any petition  
 331 consistent with the Florida Rules of Civil Procedure.

332 (c) An ex parte temporary injunction may be effective for  
 333 a fixed period not to exceed 15 days. A full hearing, as  
 334 provided by this section, must be set for a date no later than  
 335 the date when the temporary injunction ceases to be effective.  
 336 The court may grant a continuance of the hearing before or

337 during the hearing for good cause shown by any party, which must  
 338 include a continuance to obtain service of process.

339 (6) (a) 1. Upon notice and hearing, when it appears to the  
 340 court that:

341 a. The vulnerable adult is a victim of exploitation or  
 342 the court has reasonable cause to believe that the vulnerable  
 343 adult is in imminent danger of becoming a victim of  
 344 exploitation;

345 b. There is a likelihood of irreparable harm and non-  
 346 availability of an adequate remedy at law;

347 c. There is a substantial likelihood of success on the  
 348 merits;

349 d. The threatened injury to the vulnerable adult  
 350 outweighs possible harm to the respondent; and

351 e. Granting of a temporary injunction will not disserve  
 352 the public interest,

353  
 354 the court may grant such relief as the court deems proper.

355 2. Proper relief under paragraph (a) may include an  
 356 injunction:

357 a. Restraining the respondent from committing any acts of  
 358 exploitation.

359 b. If the court finds that the vulnerable adult is able  
 360 to reside safely without the respondent, awarding to the

361 vulnerable adult the exclusive use and possession of the  
 362 dwelling that the parties share or excluding the respondent from  
 363 the residence of the vulnerable adult.

364 c. Ordering the respondent to participate in treatment,  
 365 intervention, or counseling services to be paid for by the  
 366 respondent.

367 d. Directing that assets under temporary freeze by  
 368 injunction be returned to the vulnerable adult, or directing  
 369 assets remain frozen until ownership can be determined.

370 e. Restraining respondent from exploiting the vulnerable  
 371 adult.

372 f. Ordering such other relief as the court deems  
 373 necessary for the protection of a vulnerable adult from  
 374 exploitation, including injunctions or directives to law  
 375 enforcement agencies, as provided in this section.

376 (b) In determining whether a petitioner has reasonable  
 377 cause to believe that the vulnerable adult is in imminent danger  
 378 of becoming a victim of exploitation, the court shall consider  
 379 and evaluate all relevant factors, including, but not limited  
 380 to, any of the following:

381 1. The existence of a verifiable order of protection  
 382 issued previously or from another jurisdiction.

383 2. History of undue influence or exploitation by the  
 384 respondent upon the vulnerable adult in the petition or any

385 other vulnerable adult.

386 3. History of the vulnerable adult being previously  
 387 exploited or unduly influenced.

388 4. The capacity of the vulnerable adult to make decisions  
 389 related to his or her finances and property.

390 5. Susceptibility of the vulnerable adult to undue  
 391 influence.

392 6. Criminal history of the respondent or previous  
 393 probable cause findings by the adult protective services  
 394 program, if known.

395

396 In making its determination under this paragraph, the court is  
 397 not limited to those factors enumerated in subparagraphs 1.-6.

398 (c) The terms of an injunction restraining the respondent  
 399 as provided in paragraph (a) remain in effect until the  
 400 injunction is modified or dissolved. Either party may move at  
 401 any time to modify or dissolve the injunction. No specific  
 402 allegations are required for modification or dissolution of the  
 403 injunction, which may be granted in addition to other civil or  
 404 criminal penalties.

405 (d) A temporary or final judgment on an injunction must,  
 406 on its face, indicate:

407 1. That the injunction is valid and enforceable in all  
 408 counties of this state.

409           2. That law enforcement officers may use their arrest  
410 powers pursuant to s. 901.15(6) to enforce the terms of the  
411 injunction.

412           3. That the court had jurisdiction over the parties and  
413 subject matter under state law and that reasonable notice and  
414 opportunity to be heard were given to the person against whom  
415 the order was sought, in a manner that was sufficient to protect  
416 that person's right to due process.

417           4. The date the respondent was served with the temporary  
418 or final order, if obtainable.

419           (e) The fact that a separate order of protection is  
420 granted to each opposing party shall not be legally sufficient  
421 to deny any remedy to either party or to prove that the parties  
422 are equally at fault or equally endangered.

423           (f) All proceedings conducted pursuant to this subsection  
424 must be recorded. Recording may be by electronic means as  
425 provided by the Rules of Judicial Administration.

426           (7) The court must allow an advocate from a state  
427 attorney's office, law enforcement agency, or adult protective  
428 services to be present with the petitioner or the respondent  
429 during any court proceedings or hearings related to the  
430 injunction, provided the petitioner or the respondent has made  
431 such a request and the advocate is able to be present.

432           (8) (a) 1. The clerk of the circuit court shall furnish a

433 copy of the petition, financial affidavit, the notice of  
434 hearing, and any temporary injunction, if any, to the sheriff or  
435 a law enforcement agency of the county where the respondent  
436 resides or can be found, who shall serve it upon the respondent  
437 as soon thereafter as possible on any day of the week and at any  
438 time of the day or night. At the request of the sheriff, the  
439 clerk of the circuit court may transmit a facsimile copy of an  
440 injunction that has been certified by the clerk of the circuit  
441 court, and this facsimile copy may be served in the same manner  
442 as a certified copy.

443 2. The clerk of the court shall furnish a copy of the  
444 petition, financial affidavit, notice of hearing, and temporary  
445 injunction, if any, to the sheriff or a law enforcement agency  
446 of the county where the alleged victim resides or can be found,  
447 who shall serve it upon the alleged victim as soon thereafter as  
448 possible on any day of the week and at any time of the day or  
449 night. When requested by the sheriff, the clerk of the court may  
450 transmit a facsimile copy of an injunction that has been  
451 certified by the clerk of the court, and this facsimile copy may  
452 be served in the same manner as a certified copy. Upon receiving  
453 a facsimile copy, the sheriff must verify receipt with the  
454 sender before attempting to serve it upon the alleged victim. In  
455 addition, if the sheriff is in possession of an injunction for  
456 protection that has been certified by the clerk of the court,

457 the sheriff may transmit a facsimile copy of that injunction to  
 458 a law enforcement officer who shall serve it in the same manner  
 459 as a certified copy.

460 3. When an injunction is issued, the court may order that  
 461 an officer from the appropriate law enforcement agency accompany  
 462 the vulnerable adult and assist in placing the vulnerable adult  
 463 in possession of the dwelling or residence, or otherwise assist  
 464 in the execution or service of the injunction. A law enforcement  
 465 officer shall accept a copy of an injunction for protection  
 466 against exploitation of a vulnerable adult, certified by the  
 467 clerk of the court, from the petitioner and immediately serve it  
 468 upon a respondent who has been located but not yet served. Law  
 469 enforcement shall also serve any injunction freezing assets on  
 470 the financial institution where the assets subject to  
 471 dissipation are held unless the court waives such requirement.

472 4. Upon receiving a facsimile copy, the sheriff must  
 473 verify receipt with the sender before attempting to serve it  
 474 upon the respondent. If the sheriff is in possession of an  
 475 injunction that has been certified by the clerk of the circuit  
 476 court, the sheriff may transmit a facsimile copy of that  
 477 injunction to a law enforcement officer who shall serve it in  
 478 the same manner as a certified copy.

479 5. The clerk of the court shall be responsible for  
 480 furnishing to the sheriff such information on the respondent's

481 or alleged victim's, as appropriate, physical description and  
482 location as is required by the Department of Law Enforcement to  
483 comply with the verification procedures of this section for  
484 service under subparagraph 1. or subparagraph 2.

485 6. Notwithstanding any other provision of law, the chief  
486 judge of each circuit, in consultation with the appropriate  
487 sheriff, may authorize a law enforcement agency within the  
488 jurisdiction to effect service. A law enforcement agency serving  
489 injunctions pursuant to this section shall use service and  
490 verification procedures consistent with those of the sheriff.

491 7. If the alleged victim is an alleged incapacitated  
492 person or incapacitated person in a guardianship matter, the  
493 sheriff shall serve the guardian for the alleged victim, if any,  
494 with a copy of the petition, financial affidavit, notice of  
495 hearing, and temporary injunction, if any. If there is no  
496 guardian appointed for the alleged incapacitated person or  
497 incapacitated person in a guardianship matter, or if the  
498 guardian is a respondent to the petition, the sheriff shall  
499 serve the alleged incapacitated person as provided in this  
500 paragraph.

501 8. All orders issued, changed, continued, extended, or  
502 vacated subsequent to the original service of documents  
503 enumerated under subparagraph 1., shall be certified by the  
504 clerk of the court and delivered to the parties at the time of



505 the entry of the order. The parties may acknowledge receipt of  
506 such an order in writing on the face of the original order. In  
507 the event the a party fails or refuses to acknowledge the  
508 receipt of a certified copy of an order, the clerk of the  
509 circuit court must note on the original petition that service  
510 was effected. If delivery at the hearing is not possible, the  
511 clerk of the circuit court shall mail certified copies of the  
512 order to the parties at the last known address of each party.  
513 Service by mail is complete upon mailing. When an order is  
514 served pursuant to this subparagraph the clerk of the circuit  
515 court shall prepare a written certification to be placed in the  
516 court file specifying the time, date, and method of service.

517 (b)1. Within 24 hours after the court issues an  
518 injunction for protection against exploitation of a vulnerable  
519 adult or changes, continues, extends, or vacates such an  
520 injunction, the clerk of the circuit court must forward a  
521 certified copy of the injunction to the sheriff with  
522 jurisdiction over the residence of the vulnerable adult for  
523 service.

524 2. Within 24 hours after service of an injunction for  
525 protection against exploitation of a vulnerable adult upon a  
526 respondent, the person who served the injunction must forward  
527 the written proof of service to the sheriff with jurisdiction  
528 over the residence of the vulnerable adult.

529       3. Within 24 hours after the sheriff receives a certified  
530 copy of the injunction for protection against exploitation of a  
531 vulnerable adult, the sheriff must make information related to  
532 the injunction available to other law enforcement agencies by  
533 electronically transmitting such information to the Department  
534 of Law Enforcement.

535       4. Within 24 hours after the sheriff or other law  
536 enforcement officer has made service upon the respondent and the  
537 sheriff has been so notified, the sheriff must make information  
538 relating to the service available to other law enforcement  
539 agencies by electronically transmitting such information to the  
540 Department of Law Enforcement.

541       5. Within 24 hours after an injunction for protection  
542 against the exploitation of a vulnerable adult is terminated, or  
543 otherwise rendered no longer effective by ruling of the court,  
544 the clerk of the circuit court must notify the sheriff receiving  
545 original notification of the injunction as provided in  
546 subparagraph 2. That agency shall, within 24 hours after  
547 receiving such notification from the clerk of the circuit court,  
548 notify the Department of Law Enforcement of such action of the  
549 court.

550       (c) The clerk of the court shall provide a copy of all  
551 petitions filed pursuant to this section and all orders entered  
552 thereon to adult protective services who shall treat such

553 petitions and orders in the same manner as a report of abuse,  
554 neglect, or exploitation of a vulnerable adult. Adult protective  
555 services shall submit to the court overseeing the proceedings on  
556 the petition, within 24 hours, the results of any previous  
557 investigations relating to the alleged victim.

558 (9) (a) The court may enforce a violation of an injunction  
559 for protection against the exploitation of a vulnerable adult  
560 through a civil or criminal contempt proceeding, or the state  
561 attorney may prosecute it as a criminal violation under s.  
562 741.31. The court may enforce the respondent's compliance with  
563 the injunction through any appropriate civil and criminal  
564 remedies, including, but not limited to, a monetary assessment  
565 or a fine. The clerk of the court shall collect and receive such  
566 assessment or fine. On a monthly basis, the clerk shall transfer  
567 the moneys collected pursuant to this paragraph to the  
568 Department of Revenue for deposit in the Domestic Violence Trust  
569 Fund established in s. 741.01.

570 (b) If the respondent is arrested by a law enforcement  
571 officer under s. 901.15(6) or for a violation of s. 741.31, the  
572 respondent must be held in custody until brought before the  
573 court as expeditiously as possible, to enforce the injunction  
574 for protection against the exploitation of a vulnerable adult  
575 and for admittance to bail in accordance with chapter 903 and  
576 the applicable rules of criminal procedure, pending a hearing.

577           (10) The petitioner, vulnerable adult, or the respondent  
 578 may move the court to modify or dissolve an injunction at any  
 579 time.

580           Section 3. Paragraphs (a) and (c) of subsection (4) of  
 581 section 741.31, Florida Statutes, are amended to read:

582           741.31 Violation of an injunction for protection against  
 583 domestic violence.—

584           (4) (a) A person who willfully violates an injunction for  
 585 protection against domestic violence issued pursuant to s.  
 586 741.30, ~~or~~ a foreign protection order accorded full faith and  
 587 credit pursuant to s. 741.315, or an injunction for protection  
 588 against the exploitation of vulnerable adults under s. 825.1035,  
 589 by:

590           1. Refusing to vacate the dwelling that the parties  
 591 share;

592           2. Going to, or being within 500 feet of, the  
 593 petitioner's residence, school, place of employment, or a  
 594 specified place frequented regularly by the petitioner and any  
 595 named family or household member;

596           3. Committing an act of domestic violence against the  
 597 petitioner;

598           4. Committing any other violation of the injunction  
 599 through an intentional unlawful threat, word, or act to do  
 600 violence to the petitioner;

601           5. Telephoning, contacting, or otherwise communicating  
 602 with the petitioner directly or indirectly, unless the  
 603 injunction specifically allows indirect contact through a third  
 604 party;

605           6. Knowingly and intentionally coming within 100 feet of  
 606 the petitioner's motor vehicle, whether or not that vehicle is  
 607 occupied;

608           7. Defacing or destroying the petitioner's personal  
 609 property, including the petitioner's motor vehicle; ~~or~~

610           8. Refusing to surrender firearms or ammunition if  
 611 ordered to do so by the court, or

612           9. Violating the terms of an injunction for protection  
 613 against the exploitation of a vulnerable adult

614  
 615 commits a misdemeanor of the first degree, punishable as  
 616 provided in s. 775.082 or s. 775.083, except as provided in  
 617 paragraph (c).

618           (c) A person who has two or more prior convictions for  
 619 violation of an injunction, ~~or~~ foreign protection order, or an  
 620 injunction for protection against the exploitation of a  
 621 vulnerable adult, and who subsequently commits a violation of  
 622 any such injunction or ~~foreign protection~~ order against the same  
 623 victim, commits a felony of the third degree, punishable as  
 624 provided in s. 775.082, s. 775.083 or s. 775.084. For purposes

625 of this paragraph, the term "conviction" means a determination  
 626 of guilt which is the result of a plea or a trial, regardless of  
 627 whether adjudication is withheld or a plea of nolo contendere is  
 628 entered.

629 Section 4. Subsection (6) of section 901.15, Florida  
 630 Statutes, is amended to read:

631 901.15 When arrest by officer without warrant is lawful.—  
 632 A law enforcement officer may arrest a person without a warrant  
 633 when:

634 (6) There is probable cause to believe that the person  
 635 has committed a criminal act according to s. 790.233 or  
 636 according to s. 741.31 or s. 784.047 which violates an  
 637 injunction for protection entered pursuant to s. 741.30, ~~or~~ s.  
 638 784.046, or s. 825.1035 or a foreign protection order accorded  
 639 full faith and credit pursuant to s. 741.315, over the objection  
 640 of the petitioner, if necessary.

641 Section 5. This act shall take effect July 1, 2018.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Civil Justice & Claims  
 2 Subcommittee  
 3 Representative Burton offered the following:  
 4

**Amendment (with title amendment)**

5  
 6 Remove everything after the enacting clause and insert:  
 7 Section 1. Present subsections (6) through (12) of section  
 8 825.101, Florida Statutes, are redesignated as subsections (7)  
 9 through (13), respectively, and a new subsection (6) and  
 10 subsection (14) are added to that section, to read:

11 825.101 Definitions.—As used in this chapter:

12 (6) "Exploitation" has the same meaning as the term  
 13 "exploitation of an elderly person or disabled adult" as defined  
 14 in s. 825.103(1).

15 (14) "Vulnerable adult" has the same meaning as in s.  
 16 415.102.



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17 Section 2. Section 825.1035, Florida Statutes, is created  
18 to read:

19 825.1035 Injunction for protection against exploitation of  
20 a vulnerable adult.-

21 (1) INJUNCTION CREATED.-There is created a cause of action  
22 for an injunction for protection against the exploitation of a  
23 vulnerable adult.

24 (2) WHO MAY FILE; VENUE; RECORDING.-

25 (a) The cause of action for an injunction may be sought  
26 by:

27 1. A vulnerable adult in imminent danger of being  
28 exploited;

29 2. The guardian of a vulnerable adult in imminent danger  
30 of being exploited;

31 3. A person or organization acting on behalf of the  
32 vulnerable adult with the consent of the vulnerable adult or his  
33 or her guardian; or

34 4. A person who simultaneously files a petition for  
35 determination of incapacity and appointment of an emergency  
36 temporary guardian with respect to the vulnerable adult.

37 (b) A sworn petition for an injunction for protection  
38 against the exploitation of a vulnerable adult may be filed  
39 regardless of whether any other cause of action is currently  
40 pending between either the petitioner and the respondent or the  
41 vulnerable adult and the respondent. However, the pendency of





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42 any such cause of action shall be noted in the petition.

43 (c) A person temporarily or permanently vacating a  
44 residence or household in an attempt to avoid exploitation does  
45 not affect his or her right to petition for an injunction.

46 (d) Parties to an injunction for protection against the  
47 exploitation of a vulnerable adult may not be required to be  
48 represented by an attorney.

49 (e) There is no minimum requirement of residency to  
50 petition for an injunction for protection against the  
51 exploitation of a vulnerable adult. It is not required as a  
52 prerequisite of filing a petition for or issuance of an  
53 injunction under this section for exploitation to have already  
54 occurred.

55 (f) If a proceeding concerning the vulnerable adult under  
56 chapter 744 is pending at the time of the filing, the petition  
57 must be filed in that proceeding. Otherwise, a petition for an  
58 injunction for protection against the exploitation of a  
59 vulnerable adult may only be filed in the circuit where the  
60 vulnerable adult resides.

61 (g) All proceedings conducted pursuant to this subsection  
62 must be recorded. Recording may be by electronic means as  
63 provided by court rule.

64 (3) FORM OF PETITION.—

65 (a) A sworn petition filed under this section must allege  
66 the existence of exploitation, or the imminent exploitation, of



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67 the vulnerable adult and must include the specific facts and  
68 circumstances for which relief is sought. The sworn petition  
69 must be in substantially the following form:

71 PETITION FOR INJUNCTION

72 FOR Protection against the exploitation of a vulnerable adult

73  
74 Before me, the undersigned authority, personally appeared  
75 Petitioner ...(Name)..., who has been sworn and says that the  
76 following statements are true:

77 1. The vulnerable adult resides at: ...(address)...

78 2. The respondent resides at: ...(last known address)....

79 3. The respondent's last known place of employment is:  
80 ...(name of business and address)....

81 4. Physical description of the respondent: ....

82 Race....

83 Sex....

84 Date of birth....

85 Height....

86 Weight....

87 Eye color....

88 Hair color....

89 Distinguishing marks or scars....

90 5. Aliases of the respondent: ....

91 6. The respondent is associated with the vulnerable adult



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92 as follows: ....

93 7. The following describes any other cause of action  
94 currently pending between the petitioner and the respondent, any  
95 proceeding under chapter 744 concerning the vulnerable adult,  
96 and any previous or pending attempts by the petitioner to obtain  
97 an injunction for protection against exploitation of the  
98 vulnerable adult in this or any other circuit; related case  
99 numbers, if available; and the results of any such attempts:

100

101 8. The following describes the petitioner's knowledge of  
102 any reports made to a government agency, including, but not  
103 limited to, the Department of Elderly Affairs, the Department of  
104 Children and Families, and the adult protective services program  
105 relating to the abuse, neglect, or exploitation of the  
106 vulnerable adult; any investigations performed by a government  
107 agency relating to abuse, neglect, or exploitation of the  
108 vulnerable adult; and the results of any such reports or  
109 investigations:

110

111 9. The petitioner knows the vulnerable adult is either a  
112 victim of exploitation or the petitioner has reasonable cause to  
113 believe the vulnerable adult is, or is in imminent danger of  
114 becoming, a victim of exploitation because the respondent has:  
115 ....(describe in the spaces below the incidents or threats of  
116 exploitation) ....

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117       10. The petitioner genuinely fears imminent exploitation of  
118 the vulnerable adult by the respondent.

119       11. The petitioner seeks an injunction for the protection  
120 of the vulnerable adult, including: ... (mark appropriate section  
121 or sections)....

122       ....Prohibiting the respondent from having any direct or  
123 indirect contact with the vulnerable adult.

124       ....Immediately restraining the respondent from committing  
125 any acts of exploitation against the vulnerable adult.

126       ....Freezing the assets of the vulnerable adult held at  
127 ...(name and address of depository or financial institution)...  
128 even if titled jointly with the respondent, or in the  
129 respondent's name only, in the court's discretion.

130       ....Freezing the credit lines of the vulnerable adult at  
131 ...(name and address of financial institution)... even if  
132 jointly with the respondent, in the court's discretion.

133       ....Providing any terms the court deems necessary for the  
134 protection of the vulnerable adult or his or her assets,  
135 including any injunctions or directives to law enforcement  
136 agencies.

137       12. Should the court enter an injunction freezing assets  
138 and credit lines, the petitioner believes that the critical  
139 expenses of the vulnerable adult will be paid for or provided by  
140 the following persons or entities, or the petitioner requests  
141 that the following expenses be paid notwithstanding the freeze:

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142 ....

143

144 (b) Each petition for an injunction for protection against  
145 the exploitation of a vulnerable adult must contain, directly  
146 above the signature line, a statement in all capital letters and  
147 bold type not smaller than the surrounding text, as follows:

148

149 I HAVE READ EACH STATEMENT MADE IN THIS PETITION AND  
150 EACH SUCH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND  
151 THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING  
152 MADE UNDER PENALTY OF PERJURY PUNISHABLE AS PROVIDED  
153 IN SECTION 837.02, FLORIDA STATUTES.

154

155 (c) Upon the filing of the petition, the court shall  
156 schedule a hearing on the petition on the earliest possible  
157 date.

158 (4) CLERK'S DUTIES, RESPONSIBILITIES, AND CHARGES.—

159 (a) The clerk of the circuit court shall assist the  
160 petitioner in filing an injunction for protection against the  
161 exploitation of a vulnerable adult and any petition alleging a  
162 violation thereof.

163 (b) The clerk of the circuit court shall provide  
164 simplified petition forms for the injunction for protection  
165 against the exploitation of a vulnerable adult, and any  
166 modifications thereto, and for the enforcement thereof, and

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167 instructions for completion of such forms.

168 (c) The clerk of the circuit court shall, to the extent  
169 practicable, ensure the petitioner's privacy while completing  
170 such forms.

171 (d) The clerk of the circuit court shall provide, without  
172 charge, the petitioner with two certified copies of the petition  
173 for an injunction, and shall inform the petitioner of the steps  
174 necessary for service or process and enforcement.

175 (e) If an injunction is entered, the clerk of the circuit  
176 court shall provide, without charge, the petitioner with  
177 certified copies of an order of injunction that may be served  
178 upon any person holding property, or upon any financial  
179 institution with an open line of credit, that is subject to the  
180 freeze, and shall inform the petitioner of the process for  
181 service and enforcement.

182 (e) Clerks of the circuit court and appropriate staff in  
183 each county shall receive training in the effective assistance  
184 of petitioners as provided or approved by the Florida  
185 Association of Court Clerks.

186 (f) The clerk of the circuit court in each county shall  
187 produce an informational brochure and provide it to the  
188 petitioner at the time of filing for an injunction for  
189 protection against the exploitation of a vulnerable adult. The  
190 brochure must include information about the exploitation of  
191 vulnerable adults and the effect of providing false information

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192 to the court. The clerk of the circuit court in each county  
193 shall also make available informational brochures on the  
194 exploitation of vulnerable adults when such brochures are  
195 provided by local senior centers, local aging and disability  
196 resource centers, or appropriate state or federal agencies.

197 (g) The clerk of the court shall provide a copy of all  
198 petitions filed pursuant to this section and all orders entered  
199 on such petitions to the adult protective services program,  
200 which shall treat such petitions in the same manner as a report  
201 of abuse, neglect, or exploitation of a vulnerable adult. Within  
202 24 hours after receipt of such orders or petitions, the adult  
203 protective services program shall submit to the court overseeing  
204 proceedings on the petition the results of any previous  
205 investigations relating to the vulnerable adult.

206 (h) Notwithstanding any other provision of law, the clerk  
207 of the circuit court may not assess a filing fee or service  
208 charge for petitions filed under this section. However, subject  
209 to legislative appropriation for such purpose, the clerk of the  
210 circuit court may, on a quarterly basis, submit a certified  
211 request for reimbursement to the Office of the State Courts  
212 Administrator for the processing of such petitions, at the rate  
213 of \$40 per petition. The request for reimbursement must be  
214 submitted in the form and manner prescribed by the Office of the  
215 State Courts Administrator. From each reimbursement received,  
216 the clerk of the circuit court shall pay any law enforcement

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217 agency serving the injunction for protection against the  
218 exploitation of a vulnerable adult the fee requested by the law  
219 enforcement agency. However, the fee may not exceed \$20.

220 (5) TEMPORARY INJUNCTION; SERVICE; HEARING.-

221 (a)1. The court may grant a temporary injunction ex parte,  
222 pending a full hearing, and may grant such relief as the court  
223 deems proper if it appears to the court that:

224 a. An immediate and present danger of exploitation of the  
225 vulnerable adult exists;

226 b. There is a likelihood of irreparable harm and  
227 nonavailability of an adequate remedy at law;

228 c. There is a substantial likelihood of success on the  
229 merits;

230 d. The threatened injury to the vulnerable adult outweighs  
231 possible harm to the respondent; and

232 e. Granting a temporary injunction will not disserve the  
233 public interest.

234 2. Such relief the court deems proper may include, but is  
235 not limited to, injunctions doing any of the following:

236 a. Restraining the respondent from committing any acts of  
237 exploitation against the vulnerable adult.

238 b. Awarding to the vulnerable adult the temporary  
239 exclusive use and possession of the dwelling that the vulnerable  
240 adult and the respondent share, or barring the respondent from  
241 the residence of the vulnerable adult, if the court finds that





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242 the vulnerable adult is able to reside safely without the  
243 respondent.

244 c. Freezing any assets of the vulnerable adult in any  
245 depository or financial institution whether titled solely in the  
246 vulnerable adult's name, solely in the respondent's name,  
247 jointly with the respondent, in guardianship, in trust, or in a  
248 Totten trust, provided that:

249 (I) Assets held by a guardian for the vulnerable adult may  
250 be frozen only by an order entered by the court overseeing the  
251 guardianship proceeding.

252 (II) Assets held by a trust may be frozen only by an order  
253 of the court if all the trustees of the trust are served with  
254 process and are given reasonable notice prior to any hearing on  
255 the petition.

256 (III) Assets held solely in the name of the respondent may  
257 only be frozen on an ex parte basis if the petition and  
258 affidavit demonstrate to the court probable cause that such  
259 assets are traceable to the unlawful exploitation of the  
260 vulnerable adult, that such assets are likely to be returned to  
261 the vulnerable adult after a final evidentiary hearing, and that  
262 no other adequate remedy at law is reasonably available.

263 d. Freezing any line of credit of the vulnerable adult at  
264 any depository or financial institution whether listed solely in  
265 the vulnerable adult's name or jointly with the respondent.

266 e. Prohibiting the respondent from having any direct or



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267 indirect contact with the vulnerable adult.

268 f. Providing any injunctions or directives to law  
269 enforcement agencies.

270 g. If the court has ordered an asset and credit freeze, the  
271 court may order that specified living expenses of the vulnerable  
272 adult continue to be paid notwithstanding the freeze.

273 (b) Except as provided in s. 90.204, in a hearing ex parte  
274 for the purpose of obtaining an ex parte temporary injunction,  
275 only verified pleadings or affidavits may be used as evidence  
276 unless the respondent appears at the hearing or has received  
277 reasonable notice of the hearing. For purposes of s. 90.204(4),  
278 a petition under this section shall be considered a "family  
279 case."

280 (c) A denial of a petition for an ex parte injunction must  
281 be by written order and must note the legal grounds for denial.  
282 When the only ground for denial is failure to demonstrate  
283 appearance of an immediate and present danger of exploitation of  
284 a vulnerable adult, the court must set a full hearing on the  
285 petition for injunction at the earliest possible date. Nothing  
286 in this paragraph affects a petitioner's right to promptly amend  
287 any petition consistent with court rules.

288 (d) An ex parte temporary injunction may be effective for  
289 a fixed period not to exceed 15 days. A full hearing, as  
290 provided by this section, must be set for a date no later than  
291 the date when the temporary injunction ceases to be effective.

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292 The court may grant a continuance of the hearing, before or  
293 during the hearing, for good cause shown by any party, which  
294 good cause may include a continuance to obtain service of  
295 process. An ex parte injunction is not extended beyond the  
296 initial 15 days as a result of a continuance.

297 (6) REASONABLE CAUSE.—In determining whether a petitioner  
298 has reasonable cause to believe that the vulnerable adult is, or  
299 is in imminent danger of becoming, a victim of exploitation, the  
300 court shall consider and evaluate all relevant factors,  
301 including, but not limited to, any of the following:

302 (a) The existence of a verifiable order of protection  
303 issued previously or from another jurisdiction.

304 (b) Any history of exploitation by the respondent upon the  
305 vulnerable adult in the petition or any other vulnerable adult.

306 (c) Any history of the vulnerable adult being previously  
307 exploited or unduly influenced.

308 (d) The capacity of the vulnerable adult to make decisions  
309 related to his or her finances and property.

310 (e) Susceptibility of the vulnerable adult to undue  
311 influence.

312 (f) Any criminal history of the respondent or previous  
313 probable cause findings by the adult protective services  
314 program, if known.

315 (7) NOTICE OF PETITION AND INJUNCTION.—

316 (a) The respondent shall be personally served, pursuant to



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317 chapter 48, with a copy of the petition, notice of hearing, and  
318 temporary injunction, if any, prior to the final hearing. Where  
319 the petitioner is acting in a representative capacity, the  
320 vulnerable adult shall also be served with a copy of the  
321 petition, notice of hearing, and temporary injunction, if any,  
322 prior to the hearing.

323 (8) FINAL HEARING ON PETITION.—

324 (a)1. The court may grant such relief as the court deems  
325 proper when, upon notice and hearing, it appears to the court  
326 that:

327 a. The vulnerable adult is the victim of exploitation or  
328 that the vulnerable adult is in imminent danger of becoming a  
329 victim of exploitation;

330 b. There is a likelihood of irreparable harm and  
331 nonavailability of an adequate remedy at law;

332 c. The threatened injury to the vulnerable adult outweighs  
333 possible harm to the respondent; and

334 d. Where the injunction freezes assets of the respondent,  
335 the court finds probable cause that exploitation has occurred,  
336 the freeze only affects the proceeds of such exploitation, and  
337 there is a substantial likelihood that such assets will be  
338 ordered to be returned to the vulnerable adult.

339 2. Such relief may include, but need not be limited to,  
340 injunctions doing any of the following:

341 a. Continuing the temporary injunction in part or in



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342 whole.

343 b. Restraining the respondent from committing any acts of  
344 exploitation.

345 c. Awarding to the vulnerable adult the exclusive use and  
346 possession of the dwelling that the vulnerable adult and the  
347 respondent share or excluding the respondent from the residence  
348 of the vulnerable adult, if the court finds that the vulnerable  
349 adult is able to reside safely without the respondent.

350 d. Ordering the respondent to participate in treatment,  
351 intervention, or counseling services to be paid for by the  
352 respondent.

353 e. Directing that assets under temporary freeze by  
354 injunction be returned to the vulnerable adult, or directing  
355 that those assets remain frozen until ownership can be  
356 determined; and directing that the temporary freeze on any line  
357 of credit be lifted.

358 f. Where the court has found that the respondent has  
359 engaged in exploitation of the vulnerable adult, entering a  
360 final cost judgment against the respondent and in favor of the  
361 petitioner for all costs, and entering a final cost judgment  
362 against the respondent and in favor of the clerk of the circuit  
363 court for all clerk's filing fees and service charges that were  
364 waived by operation of this section.

365 g. Ordering such other relief as the court deems necessary  
366 for the protection of a victim of exploitation, including

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367 injunctions or directives to law enforcement agencies, as  
368 provided in this section.

369 (b) The court must allow an advocate from a state  
370 attorney's office, a law enforcement agency, or the adult  
371 protective services program to be present with the petitioner or  
372 the respondent during any court proceedings or hearings related  
373 to the injunction, provided the petitioner or the respondent has  
374 made such a request and the advocate is able to be present.

375 (c) The terms of an injunction restraining the respondent  
376 as provided in paragraph (a) remain in effect until the  
377 injunction is modified or dissolved.

378 (9) PROVISIONS REQUIRED IN ANY TEMPORARY OR PERMANENT  
379 INJUNCTION.—A temporary or final judgment on an injunction must,  
380 on its face, indicate:

381 (a) That the injunction is valid and enforceable in all  
382 counties of this state.

383 (b) That law enforcement officers may use their arrest  
384 powers pursuant to s. 901.15(6) to enforce the terms of the  
385 injunction.

386 (c) That the court had jurisdiction over the parties and  
387 subject matter under state law and that reasonable notice and  
388 opportunity to be heard were given to the person against whom  
389 the order was sought, in a manner that was sufficient to protect  
390 that person's right to due process.

391 (d) The date the respondent was served with the petition

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392 for injunction.

393 (10) TRANSMITTAL TO SHERIFF; SERVICE.-

394 (a)1.a. The clerk of the circuit court shall furnish a  
395 copy of the petition, the financial affidavit, the notice of  
396 hearing, and any temporary injunction to the sheriff or a law  
397 enforcement agency of the county in which the respondent resides  
398 or can be found, who shall serve it upon the respondent as soon  
399 thereafter as possible on any day of the week and at any time of  
400 the day or night. At the request of the sheriff, the clerk of  
401 the circuit court may transmit a facsimile copy of an injunction  
402 that has been certified by the clerk of the circuit court  
403 pursuant to subparagraph 4., and this facsimile copy may be  
404 served in the same manner as a certified copy. The clerk of the  
405 circuit court shall also furnish to the sheriff such information  
406 on the respondent's physical description and location as is  
407 required by the Florida Department of Law Enforcement to comply  
408 with the verification procedures set forth in sub-subparagraph  
409 b.

410 b. Upon receiving a facsimile copy, the sheriff must  
411 verify receipt with the clerk of the circuit court before  
412 attempting to serve it upon the respondent. If the sheriff is in  
413 possession of an injunction that has been certified by the clerk  
414 of the circuit court, the sheriff may transmit a facsimile copy  
415 of that injunction to a law enforcement officer who shall serve  
416 it in the same manner as a certified copy.

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417 c. Notwithstanding any other provision of law, the chief  
418 judge of each circuit, in consultation with the appropriate  
419 sheriff, may authorize a law enforcement agency within the  
420 jurisdiction to effect service. A law enforcement agency  
421 performing service pursuant to this section shall use service  
422 and verification procedures consistent with those of the  
423 sheriff.

424 2.a. Except where the vulnerable adult is the petitioner,  
425 the clerk of the circuit court shall furnish a copy of the  
426 petition, the financial affidavit, the notice of hearing, and  
427 any temporary injunction to the sheriff or a law enforcement  
428 agency of the county in which the vulnerable adult resides or  
429 can be found, who shall serve it upon the vulnerable adult as  
430 soon thereafter as possible on any day of the week and at any  
431 time of the day or night. At the request of the sheriff, the  
432 clerk of the circuit court may transmit a facsimile copy of an  
433 injunction that has been certified by the clerk of the circuit  
434 court pursuant to subparagraph 4., and this facsimile copy may  
435 be served in the same manner as a certified copy. The clerk of  
436 the circuit court shall also furnish to the sheriff such  
437 information on the vulnerable adult's physical description and  
438 location as is required by the Florida Department of Law  
439 Enforcement to comply with the verification procedures set forth  
440 in sub-subparagraph b.

441 b. Upon receiving a facsimile copy, the sheriff must





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442 verify receipt with the clerk of the circuit court before  
443 attempting to serve it upon the vulnerable adult. If the sheriff  
444 is in possession of an injunction that has been certified by the  
445 clerk of the circuit court, the sheriff may transmit a facsimile  
446 copy of that injunction to a law enforcement officer, who shall  
447 serve it in the same manner as a certified copy.

448 c. Notwithstanding any other provision of law, the chief  
449 judge of each circuit, in consultation with the appropriate  
450 sheriff, may authorize a law enforcement agency within the  
451 jurisdiction of the circuit to effect service. A law enforcement  
452 agency performing service pursuant to this section shall use  
453 service and verification procedures consistent with those of the  
454 sheriff.

455 3. When an injunction for protection against the  
456 exploitation of a vulnerable adult is issued, if the petitioner  
457 requests that a law enforcement agency assist the vulnerable  
458 adult, the court may order that an officer from the appropriate  
459 law enforcement agency accompany the vulnerable adult and assist  
460 in the service or execution of the injunction, including  
461 returning possession of a dwelling or residence to the  
462 vulnerable adult. A law enforcement officer shall accept a copy  
463 of an injunction, certified by the clerk of the circuit court  
464 pursuant to subparagraph 4., from the petitioner and immediately  
465 serve it upon a respondent who has been located but not yet  
466 served. The law enforcement agency must also serve any

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467 injunction freezing assets on a financial institution where  
468 assets subject to dissipation are held, or where a credit line  
469 may be exploited; the court may waive such service.

470 4. The clerk of the circuit court shall certify a copy of  
471 all orders issued, changed, continued, extended, or vacated  
472 subsequent to the original service of the original petition,  
473 notice of hearing, or temporary injunction and deliver the  
474 certified copy to the parties at the time of the entry of the  
475 order. The parties may acknowledge receipt of a certified order  
476 in writing on the face of the original order. If a party fails  
477 or refuses to acknowledge the receipt of a certified copy of an  
478 order, the clerk of the circuit court must note on the original  
479 petition that service was effected. If delivery at the hearing  
480 during which an order is issued is not possible, the clerk of  
481 the circuit court shall mail certified copies of the order to  
482 the parties at their respective last known mailing addresses.  
483 Service by mail is complete upon mailing. When an order is  
484 served pursuant to this subparagraph the clerk of the circuit  
485 court shall notify the sheriff of the service and prepare a  
486 written certification to be placed in the court file specifying  
487 the time, date, and method of service.

488 5. If the respondent has been previously served with the  
489 temporary injunction and has failed to appear at the initial  
490 hearing on the temporary injunction, any subsequent petition for  
491 an injunction seeking an extension of time may be served on the



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492 respondent by the clerk of the court by certified mail in lieu  
493 of personal service by a law enforcement officer.

494 (b)1. Within 24 hours after the court issues an injunction  
495 for protection against the exploitation of a vulnerable adult or  
496 changes, continues, extends, or vacates such an injunction, the  
497 clerk of the circuit court must forward a certified copy of the  
498 order to the sheriff with jurisdiction over the residence of the  
499 petitioner for service in accordance with this subsection.

500 2. Within 24 hours after service of an injunction for  
501 protection against the exploitation of a vulnerable adult upon a  
502 respondent, the law enforcement officer who served the  
503 injunction must forward the written proof of service to the  
504 sheriff with jurisdiction over the residence of the petitioner.

505 3. Within 24 hours after the sheriff receives a certified  
506 copy of the injunction for protection against the exploitation  
507 of a vulnerable adult, the sheriff must make information related  
508 to the injunction available to this state's law enforcement  
509 agencies by electronically transmitting such information to the  
510 Florida Department of Law Enforcement.

511 4. Within 24 hours after the sheriff or other law  
512 enforcement officer has made service upon the respondent and the  
513 sheriff has been so notified, the sheriff must make information  
514 relating to the service available to other law enforcement  
515 agencies by electronically transmitting such information to the  
516 Florida Department of Law Enforcement.

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517       5. Within 24 hours after an injunction for protection  
518 against the exploitation of a vulnerable adult is terminated, or  
519 otherwise rendered no longer effective by ruling of the court,  
520 the clerk of the circuit court must notify the sheriff receiving  
521 original notification of the injunction as provided in  
522 subparagraph 1. The sheriff's agency shall, within 24 hours  
523 after receiving such notification from the clerk of the circuit  
524 court, notify the Florida Department of Law Enforcement of such  
525 action of the court.

526       (11) ENFORCEMENT.—

527       (a) The court may enforce a violation of an injunction for  
528 protection against the exploitation of a vulnerable adult  
529 through a civil or criminal contempt proceeding, and the state  
530 attorney may prosecute it as a criminal violation under s.  
531 825.1036. Any assessment or fine ordered by the court enforcing  
532 such injunction shall be collected by the clerk of the circuit  
533 court and transferred on a monthly basis to the Department of  
534 Revenue for deposit in the Domestic Violence Trust Fund.

535       (b) If the respondent is arrested by a law enforcement  
536 officer under s. 901.15(6) or for a violation of s. 825.1036,  
537 the respondent must be held in custody until he or she is  
538 brought before the court, which must occur as expeditiously as  
539 possible, for the purpose of enforcing the injunction for  
540 protection against the exploitation of a vulnerable adult and  
541 for admittance to bail in accordance with chapter 903 and the

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542 applicable rules of criminal procedure, pending a hearing.

543 (12) JUDGMENT FOR DAMAGES.—Actual damages may be assessed  
544 in a proceeding under this section if the court finds that the  
545 petition was without substantial fact or legal support.

546 (13) MODIFICATION OR DISSOLUTION OF INJUNCTION.— The  
547 petitioner, respondent, or vulnerable adult may move at any time  
548 to modify or dissolve the injunction in part or in whole. No  
549 specific allegations are required for modification or  
550 dissolution of the injunction, which may be granted in addition  
551 to other civil or criminal penalties. The court shall promptly  
552 hear a motion to modify or dissolve an injunction.

553 (14) LIMITATION.—Nothing in this section may affect the  
554 title to real property.

555 Section 3. Section 825.1036, Florida Statutes, is created  
556 to read:

557 825.1036 Violation of an injunction for protection against  
558 the exploitation of a vulnerable adult.—

559 (1) In the event of a violation of an injunction for  
560 protection against the exploitation of a vulnerable adult when  
561 the person who violated such injunction has not been arrested,  
562 the petitioner may contact the clerk of the circuit court of the  
563 county in which the violation is alleged to have occurred. The  
564 clerk of the circuit court shall assist the petitioner in the  
565 preparation of an affidavit in support of the violation or  
566 direct the petitioner to the office operated by the court within



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567 the circuit which has been designated by the chief judge of that  
568 circuit as the central intake point for injunction violations  
569 and where the petitioner can receive assistance in the  
570 preparation of the affidavit in support of the violation.

571 (2) The affidavit shall be immediately forwarded by the  
572 clerk of the circuit court or the office assisting the  
573 petitioner to the state attorney of that circuit and to such  
574 court or judge as the chief judge of that circuit determines to  
575 be the recipient of affidavits of violation. If the affidavit  
576 alleges that a crime has been committed, the clerk of the  
577 circuit court or the office assisting the petitioner shall also  
578 forward a copy of the petitioner's affidavit to the appropriate  
579 law enforcement agency for investigation. Within 20 days after  
580 receipt of the affidavit, the local law enforcement agency shall  
581 complete its investigation and forward the affidavit and a  
582 report containing the agency's findings to the state attorney.  
583 The state attorney shall determine within 30 working days  
584 whether its office will proceed to file criminal charges,  
585 prepare a motion for an order to show cause as to why the  
586 respondent should not be held in criminal contempt, prepare both  
587 as alternative findings, or file notice that the case remains  
588 under investigation or is pending subject to another action.

589 (3) If, based on its familiarity with the case, the court  
590 has knowledge that the vulnerable adult is in immediate danger  
591 if the court fails to act prior to the decision of the state



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592 attorney to prosecute, it should immediately issue an order of  
593 appointment of the state attorney to file a motion for an order  
594 to show cause as to why the respondent should not be held in  
595 contempt. If the court does not issue an order of appointment of  
596 the state attorney, it shall immediately notify the state  
597 attorney that the court is proceeding to enforce the violation  
598 through a ruling of criminal contempt.

599 (4) (a) Except as provided in paragraph (b), a person who  
600 willfully violates an injunction for protection against the  
601 exploitation of a vulnerable adult commits a misdemeanor of the  
602 first degree, punishable as provided in s. 775.082 or s.  
603 775.083. A person may violate such injunction by:

604 1. Refusing to vacate the dwelling shared with the  
605 vulnerable adult;

606 2. Going to, or being within 500 feet of, the vulnerable  
607 adult's residence;

608 3. Exploiting or unduly influencing the vulnerable adult;

609 4. Committing any other violation of the injunction  
610 through an intentional unlawful threat, word, or act to do  
611 violence to the vulnerable adult;

612 5. Telephoning, contacting, or otherwise communicating  
613 with the vulnerable adult directly or indirectly, unless the  
614 injunction specifically allows indirect contact through a third  
615 party;

616 6. Knowingly and intentionally coming within 100 feet of

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617 the vulnerable adult's motor vehicle, regardless of whether that  
618 vehicle is occupied; or

619 7. Defacing or destroying the vulnerable adult's personal  
620 property.

621 (b) A person who has two or more prior convictions for  
622 violation of an injunction or foreign protection order against  
623 the same victim, and who subsequently commits a violation of any  
624 injunction or foreign protection order against the same victim,  
625 commits a felony of the third degree, punishable as provided in  
626 s. 775.082, s. 775.083, or s. 775.084. For purposes of this  
627 paragraph, the term "conviction" means a determination of guilt  
628 which is the result of a plea or a trial, regardless of whether  
629 adjudication is withheld or a plea of nolo contendere is  
630 entered.

631 (5) A vulnerable adult who suffers an injury or loss as a  
632 result of a violation of an injunction for protection against  
633 the exploitation of a vulnerable adult may be awarded economic  
634 damages for that injury or loss. Damages include costs and  
635 attorney fees for enforcement of such injunction.

636 Section 4. Subsection (6) of section 901.15, Florida  
637 Statutes, is amended to read:

638 901.15 When arrest by officer without warrant is lawful.—A  
639 law enforcement officer may arrest a person without a warrant  
640 when:

641 (6) There is probable cause to believe that the person has





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642 committed a criminal act according to s. 790.233 or according to  
 643 s. 741.31, ~~or~~ s. 784.047, or s. 825.1036 which violates an  
 644 injunction for protection entered pursuant to s. 741.30, ~~or~~ s.  
 645 784.046, or s. 825.1035 or a foreign protection order accorded  
 646 full faith and credit pursuant to s. 741.315, over the objection  
 647 of the petitioner, if necessary.

648 Section 5. This act shall take effect July 1, 2018.

649  
 650  
 651

652 -----

653 **T I T L E A M E N D M E N T**

654 Remove everything before the enacting clause and insert:

655

656 An act relating to exploitation of a vulnerable person; amending  
 657 s. 825.101, F.S.; defining terms; creating s. 825.1035, F.S.;  
 658 creating a cause of action for an injunction for protection  
 659 against the exploitation of a vulnerable adult; providing for  
 660 standing to bring a cause of action for an injunction; providing  
 661 that an injunction may be sought regardless of any other action  
 662 that may be pending between specified parties; specifying that  
 663 the right to petition for an injunction is not affected by a  
 664 person temporarily or permanently vacating a residence or  
 665 household to avoid exploitation; providing that parties to an  
 666 injunction may not be required to be represented by an attorney;



Amendment No.

667 providing for venue; providing that exploitation already having  
668 occurred is not required as a prerequisite for filing for or  
669 issuance of an injunction; requiring that a petition be filed in  
670 certain proceedings under ch. 744, F.S.; requiring that certain  
671 proceedings be recorded; requiring a sworn petition to contain  
672 certain allegations and statements; requiring the court to set a  
673 hearing within a certain time; requiring the clerk of the  
674 circuit court to assist the petitioner in filing an injunction  
675 or petition by providing certain forms and instructions;  
676 requiring the clerk of the court to ensure the petitioner's  
677 privacy; requiring the clerk of the court to provide the  
678 petitioner with certified copies of the injunction order;  
679 requiring that the clerks of the court and appropriate staff  
680 receive certain training; requiring that the clerk of the  
681 circuit court make available certain informational brochures and  
682 create and distribute a specified brochure containing specified  
683 information to the petitioner at the time of filing for an  
684 injunction; prohibiting the clerk of the circuit court from  
685 assessing a filing fee; authorizing the clerk of the circuit  
686 court to request a reimbursement for such petitions, subject to  
687 the appropriation of funds for that purpose; requiring the clerk  
688 of the circuit court to pay from such reimbursement certain fees  
689 to a law enforcement agency; authorizing the court to grant a  
690 temporary injunction ex parte under certain circumstances;  
691 prohibiting the use of evidence other than verified pleadings or

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Amendment No.

692 affidavits in an ex parte hearing; providing an exception;  
693 authorizing the court to grant specified relief under certain  
694 circumstances; requiring the court to follow certain procedures  
695 when issuing an order denying a petition for an ex parte  
696 injunction; prohibiting an ex parte temporary injunction from  
697 having a duration longer than a specified number of days;  
698 requiring that a full hearing be set for a date no later than  
699 the date the temporary injunction expires; authorizing the court  
700 to grant a continuance of the hearing for good cause; providing  
701 factors that a court must consider when determining whether  
702 petitioners have reasonable cause; requiring the respondent to  
703 be personally served with certain documents prior to the  
704 hearing; providing for the relief a court may grant after a  
705 final hearing on a petition; requiring that the court allow  
706 certain advocates to be present under certain circumstances;  
707 requiring that the terms of certain injunctions remain in effect  
708 until modified or dissolved; requiring that a temporary or final  
709 judgment on an injunction meet certain requirements; providing  
710 requirements and options for service of process; authorizing the  
711 court to waive the service of process requirement for a  
712 financial institution; requiring that the clerk of the circuit  
713 court deliver a certified copy of certain orders meeting certain  
714 criteria to the parties under certain circumstances; providing  
715 options for noting the service was effective; requiring that the  
716 clerk of the circuit court place a written certification in the

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Amendment No.

717 court file and notify the sheriff under certain circumstances;  
718 authorizing the clerk of the circuit court to serve certain  
719 respondents by certified mail; requiring that the clerk of the  
720 circuit court, law enforcement officers, and sheriffs follow  
721 certain procedures within a certain timeframe after an  
722 injunction has been issued or an injunction becomes ineffective;  
723 requiring the clerk of the circuit court to provide copies of  
724 certain petitions and orders to the adult protective services  
725 program; requiring the adult protective services program to  
726 treat petitions in a certain manner; requiring the adult  
727 protective services program to submit to the court the results  
728 of any previous investigations relating to the vulnerable adult  
729 within a specified timeframe; providing options for enforcing  
730 and prosecuting a violation of an injunction; requiring that the  
731 clerk of the circuit collect any assessment or fine ordered by  
732 the court and transfer it to the Department of Revenue for  
733 deposit into the General Revenue fund on a monthly basis;  
734 requiring that a respondent held in custody after an arrest for  
735 violating an injunction be brought before the court as  
736 expeditiously as possible; specifying that the petitioner is  
737 liable for actual damages under certain circumstances;  
738 authorizing either party to move at any time to modify or  
739 dissolve an injunction; providing construction; creating s.  
740 825.1036, F.S.; requiring that a clerk of the circuit court  
741 assist the petitioner in preparing an affidavit or direct the

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Amendment No.

742 petitioner to a certain office, under certain circumstances;  
743 requiring the clerk of the circuit court or the office assisting  
744 the petitioner to immediately forward the affidavit to certain  
745 people and places depending on certain circumstances; requiring  
746 a law enforcement agency to complete its investigation and  
747 forward the affidavit along with a report of any information  
748 obtained through its investigation to the state attorney within  
749 a specified timeframe; requiring the state attorney to determine  
750 how it will proceed within a specified timeframe; authorizing  
751 the court to immediately issue an order of appointment of the  
752 state attorney in certain circumstances; requiring the court to  
753 immediately notify the state attorney that the court is  
754 proceeding to enforce the violation through a ruling of criminal  
755 contempt if the court does not issue an order of appointment;  
756 providing a penalty for a willful violation of an injunction;  
757 providing an exception; providing for how an injunction may be  
758 violated; providing that a person with two or more prior  
759 convictions for violation of an injunction or foreign protection  
760 order against the same victim who commits a subsequent violation  
761 against the same victim commits a third degree felony; defining  
762 conviction; authorizing the court to award economic damages to a  
763 person who suffers an injury or loss as a result of a violation  
764 of an injunction; amending s. 901.15, F.S.; conforming  
765 provisions to changes made by the act; providing an effective  
766 date.

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1217 Deployed Parent Custody and Visitation  
**SPONSOR(S):** Metz  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1598

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Tuszynski (H)	Bond NB
2) Local, Federal & Veterans Affairs Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Florida law allows for the filing of a petition or motion for modification of time-sharing and parental responsibility when a parent is activated, deployed, or temporarily assigned to military service and that parent's ability to comply with time-sharing is materially affected. The law allows a deployed parent to designate a person or persons to exercise time-sharing with the child on the parent's behalf. This is limited to a family member, stepparent, or relative of the child by marriage.

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses issues of child custody and visitation that arise when parents are deployed in military or other national service. The Uniform Law Commission finalized the UDPVA in 2012. Thirteen states have enacted the UDPVA.

HB 1217 creates the "Uniform Deployed Parents Custody and Visitation Act" in Florida. The bill contains definitions and provisions that apply generally to custody matters of service members. It includes a notice provision requiring parents to communicate about custody and visitation issues as soon as possible after a service member learns of deployment.

The bill contains provisions dealing with custody issues that arise on notice of and during deployment. The bill outlines an easy procedure for parents who agree to a custody arrangement during deployment to resolve these issues by an out-of-court agreement, and details what must be in that agreement. The bill allows a deployed parent to grant caretaking authority to a nonparent to whom the child has a close and substantial relationship. In the absence of the parents reaching an agreement, the bill allows for an expedited resolution of a custody arrangement in court with a temporary custody order. The bill declares that no permanent custody order can be entered before or during deployment without the service member's consent.

The bill contains provisions detailing how to terminate the temporary custody arrangement following return from deployment.

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

The bill is effective July 1, 2018

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

"The increased deployment of service members has raised difficult child custody issues that profoundly affect both children's welfare and service members' ability to serve their country efficiently."<sup>1</sup> Because a significant proportion of service members are single parents, the Department of Defense indicates that problems related to child custody and visitation while the parent is deployed detrimentally impact overall military effort.<sup>2</sup>

##### Federal Law

The only existing federal statutory protection for single-parent service members is the Servicemembers Civil Relief Act (SCRA), which governs the general legal rights of a deploying service member.<sup>3</sup> Under the SCRA, judges must grant stays of legal proceedings, including custody proceedings, when military service materially affects the service member's ability to participate in the proceedings.<sup>4</sup> Yet such stays are mandatory only for the first 90 days after deployment.<sup>5</sup> After that time passes, entry of such stays are discretionary.<sup>6</sup> The SCRA does not provide procedures to facilitate entry of a temporary custody arrangement or give guidance on how to balance service members' interests against other relevant interests, including the best interests of the child.<sup>7</sup>

##### State Law

Issues of child custody and visitation are the proper province of state law. However, state statutes and courts vary considerably in their approach to custody issues on a parent's deployment.<sup>8</sup> Many courts will grant custody to the other natural parent for the duration of the deployment, even over the wishes of the deploying parent, while other courts will grant custody to the person that the service member wishes to designate as custodian, such as a grandparent.<sup>9</sup> Further, at the end of a deployment, some courts have been reluctant to return custody to the deploying parent.<sup>10</sup>

##### *Florida Law*

Custody and time-sharing in relation to military service is governed by s. 61.13002, F.S., which allows for the filing of a petition or motion for modification of time-sharing and parental responsibility when a parent is activated, deployed, or temporarily assigned to military service and that parent's ability to comply with time-sharing is materially affected.<sup>11</sup> Generally, the court is not able to issue an order or modify a previous judgment or order that changes time-sharing as it existed on the date the parent was activated, deployed, or temporarily assigned.<sup>12</sup> However, the court may enter a temporary order to

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<sup>1</sup> National Conference of Commissioners on Uniform State Laws, *Deployed Parents Custody and Visitation Act Summary*, available at: <http://www.uniformlaws.org/ActSummary.aspx?title=Deployed%20Parents%20Custody%20and%20Visitation%20Act> (last accessed January 18, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> 50 U.S.C. App. ss. 5011-597b

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Supra*, FN 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Supra*, FN 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> s. 39.13002(1), F.S.

<sup>12</sup> *Id.*



modify or amend time-sharing if there is clear and convincing evidence that the temporary modification is in the best interests of the child.<sup>13</sup> The court may address support by either:

1. Ordering temporary support from the servicemember to the other parent;
2. Requiring the servicemember to enroll the child as a military dependent for benefits available to military dependents; or
3. Suspend, abate, or reduce the child support obligation of the nonservice member until the previous order in effect is reinstated.<sup>14</sup>

The law allows a deployed parent on orders in excess of 90 days to designate a person or persons to exercise time-sharing with the child on the parent's behalf.<sup>15</sup> This is limited to a family member, stepparent, or relative of the child by marriage.<sup>16</sup> The other parent may only object on the basis that the designee's time-sharing is not in the best interest of the child.<sup>17</sup> The law excludes permanent change of station moves by servicemembers.<sup>18</sup>

The law also requires the court to:

- Allow the servicemember to testify by telephone, video, webcam, affidavit, or other means if a motion is filed and the servicemember is unable to appear in person;<sup>19</sup> and
- Reinstate the time-sharing order previously in effect upon the servicemember's return.<sup>20</sup>

### Uniform Deployed Parents Custody and Visitation Act (2012)

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses issues of child custody and visitation that arise when parents are deployed in military or other national service.<sup>21</sup> The UDPVA was created by the Uniform Law Commission in 2012 and has been approved by the American Bar Association, the American Academy of Matrimonial Lawyers, and the Council of State Governments.<sup>22</sup> The UDPVA has been enacted by 13 states,<sup>23</sup> and has been introduced in Pennsylvania and Florida this year.<sup>24</sup>

### **Effect of Proposed Changes**

HB 1217 creates part IV of ch. 61, F.S, entitled "Uniform Deployed Parents Custody and Visitation Act." (Act) The act contains definitions and provisions relating to general custody matters for service members, custody issues upon deployment, expedited resolution of custody issues, and termination of the temporary custody arrangement.

### General Provisions

#### *Definitions*

The bill defines common terms as used in the Act, including "adult," "child," and "court." The bill also defines multiple terms that are unique to the provisions of the Act:

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<sup>13</sup> Id.

<sup>14</sup> s. 61.13002(6), F.S.

<sup>15</sup> s. 61.13002(2), F.S.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> s. 61.13002(7), F.S.

<sup>19</sup> s. 61.13002(5), F.S.

<sup>20</sup> s. 61.13002(4), F.S.

<sup>21</sup> Uniform Law Commission, *Legislative Fact Sheet - Deployed Parents Custody and Visitation Act*, available at: <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Deployed%20Parents%20Custody%20and%20Visitation%20Act> (last accessed January 18, 2018).

<sup>22</sup> Id.

<sup>23</sup> Arkansas, Colorado, Iowa, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, and West Virginia.

<sup>24</sup> Supra, FN 21

- "Servicemember" means a member of a uniformed service.
  - "Uniformed service" means: active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard; United States Merchant Marine; commissioned corps of the United States Public Health Service; commissioned corps of the National Oceanic and Atmospheric Administration; and the National Guard of a state or territory of the United States, Puerto Rico, or the District of Columbia.
- "Deployment" means the movement or mobilization of a servicemember for more than 90 days but less than 18 months pursuant to uniformed service orders that are designated as unaccompanied, do not authorize dependent travel, or otherwise do not permit the movement of family members to the location to which the servicemember is deployed.
- "Custodial responsibility" means all powers and duties relating to caretaking authority and decisionmaking authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.
  - "Caretaking authority" is a subset of "custodial responsibility" and means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.
  - "Decisionmaking authority" is a subset of "custodial responsibility" and means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.
- "Close and substantial relationship" means a relationship in which a significant bond exists between a child and a nonparent.
  - "Nonparent" means an individual other than a deploying parent or other parent.
- "Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the child's residence.

### *Jurisdiction*

The bill allows any court that has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)<sup>25</sup> to issue an order regarding custodial responsibility. For purposes of the UCCJEA, the residence of the deploying parent does not change due to that deployment if a court:

- Has issued a temporary order regarding custodial responsibility;
- Has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order by temporary agreement; or
- In another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment.

The bill does not prevent a court from exercising temporary emergency jurisdiction under the UCCJEA.

### *Notice Requirements*

The bill requires a deploying parent to notify the other parent of a pending deployment no later than 7 days after receiving notice of the deployment, unless he or she is reasonably prevented from doing so, in which case the deploying parent must provide notice as soon as reasonably possible. The bill also requires the deploying parent to notify the other parent of a plan fulfilling each parent's share of custodial responsibility during deployment as soon as reasonably possible after notice of deployment.

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<sup>25</sup> The UCCJEA is a uniform law adopted by all states, except Massachusetts, that limits the state with jurisdiction over child custody to one, which avoids competing custody orders. It also provides enforcement provisions for child custody orders and the ability to exercise emergency jurisdiction if needed.

The bill allows this notice to be provided to the issuing court if a court order prohibits disclosure of the address or contact information of the other parent. If the address of the other parent is available to the issuing court, the court shall forward the notice to the other parent, and keep confidential the address or contact information of the other parent. The bill does not require this notice if both parents are living in the same residence and have actual notice of the deployment or plan.

The bill requires an individual granted custodial responsibility during deployment to notify the deploying parent, any other individual with custodial responsibility of a child, and the court of any change of mailing address or residence, unless a court order prohibits disclosure of the address.

### Custodial Responsibility Agreements

#### *Form of Custodial Responsibility Agreement*

The bill allows parents to enter into a temporary agreement granting custodial responsibility during deployment. The agreement must be written and signed by both parents and any nonparent granted custodial responsibility. The agreement, if feasible, must:

- Identify location, duration, and conditions of deployment;
- Specify the allocation of caretaking authority, any decisionmaking authority that accompanies that caretaking authority among the parties to the agreement and any grant of limited contact to a nonparent;
- Provide a process to resolve any dispute that may arise;
- Specify the frequency, duration, and means, including electronic, by which a deploying parent will have contact with the child, any role to be played by the other parent or nonparent in facilitating that contact, and allocate any costs of that contact;
- Acknowledge the agreement does not modify any existing child support obligation;
- Provide that the agreement will terminate according to the Act after the deploying parent returns from deployment; and
- Specify which parent is required to file the agreement, if the agreement must be filed with a court that has entered an order relating to custody or child support of the child.

#### *Nature of Authority Created by Custodial Responsibility Agreement*

The bill specifies that the Custodial Responsibility Agreement does not create an independent, continuing right to caretaking authority, decisionmaking authority, or limited contact. A nonparent has standing to enforce the agreement until it is terminated.

#### *Modification of Agreement*

The bill allows the parents of a child to modify an agreement granting custodial responsibility by mutual consent. If an agreement is modified before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent granted custodial responsibility under the modified agreement. If the agreement is modified during deployment of a deploying parent, the modification must be agreed to in some record by both parents and any nonparent granted custodial responsibility.

#### *Power of Attorney*

The bill allows a deploying parent, by power of attorney, to grant all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power of attorney.

## *Filing Custodial Responsibility Agreement or Power of Attorney*

The bill requires any agreement or power of attorney be filed within reasonable time with a court that has entered an order in effect relating to custody or child support. The case number and heading of the pending case must be provided to the court with the agreement or power of attorney.

### Temporary Custody

#### *Temporary Custody Order*

The bill allows a court to issue a temporary order granting custodial responsibility, after a deploying parent receives notice of deployment, unless prohibited by the SCRA. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

Either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in a pending proceeding for custodial responsibility in a court with jurisdiction, if a pending proceeding does not exist in a court with jurisdiction, the motion must be filed as a new action. If a motion to grant custodial responsibility is filed before a deploying parent deploys, the court shall conduct an expedited hearing. The bill allows for testimony by electronic means unless the court finds good cause to require in-person testimony.

A prior judicial order granting custodial responsibility is binding on the court unless circumstances meet the requirements authorized by general law to modify a judicial order regarding custodial responsibility. The court must enforce a prior written agreement between the parties, unless the court finds that the agreement is not in the best interest of the child.

#### *Grant of Caretaking Authority to Nonparent*

The bill allows a court, upon the request of a deploying parent, in the best interests of the child, to grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. Unless agreed to by the other parent, the grant of caretaking authority may not exceed the amount of time granted to the deploying parent under a permanent custody order, or in the absence of a permanent custody order, the amount of time the deploying parent habitually cared for the child before being notified of deployment.

If the deploying parent is unable to exercise decisionmaking authority, a court may grant part of that authority to a nonparent, but must specify the decisionmaking powers granted.

The court must grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship on motion of a deploying parent unless the court finds that limited contact with a nonparent would not be in the best interest of the child.

Any grant of authority to a nonparent is temporary and terminates after the deploying parent returns from deployment.

#### *Content of Temporary Custody Order*

An order granting custodial responsibilities, must:

- Designate the order as temporary and provide for termination after the deploying parent returns from deployment;
- Identify the destination, duration, and conditions of the deployment;
- Specify the allocation of caretaking authority, decisionmaking authority, or limited contact among the deploying parent, the other parent, and any nonparent.
- Provide a process to resolve any dispute that may arise;

- Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless it is not in the best interest of the child, and allocate any costs of communication;
- Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless it is not in the best interest of the child; and
- Provide for reasonable contact between the deploying parent and the child after the parent's return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order.

#### *Order for Child Support*

The bill allows the court to enter a temporary order for child support authorized by general law if the court has jurisdiction

#### *Modifying or Terminating Grant of Custodial Responsibility or Limited Contact to Nonparent*

The bill allows a court to modify or terminate a temporary grant of custodial responsibility on the motion of a deploying parent, other parent, or any nonparent granted caretaking authority if the modification or termination is in the best interest of the child. A modification is temporary and terminates after the deploying parent returns from deployment. The court must terminate a grant of limited contact on motion of a deploying parent.

#### *Procedure for Terminating Temporary Agreement Granting Custodial Responsibility*

The bill details the procedure for terminating a Temporary Agreement Granting Custodial Responsibility. The procedure requires, after a deploying parent returns from deployment, a deploying parent and the other parent to file an agreement to terminate a temporary order for custodial responsibility. After an agreement to terminate has been filed, it must terminate on the date specified on the agreement or on the date the agreement is signed by the deploying parent and the other parent if the agreement to terminate does not specify a date.

In the absence of an agreement to terminate, a temporary agreement granting custodial responsibility terminates 60 days after the deploying parent gives notice of return from deployment to the other parent. If a temporary agreement granting custodial responsibility was filed with a court, an agreement to terminate must be filed with the court within a reasonable time after the deploying parent and other parent sign the agreement.

#### Other

The bill requires a court to issue a temporary order granting the deploying parent reasonable contact with the child from the time he or she returns from deployment until a temporary agreement or order is terminated, even if contact exceeds the time the deploying parent spent with the child before deployment unless it is not in the best interest of the child.

The bill allows for reasonable attorney fees and costs be awarded against a party who acts in bad faith or intentionally fails to comply with the provisions of the Act or a court order issued under the Act.

The bill does not allow a court to consider past deployment or possible future deployment when determining the best interest of the child in a proceeding for custodial responsibility under the Act.

The bill does not affect validity of temporary court orders entered before July 1, 2018.

The bill is effective July 1, 2018.

**B. SECTION DIRECTORY:**

- Section 1:** Creates Part IV of chapter 61, F.S, relating to uniform deployed parents visitation and custody act.  
**Section 2:** Provides and effective date of July 1, 2018

**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:  
Not applicable. The bill does not appear to affect county or municipal governments.
2. Other:

The United States Supreme Court has recognized the fundamental liberty interest parents have in the 'care, custody and management' of their children.<sup>26</sup> The Florida Supreme Court has likewise recognized that decisions relating to child rearing and education are clearly established as fundamental rights within the Fourteenth Amendment of the United States Constitution and that the fundamental liberty interest in parenting is specifically protected by the privacy provision in the Florida Constitution.<sup>27</sup> Consequently, any statute that infringes these rights is subject to the highest level of scrutiny and must serve a compelling state interest through the least intrusive means necessary.<sup>28</sup>

<sup>26</sup> *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Santosky v. Kramer*, 455 U.S. 745 (1982).

<sup>27</sup> *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996). Art. I, s. 23, Fla. Const. provides "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law."

<sup>28</sup> *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 637 (Fla. 1980); *Belair v. Drew*, 776 So. 2d 1105, 1107 (Fla. 5th DCA 2001); *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation*, 477 So. 2d 544, 547 (Fla. 1985).

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Much of s. 61.13002, F.S., could be repealed, as the issues are contemplated by the new Act or would be in partial conflict with the new Act if this bill were to pass. Provisions regarding delegation of time-sharing to a nonparent would be in conflict, as the Act allows for a much broader grant than current law. Current law also specifically allows a court to order a servicemember to enroll the child as a military dependent for the purposes of military benefits as part of a child support order, the Act does not contemplate this, leaving orders of child support to "general law."

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to deployed parent custody and  
 3           visitation; creating part IV of ch. 61, F.S., entitled  
 4           "Uniform Deployed Parents Custody and Visitation Act";  
 5           providing definitions; providing remedies for  
 6           noncompliance; authorizing a court to issue certain  
 7           custodial orders only under certain jurisdiction;  
 8           providing notice requirements; providing requirements  
 9           for proceeding for custodial responsibility of a child  
 10          of a servicemember; providing requirements for  
 11          agreement forms, termination, modification, power of  
 12          attorney, and filing; providing requirements for  
 13          temporary orders of custodial responsibility;  
 14          authorizing electronic testimony in a proceeding for  
 15          temporary custody; providing for the effect of any  
 16          prior judicial order or agreement; authorizing a court  
 17          to grant caretaking authority or limited contact to a  
 18          nonparent under certain conditions; providing for the  
 19          termination of a grant of authority; providing  
 20          requirements for an order of temporary custody;  
 21          authorizing a court to enter a temporary order for  
 22          child support under certain circumstances; authorizing  
 23          a court to modify or terminate a temporary grant of  
 24          custodial responsibility; providing procedures for  
 25          termination of a temporary custodial responsibility



26 agreement; providing for visitation; providing  
 27 construction; providing applicability; providing an  
 28 effective date.

29  
 30 Be It Enacted by the Legislature of the State of Florida:

31  
 32 Section 1. Part IV of chapter 61, Florida Statutes,  
 33 consisting of sections 61.703-61.773, Florida Statutes, is  
 34 created and entitled "Uniform Deployed Parents Custody and  
 35 Visitation Act."

36 61.703 Definitions.—As used in this part:

37 (1) "Adult" means an individual who has attained 18 years  
 38 of age or who has had the disability of nonage removed under  
 39 chapter 743.

40 (2) "Caretaking authority" means the right to live with  
 41 and care for a child on a day-to-day basis. The term includes  
 42 physical custody, parenting time, right to access, and  
 43 visitation.

44 (3) "Child" means:

45 (a) An individual who has not attained 18 years of age and  
 46 who has not had the disability of nonage removed under chapter  
 47 743; or

48 (b) An adult son or daughter by birth or adoption, or  
 49 designated by general law, who is the subject of a court order  
 50 concerning custodial responsibility.

51           (4) "Close and substantial relationship" means a  
 52 relationship in which a significant bond exists between a child  
 53 and a nonparent.

54           (5) "Court" means the court of legal jurisdiction.

55           (6) "Custodial responsibility" includes all powers and  
 56 duties relating to caretaking authority and decisionmaking  
 57 authority for a child. The term includes physical custody, legal  
 58 custody, parenting time, right to access, visitation, and  
 59 authority to grant limited contact with a child.

60           (7) "Decisionmaking authority" means the power to make  
 61 important decisions regarding a child, including decisions  
 62 regarding the child's education, religious training, health  
 63 care, extracurricular activities, and travel. The term does not  
 64 include the power to make decisions that necessarily accompany a  
 65 grant of caretaking authority.

66           (8) "Deploying parent" means a servicemember who is  
 67 deployed or has been notified of impending deployment and is:

68           (a) A parent of a child; or

69           (b) An individual who has custodial responsibility for a  
 70 child.

71           (9) "Deployment" means the movement or mobilization of a  
 72 servicemember for more than 90 days but less than 18 months  
 73 pursuant to uniformed service orders that:

74           (a) Are designated as unaccompanied;

75           (b) Do not authorize dependent travel; or

76 (c) Otherwise do not permit the movement of family members  
 77 to the location to which the servicemember is deployed.

78 (10) "Family member" means a sibling, aunt, uncle, cousin,  
 79 stepparent, or grandparent of a child or an individual recognized  
 80 to be in a familial relationship with a child.

81 (11) "Limited contact" means the authority of a nonparent  
 82 to visit a child for a limited time. The term includes authority  
 83 to take the child to a place other than the child's residence.

84 (12) "Nonparent" means an individual other than a  
 85 deploying parent or other parent.

86 (13) "Other parent" means an individual who, in addition  
 87 to a deploying parent, is:

88 (a) A parent of a child; or

89 (b) An individual who has custodial responsibility for a  
 90 child.

91 (14) "Record" means information that is created in a  
 92 tangible medium or stored in an electronic or other medium and  
 93 is retrievable in perceivable form.

94 (15) "Return from deployment" means the conclusion of a  
 95 servicemember's deployment as specified in uniformed service  
 96 orders.

97 (16) "Servicemember" means a member of a uniformed service.

98 (17) "Sign" means, with the intent to authenticate or  
 99 adopt a record, to:

100 (a) Execute or adopt a tangible symbol; or

101 (b) Attach to or logically associate with the record an  
 102 electronic symbol, sound, or process.

103 (18) "State" means a state of the United States, the  
 104 District of Columbia, Puerto Rico, the United States Virgin  
 105 Islands, or any territory or insular possession subject to the  
 106 jurisdiction of the United States.

107 (19) "Uniformed service" means any of the following:

108 (a) Active and reserve components of the Army, Navy, Air  
 109 Force, Marine Corps, or Coast Guard of the United States.

110 (b) The United States Merchant Marine.

111 (c) The commissioned corps of the United States Public  
 112 Health Service.

113 (d) The commissioned corps of the National Oceanic and  
 114 Atmospheric Administration.

115 (e) The National Guard of a state or territory of the  
 116 United States, Puerto Rico, or the District of Columbia.

117 61.705 Remedies for noncompliance.—In addition to other  
 118 remedies authorized by general law, if a court finds that a  
 119 party to a proceeding acts in bad faith or intentionally fails to  
 120 comply with this part or a court order issued under this part,  
 121 the court may assess reasonable attorney fees and costs against  
 122 the party, and order other appropriate relief.

123 61.707 Jurisdiction.—

124 (1) A court may issue an order regarding custodial  
 125 responsibility only if the court has jurisdiction under the

126 Uniform Child Custody Jurisdiction and Enforcement Act.

127 (2) For purposes of the Uniform Child Custody Jurisdiction  
 128 and Enforcement Act, the residence of the deploying parent does  
 129 not change by reason of the deployment if:

130 (a) A court has issued a temporary order regarding  
 131 custodial responsibility.

132 (b) A court has issued a permanent order regarding  
 133 custodial responsibility before notice of deployment and the  
 134 parents modify that order temporarily by agreement.

135 (c) A court in another state has issued a temporary order  
 136 regarding custodial responsibility as a result of impending or  
 137 current deployment.

138 (3) This section does not prevent a court from exercising  
 139 temporary emergency jurisdiction under the Uniform Child Custody  
 140 Jurisdiction and Enforcement Act.

141 61.709 Notice requirement for deploying parent.—

142 (1) Except as otherwise provided in subsection (3), and  
 143 subject to subsection (2), a deploying parent shall notify in a  
 144 record to the other parent:

145 (a) A pending deployment not later than 7 days after  
 146 receiving notice of deployment unless he or she is reasonably  
 147 prevented from doing so by the circumstances of service, in which  
 148 case the deploying parent shall provide notice as soon as  
 149 reasonably possible.

150 (b) A plan fulfilling each parent's share of custodial

151 responsibility during deployment provided as soon as reasonably  
 152 possible after notice of deployment is given under paragraph  
 153 (a).

154 (2) If a court order prohibits disclosure of the address  
 155 or contact information of the other parent, notice pursuant to  
 156 subsection (1) must be provided to the issuing court. If the  
 157 address of the other parent is available to the issuing court,  
 158 the court shall forward the notice to the other parent. The court  
 159 shall keep confidential the address or contact information of the  
 160 other parent.

161 (3) Notice pursuant to subsection (1) is not required if  
 162 both parents are living in the same residence and have actual  
 163 notice of the deployment or plan.

164 (4) In a proceeding regarding custodial responsibility, a  
 165 court may consider the reasonableness of a parent's efforts to  
 166 comply with this section.

167 61.711 Duty to notify of change of address.-

168 (1) Except as otherwise provided in subsection (2), an  
 169 individual granted custodial responsibility during deployment  
 170 must notify the deploying parent and any other individual with  
 171 custodial responsibility of a child of any change of mailing  
 172 address or residence until the grant is terminated. The  
 173 individual must provide the notice to any court that has issued  
 174 a custody or child support order concerning the child.

175 (2) If a court order prohibits disclosure of the address

176 or contact information of an individual to whom custodial  
177 responsibility has been granted, notice pursuant to subsection  
178 (1) must be provided to the issuing court. The court shall keep  
179 confidential the mailing address or residence of the individual  
180 granted custodial responsibility.

181 61.713 General consideration in custody proceeding of  
182 parent's service.—In a proceeding for custodial responsibility  
183 of a child of a servicemember, a court may not consider a  
184 parent's past deployment or possible future deployment in  
185 determining the best interest of the child.

186 61.721 Form of custodial responsibility agreement.—

187 (1) The parents of a child may enter into a temporary  
188 agreement granting custodial responsibility during deployment.

189 (2) The agreement must be in writing and signed by both  
190 parents and any nonparent granted custodial responsibility.

191 (3) Subject to subsection (4), the agreement, if feasible,  
192 must:

193 (a) Identify the destination, duration, and conditions of  
194 the deployment that is the basis for the agreement.

195 (b) Specify the allocation of caretaking authority among  
196 the deploying parent, the other parent, and any nonparent.

197 (c) Specify any decisionmaking authority that accompanies  
198 a grant of caretaking authority.

199 (d) Specify any grant of limited contact to a nonparent.

200 (e) Provide a process to resolve any dispute that may arise

201 if custodial responsibility is shared by the other parent and a  
 202 nonparent, or by other nonparents.

203 (f) Specify the frequency, duration, and means, including  
 204 electronic means, by which the deploying parent will have contact  
 205 with the child, any role to be played by the other parent or  
 206 nonparent in facilitating the contact, and the allocation of any  
 207 costs of contact.

208 (g) Specify contact between the deploying parent and child  
 209 during the time the deploying parent is on leave or is otherwise  
 210 available.

211 (h) Acknowledge that the agreement does not modify any  
 212 existing child support obligation and that changing the terms of  
 213 the obligation during deployment requires modification in the  
 214 appropriate court.

215 (i) Provide that the agreement will terminate according to  
 216 the procedures under this part after the deploying parent returns  
 217 from deployment.

218 (j) Specify which parent is required to file the agreement  
 219 if the agreement must be filed pursuant to s. 61.729.

220 (4) The omission of any item in subsection (3) does not  
 221 invalidate the agreement.

222 61.723 Nature of authority created by custodial  
 223 responsibility agreement.-

224 (1) An agreement granting custodial responsibility during  
 225 deployment is temporary and terminates after the deploying



226 parent returns from deployment unless the agreement has been  
 227 terminated before that time by court order or modification under  
 228 s. 61.725. The agreement does not create an independent,  
 229 continuing right to caretaking authority, decisionmaking  
 230 authority, or limited contact for an individual granted custodial  
 231 responsibility.

232 (2) A nonparent granted caretaking authority,  
 233 decisionmaking authority, or limited contact by agreement has  
 234 standing to enforce the agreement until it is terminated by court  
 235 order or under s. 61.761, or modified under s. 61.725.

236 61.725 Modification of agreement.-

237 (1) The parents of a child may modify an agreement granting  
 238 custodial responsibility by mutual consent.

239 (2) If an agreement is modified before deployment of a  
 240 deploying parent, the modification must be in writing and signed  
 241 by both parents and any nonparent granted custodial  
 242 responsibility under the modified agreement.

243 (3) If an agreement is modified during deployment of a  
 244 deploying parent, the modification must be agreed to in a record  
 245 by both parents and any nonparent granted custodial  
 246 responsibility.

247 61.727 Power of attorney.-A deploying parent may, by power  
 248 of attorney, grant all or part of custodial responsibility to an  
 249 adult nonparent for the period of deployment if no other parent  
 250 possesses custodial responsibility, or if a court order

251 currently in effect prohibits contact between the child and the  
 252 other parent. The deploying parent may revoke the power of  
 253 attorney by signing a revocation of the power of attorney.

254 61.729 Filing custodial responsibility agreement or power  
 255 of attorney with court.—An agreement or power of attorney must  
 256 be filed within a reasonable time with a court that has entered  
 257 an order in effect relating to custodial responsibility or child  
 258 support concerning the child who is the subject of the agreement  
 259 or power. The case number and heading of the pending case  
 260 concerning custodial responsibility or child support must be  
 261 provided to the court with the agreement or power.

262 61.733 Proceeding for temporary custody order.—

263 (1) After a deploying parent receives notice of deployment  
 264 and until the deployment terminates, a court may issue a  
 265 temporary order granting custodial responsibility unless  
 266 prohibited by the Servicemembers Civil Relief Act, Title 50,  
 267 Appendix U.S.C. ss. 501 et seq. A court may not issue a  
 268 permanent order granting custodial responsibility without the  
 269 consent of the deploying parent.

270 (2) (a) At any time after a deploying parent receives  
 271 notice of deployment, either parent may file a motion regarding  
 272 custodial responsibility of a child during deployment. The  
 273 motion must be filed in a pending proceeding for custodial  
 274 responsibility in a court with jurisdiction under s. 61.707 or,  
 275 if a pending proceeding does not exist in a court with

276 jurisdiction under s. 61.707, the motion must be filed in a new  
 277 action for granting custodial responsibility during deployment.

278 (b) If a motion to grant custodial responsibility is filed  
 279 under paragraph (a) before a deploying parent deploys, the court  
 280 shall conduct an expedited hearing.

281 61.735 Testimony by electronic means.—In a proceeding for  
 282 a temporary custody order, a party or witness who is not  
 283 reasonably able to appear in person may appear, provide  
 284 testimony, and present evidence by electronic means unless the  
 285 court finds good cause to require in-person testimony.

286 61.737 Effect of prior judicial order or agreement.—In a  
 287 proceeding for a temporary grant of custodial responsibility:

288 (1) A prior judicial order granting custodial  
 289 responsibility in the event of deployment is binding on the court  
 290 unless circumstances meet the requirements authorized by general  
 291 law for modifying a judicial order regarding custodial  
 292 responsibility.

293 (2) The court shall enforce a prior written agreement  
 294 between the parents for granting custodial responsibility in the  
 295 event of deployment, including an agreement for custodial  
 296 responsibility during deployment, unless the court finds that  
 297 the agreement is not in the best interest of the child.

298 61.739 Grant of caretaking authority to nonparent.—

299 (1) Upon the motion of a deploying parent and in  
 300 accordance with general law, if it is in the best interest of

301 the child, a court may grant caretaking authority to a  
 302 nonparent who is an adult family member of the child or an  
 303 adult with whom the child has a close and substantial  
 304 relationship.

305 (2) Unless a grant of caretaking authority to a  
 306 nonparent is agreed to by the other parent, the grant is  
 307 limited to an amount of time that may not exceed:

308 (a) The amount of time granted to the deploying parent  
 309 under a permanent custody order; however, the court may add  
 310 travel time necessary to transport the child; or

311 (b) In the absence of a permanent custody order that is  
 312 currently in effect, the amount of time the deploying parent  
 313 habitually cared for the child before being notified of  
 314 deployment; however, the court may add travel time necessary  
 315 to transport the child.

316 (3) If the deploying parent is unable to exercise  
 317 decisionmaking authority, a court may grant part of that  
 318 authority to a nonparent who is an adult family member of the  
 319 child or an adult with whom the child has a close and  
 320 substantial relationship. If a court grants the authority to a  
 321 nonparent, the court shall specify the decisionmaking powers  
 322 granted.

323 61.741 Grant of limited contact.—A court shall grant  
 324 limited contact to a nonparent who is a family member of the  
 325 child or an individual with whom the child has a close and

326 substantial relationship on motion of a deploying parent and in  
 327 accordance with general law unless the court finds that limited  
 328 contact with a nonparent would not be in the best interest of  
 329 the child.

330 61.743 Nature of authority created by temporary custody  
 331 order.—

332 (1) A grant of authority is temporary and terminates after  
 333 the deploying parent returns from deployment unless the grant  
 334 has been terminated before that time by court order. The grant  
 335 does not create an independent, continuing right to caretaking  
 336 authority, decisionmaking authority, or limited contact to an  
 337 individual granted temporary custody.

338 (2) A nonparent granted caretaking authority,  
 339 decisionmaking authority, or limited contact has standing to  
 340 enforce the grant until it is terminated by court order or under  
 341 this part.

342 61.745 Content of temporary custody order.—An order  
 343 granting custodial responsibility, when applicable, must:

344 (1) Designate the order as temporary and provide for  
 345 termination after the deploying parent returns from deployment.

346 (2) Identify, to the extent feasible, the destination,  
 347 duration, and conditions of the deployment.

348 (3) Specify the allocation of caretaking authority,  
 349 decisionmaking authority, or limited contact among the  
 350 deploying parent, the other parent, and any nonparent.

351           (4) Provide a process to resolve any dispute that may  
 352 arise if the order divides caretaking or decisionmaking  
 353 authority between individuals, or grants caretaking authority  
 354 to one individual and limited contact to another individual.

355           (5) Provide for liberal communication between the  
 356 deploying parent and the child during deployment, including  
 357 through electronic means, unless it is not in the best  
 358 interest of the child, and allocate any costs of  
 359 communication.

360           (6) Provide for liberal contact between the deploying  
 361 parent and the child during the time the deploying parent is  
 362 on leave or otherwise available, unless it is not in the best  
 363 interest of the child.

364           (7) Provide for reasonable contact between the deploying  
 365 parent and the child after the parent's return from deployment  
 366 until the temporary order is terminated, even if the time of  
 367 contact exceeds the time the deploying parent spent with the  
 368 child before entry of the temporary order.

369           61.747 Order for child support.—If a court has issued an  
 370 order granting caretaking authority, or an agreement granting  
 371 caretaking authority has been executed, the court may enter a  
 372 temporary order for child support authorized by general law if  
 373 the court has jurisdiction under the Uniform Interstate Family  
 374 Support Act.

375           61.749 Modifying or terminating grant of custodial

376 responsibility or limited contact to nonparent.-

377 (1) Except for an agreement under s. 61.723, or as  
 378 otherwise provided in subsection (2), and consistent with the  
 379 Servicemembers Civil Relief Act, Title 50, Appendix U.S.C. ss.  
 380 501 et seq, a court may modify or terminate a temporary grant of  
 381 custodial responsibility on motion of a deploying parent, other  
 382 parent, or any nonparent granted caretaking authority if the  
 383 modification or termination is consistent with this part and is  
 384 in the best interest of the child. A modification is temporary  
 385 and terminates after the deploying parent returns from  
 386 deployment, unless the grant has been terminated before that time  
 387 by court order.

388 (2) The court shall terminate a grant of limited contact on  
 389 motion of a deploying parent.

390 61.761 Procedure for terminating temporary agreement  
 391 granting custodial responsibility.-

392 (1) After a deploying parent returns from deployment, a  
 393 deploying parent and the other parent may file with the court an  
 394 agreement to terminate a temporary order for custodial  
 395 responsibility.

396 (2) After an agreement has been filed, it shall terminate:

397 (a) On the date specified on an agreement to terminate  
 398 under subsection (1); or

399 (b) On the date the agreement is signed by the deploying  
 400 parent and the other parent if the agreement to terminate does

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401 not specify a date.

402 (3) In the absence of an agreement to terminate under (1),  
403 a temporary agreement granting custodial responsibility  
404 terminates 60 days after the deploying parent gives notice of  
405 return from deployment to the other parent.

406 (4) If a temporary agreement granting custodial  
407 responsibility was filed with a court pursuant to s. 61.729, an  
408 agreement to terminate must be filed with the court within a  
409 reasonable time after the deploying parent and other parent sign  
410 the agreement. The case number and heading of the case concerning  
411 custodial responsibility or child support must be provided to the  
412 court with the agreement to terminate.

413 (5) A proceeding seeking to prevent termination of a  
414 temporary order for custodial responsibility is governed by  
415 general law.

416 61.763 Visitation before termination of temporary grant of  
417 custodial responsibility.—From the time a deploying parent  
418 returns from deployment until a temporary agreement or order for  
419 custodial responsibility is terminated, the court shall issue a  
420 temporary order granting the deploying parent reasonable contact  
421 with the child even if the time of contact exceeds the time the  
422 deploying parent spent with the child before deployment unless it  
423 is not in the best interest of the child.

424 61.771 Relation to electronic signatures in Global and  
425 National Commerce Act.—This act modifies, limits, or supersedes



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426 the Electronic Signatures in Global and National Commerce Act,  
427 15 U.S.C. s. 7001 et seq., but does not modify, limit, or  
428 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or  
429 authorize electronic delivery of any of the notices described in  
430 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

431 61.773 Applicability.—This act does not affect the  
432 validity of a temporary court order concerning custodial  
433 responsibility during deployment entered before July 1, 2018.

434 Section 2. This act shall take effect July 1, 2018.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice & Claims  
 2 Subcommittee  
 3 Representative Metz offered the following:

**Amendment (with title amendment)**

Between lines 433 and 434, insert:

Section 2. Section 61.13002, Florida Statutes, is repealed.

-----  
**T I T L E A M E N D M E N T**

Remove line 27 and insert:  
construction; providing applicability; repealing s. 61.13002,  
F.S., repealing provisions regarding temporary time-sharing  
modification and child support modification due to military  
service; providing an



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1323 Florida Guide to a Healthy Marriage

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

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1580

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Bruno	Bond NB
2) Children, Families & Seniors Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

A marriage license is required in order to be married in Florida. Among other requirements for issuance, a couple seeking a marriage license must certify that they have read the family law handbook, which outlines the legal rights and responsibilities of marital partners to each other and to their children. Florida law also incentivizes, but not does require, completion of a premarital preparation course by reducing the marriage license fee and waiving a three-day waiting period for couples who complete the course.

Similarly, HB 1323 adds the requirement that the applicants for a marriage license must certify that they have obtained and read or otherwise accessed the Florida Guide to a Healthy Marriage. Alternatively, the parties may certify that they have accessed an alternative electronic presentation of information covering conflict management, communication skills, family expectations, financial responsibilities and management, domestic violence resources, and parenting responsibilities.

The bill establishes the Marriage Education Committee within the Department of Children and Families. The committee consists of six members: two appointed by the Governor, two by the Speaker of the House, and two by the President of the Senate. The committee must create the Florida Guide to a Healthy Marriage. The Guide must include:

- Resources regarding conflict management, communication skills, family expectations, financial responsibilities, and parenting responsibilities.
- Current information from marriage education and family advocates to assist in forming and maintaining a long-term marital relationship.
- Information regarding premarital education, marriage enrichment education, and resources that are available to help restore a marriage that is potentially moving towards dissolution.
- Contact information and website links to additional resources and local professional and community services to further assist a marital relationship.

Each clerk of courts is required to make the Guide available on its website and to make printed copies available to marriage license applicants if the Committee has furnished them to the clerk.

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

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

A marriage license issued by a county court judge or the clerk of the circuit court is required in order to be married in Florida.<sup>1</sup> To be married, the parties must:

- Be at least 18 years old, subject to some exceptions;<sup>2</sup>
- Provide their social security number or other identification;<sup>3</sup>
- Obtain and read or otherwise access Florida's family law handbook;<sup>4</sup>
- Provide a written statement stating whether they have completed a premarital preparation course;<sup>5</sup>
- Pay the required fees;<sup>6</sup>
- Complete an application, required affidavits, and statements;<sup>7</sup> and
- Appear before the clerk or judge in person.<sup>8</sup>

Reading Florida's family law handbook is a prerequisite to receiving a marriage license.<sup>9</sup> The Family Law Section of The Florida Bar created the family law handbook, which covers the legal rights and responsibilities of marital partners to each other and to their children, both during a marriage and upon dissolution.<sup>10</sup> The Family Court Steering Committee and Florida Supreme Court reviews the handbook for accuracy prior to publication and distribution.<sup>11</sup> The clerk of court must make the handbook available upon application for a marriage license and may also make it available through electronic means or on videotape.<sup>12</sup> The book is 16 half-pages long and covers:

- Economic issues during marriage and upon the dissolution of marriage, including:
  - Assets;
  - Liabilities;
  - How the court divides assets and liabilities upon divorce;
  - Alimony;
  - Rights to assets upon the death of a spouse.
- Child-related issues, including:
  - Paying for children's expenses after divorce;
  - Making decisions for the children after divorce;
  - Where the children will live after divorce;
  - Contact with children;
  - Step-parenting.
- Domestic violence and child abuse;
- The process for ending a marriage; and
- Community resources.<sup>13</sup>

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<sup>1</sup> SS. 741.01 & 741.08, F.S.

<sup>2</sup> SS. 741.04 & 741.0405, F.S.

<sup>3</sup> S. 741.04(1), F.S.

<sup>4</sup> SS. 741.04(2)(b) & 741.0306, F.S.

<sup>5</sup> S. 741.04(2)(a), F.S.

<sup>6</sup> SS. 741.01 & 741.02, F.S.

<sup>7</sup> SS. 741.01(1) & 741.04, F.S.

<sup>8</sup> S. 741.04(2), F.S.

<sup>9</sup> SS. 741.04(2)(b) & 741.0306, F.S.

<sup>10</sup> S. 741.0306(1); The Florida Bar, *Family Law Handbook*, available at:

<https://www.pinellasclerk.org/asplnclude2/pdf/familylawhandbook.pdf> (last viewed January 16, 2018).

<sup>11</sup> S. 741.0306(1), F.S.

<sup>12</sup> S. 741.0306, F.S.

<sup>13</sup> The Florida Bar, *Family Law Handbook*, available at: <https://www.pinellasclerk.org/asplnclude2/pdf/familylawhandbook.pdf> (last viewed January 16, 2018).

Although a couple is not required to complete a premarital preparation course, doing so reduces the marriage license fees and allows a couple to bypass a three-day waiting period.<sup>14</sup>

There were 167,416 marriages in Florida in calendar year 2016.<sup>15</sup>

### **Effect of Proposed Changes**

HB 1323 creates the Marriage Education Committee within the Department of Children and Families. The committee is composed of six marriage education and family advocates. The Speaker of the House, Senate President, and Governor each appoints two members. The bill requires the committee to create the Florida Guide to a Healthy Marriage. The Guide must include:

- Resources regarding conflict management, communication skills, family expectations, financial responsibilities, and parenting responsibilities.
- Current information from marriage education and family advocates to assist in forming and maintaining a long-term marital relationship.
- Information regarding premarital education, marriage enrichment education, and resources that are available to help restore a marriage that is potentially moving towards dissolution.
- Contact information and website links to additional resources and local professional and community services to further assist a marital relationship.

The committee must raise private funds to cover the costs of design and layout for the Guide and may raise additional private funds for printing and distribution. The committee is not required to print and distribute the Guide if it is unable to obtain funding.

The members of the first committee must be appointed by September 1, 2018. The committee is reconstituted every 10 years and must provide the House of Representatives, Senate, and Governor a report detailing recommended updates to the Guide.

As a prerequisite to obtaining a marriage license, applicants must verify that they have read or otherwise accessed either the Guide or an alternative electronic presentation of information covering conflict management, communication skills, family expectations, financial responsibilities and management, domestic violence resources, and parenting responsibilities.

Each of the state's clerks of court is required to make the Guide available on its website and provide printed copies, if any, to marriage license applicants. The clerk of the circuit court is also encouraged to provide a list of course providers and sites where marriage and relationship skill-building classes are available.

The bill provides an effective date of July 1, 2018.

#### **B. SECTION DIRECTORY:**

**Section 1:** Creating s. 741.0307, F.S., relating to Marriage Education Committee; Florida Guide to a Healthy Marriage.

**Section 2:** Amending s. 741.04, F.S., relating to marriage license issued.

**Section 3:** Providing an effective date of July 1, 2018.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

##### **1. Revenues:**

<sup>14</sup> SS. 741.0305 & 741.04(3), F.S.

<sup>15</sup> Data furnished by the Florida Bureau of Vital Statistics, and is available at: <http://www.flpublichealth.com/V/BOOK/pdf/2016/Marriage.pdf> (last accessed January 19, 2018).

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The committee is required to secure private funding to cover design and layout of the Guide and any printing and distribution, and may solicit funds for printing. No mention of pay or per diem is in the bill, thus, members of the committee must serve without compensation.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect municipal or county governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**





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

27

28 Section 1. Section 741.0307, Florida Statutes, is created  
 29 to read:

30 741.0307 Marriage Education Committee; Florida Guide to a  
 31 Healthy Marriage.-

32 (1) There is created within the Department of Children and  
 33 Families, for administrative purposes only, the Marriage  
 34 Education Committee. The committee shall consist of six marriage  
 35 education and family advocates, two of whom shall be appointed  
 36 by the Governor, two of whom shall be appointed by the President  
 37 of the Senate, and two of whom shall be appointed by the Speaker  
 38 of the House of Representatives. The committee shall be  
 39 appointed by September 1, 2018, and the appointees shall serve a  
 40 1-year term each or until such time as the Florida Guide to a  
 41 Healthy Marriage has been created, whichever is earlier. The  
 42 committee shall submit the completed guide to the Governor, the  
 43 President of the Senate, and the Speaker of the House of  
 44 Representatives and terminates with the submission of the guide.  
 45 The committee shall subsequently be reconstituted once every 10  
 46 years after July 1, 2018, to review and update the contents of  
 47 the guide. The Governor, the President of the Senate, and the  
 48 Speaker of the House of Representatives shall each appoint two  
 49 members to the reconstituted committee. A vacancy on the  
 50 committee shall be filled for the unexpired portion of the term

51 in the same manner as the original appointment.

52 (2) The guide shall include, but is not limited to:

53 (a) Resources regarding conflict management, communication  
 54 skills, family expectations, financial responsibilities and  
 55 management, domestic violence resources, and parenting  
 56 responsibilities.

57 (b) Current information from marriage education and family  
 58 advocates to assist in forming and maintaining a long-term  
 59 marital relationship.

60 (c) Information regarding premarital education, marriage  
 61 enrichment education, and resources that are available to help  
 62 restore a marriage that is potentially moving toward  
 63 dissolution.

64 (d) Contact information and website links to additional  
 65 resources and local professional and community services to  
 66 further assist a marital relationship.

67 (3) The Marriage Education Committee shall oversee the  
 68 design and layout of the guide. The committee shall raise funds  
 69 from private sources to cover the costs of the design and  
 70 layout. The committee may raise funds from private sources to  
 71 cover the costs of printing and distributing copies of the  
 72 guide. If adequate funds are not raised to cover the costs of  
 73 printing and distribution, the committee will not be required to  
 74 print or distribute copies of the guide.

75 (4) The clerk of the circuit court shall post an

76 electronic copy of the guide on its website. Additionally, if  
 77 the Marriage Education Committee provides printed copies of the  
 78 guide to the office of the clerk of the circuit court, the clerk  
 79 shall make the guide available to marriage license applicants.  
 80 The clerk of the circuit court is encouraged to provide a list  
 81 of course providers and sites where marriage and relationship  
 82 skill-building classes are available.

83 (5) The Marriage Education Committee shall review the  
 84 guide and provide a report to the Governor, the President of the  
 85 Senate, and the Speaker of the House of Representatives every 10  
 86 years, or as soon thereafter as practicable, detailing changes  
 87 made to the guide and recommending further updates.

88 Section 2. Paragraph (c) is added to subsection (2) of  
 89 section 741.04, Florida Statutes, to read:

90 741.04 Marriage license issued.—

91 (2) No county court judge or clerk of the circuit court in  
 92 this state shall issue a license for the marriage of any person  
 93 unless there shall be first presented and filed with him or her:

94 (c) A statement that verifies that both parties have  
 95 obtained and read or otherwise accessed the information  
 96 contained in the Florida Guide to a Healthy Marriage, as created  
 97 under s. 741.0307, or some other electronic presentation of  
 98 information regarding conflict management, communication skills,  
 99 family expectations, financial responsibilities and management,  
 100 domestic violence resources, and parenting responsibilities.

HB 1323

2018

101 | Section 3. This act shall take effect July 1, 2018. |



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1351 Early Childhood Court Program
SPONSOR(S): Payne
TIED BILLS: IDEN./SIM. BILLS: SB 1442

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Civil Justice & Claims Subcommittee, Tuszynski (initials), Bond (initials). Row 2: 2) Appropriations Committee. Row 3: 3) Judiciary Committee.

SUMMARY ANALYSIS

Early Childhood Court (ECC) programs address child welfare cases involving children under the age of three and seek to address the root causes of justice system involvement through specialized dockets, multidisciplinary teams, and a nonadversarial approach

HB 1351 requires the Office of the State Courts Administrator (OSCA), by August 1, 2018, to verify the existence of ECC programs within each circuit court that were established prior to July 1, 2018. The bill requires OSCA to hire and train a full-time community coordinator at each ECC program site, and may also hire a statewide community coordinator to implement the program.

The bill requires the Florida State University Center for Prevention and Early Intervention Policy (CPEIP) to hire a statewide clinical consultant as well as assemble a clinical oversight team to provide training and technical assistance, consultation and guidance, clinical training for court teams, and training in child-parent psychotherapy to support professional development at each ECC program site. The bill also requires CPEIP and OSCA to provide training to participating court teams on the objectives of the ECC program.

The bill requires the Florida Institute for Child Welfare (FICW), in consultation with other agencies, to evaluate the impact of ECC programs on children in the child welfare system, to include an analysis of data collected by OSCA. FICW is required to submit the results of the evaluation to the Governor, the President of the Senate, the Speaker of the House, and the Office of Program Policy Analysis and Government Accountability by October 1, 2021. In the interim, the FICW is required to submit reports on the status of the program evaluation to these same parties by December 1, 2019 and 2020.

The bill also provides definitions, goals, core components, and legislative findings related to ECC programs.

The bill appears to have the following negative recurring fiscal impacts, commencing with FY 2018-19:

- \$1.6 million on State Courts
\$.38 million on the FSU Center for Prevention and Early Intervention Policy
\$.09 million on the Florida Institute for Child Welfare

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

The bill is effective July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Chapter 39, F.S., creates Florida's child welfare system to protect children and prevent abuse, abandonment, and neglect. The Department of Children and Families works in partnership with local communities and the dependency courts to ensure the safety, timely permanency and well-being of children in the dependency system. While the child welfare system is tasked with protection of children, it is also required to recognize that most parents desire to be competent caregivers and providers for their children and that children achieve their greatest potential when families are able to support and nurture the growth and development of their children.<sup>1</sup>

Florida has a long history of model court initiatives, pioneering the nation's first drug courts and unified family courts. Florida is also the birthplace of the nation's first Early Childhood Court (ECC) approximately 3 years ago, the Miami Child Well-Being Court, which inspired national expansion of Safe Babies Court Teams (SBCT).<sup>2</sup>

SBCTs are community engagement and systems change initiatives focused on improving how the courts, child welfare agencies, and related child-serving organizations work together to improve and expedite services for young foster children.<sup>3</sup> The SBCT is designed to protect babies from further harm and address the damage done, and expose the structural issues in the child welfare system that prevent families from succeeding.<sup>4</sup>

Building upon these model programs, Florida has embarked on a collaborative statewide ECC initiative.<sup>5</sup>

##### Early Childhood Courts

ECCs address child welfare cases involving children under the age of three. ECC is considered a "problem-solving court" that seeks to address the root causes of justice system involvement through specialized dockets, multidisciplinary teams, and a nonadversarial approach.<sup>6</sup> A hallmark of problem-solving courts is in the individualized intervention for participants by offering evidence-based treatment, judicial supervision, and accountability.<sup>7</sup> Problem-solving courts also differ from traditional courts in how they handle case management. Cases are triaged based on the level of complexity of the issues, and the most complex, service intensive cases are heard on a special docket before a specific judicial officer, providing greater judicial oversight and close monitoring by a multidisciplinary team.<sup>8</sup>

The goal of Florida's ECC, coordinated by the Office of the State Courts Administrator (OSCA) is to improve child safety and well-being, heal trauma and repair the parent/child relationship, expedite

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

<sup>2</sup> Florida Courts, Office of Court Improvement, *Early Childhood Courts*, available at: <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/early-childhood-court.stml> (last accessed January 17, 2018).

<sup>3</sup> The California Evidence-Based Clearinghouse for Child Welfare, available at: <http://www.cebc4cw.org/program/safe-babies-court-teams-project/> (last accessed January 17, 2018).

<sup>4</sup> Id.

<sup>5</sup> Center for Prevention & Early Intervention Policy, Florida State University, *Florida's Early Childhood Court Manual*, April 2015, at 3, available at: <http://cpeip.fsu.edu/babyCourt/resources/Early%20Childhood%20Court%20Manual%204172015.pdf> (last accessed January 17, 2018).

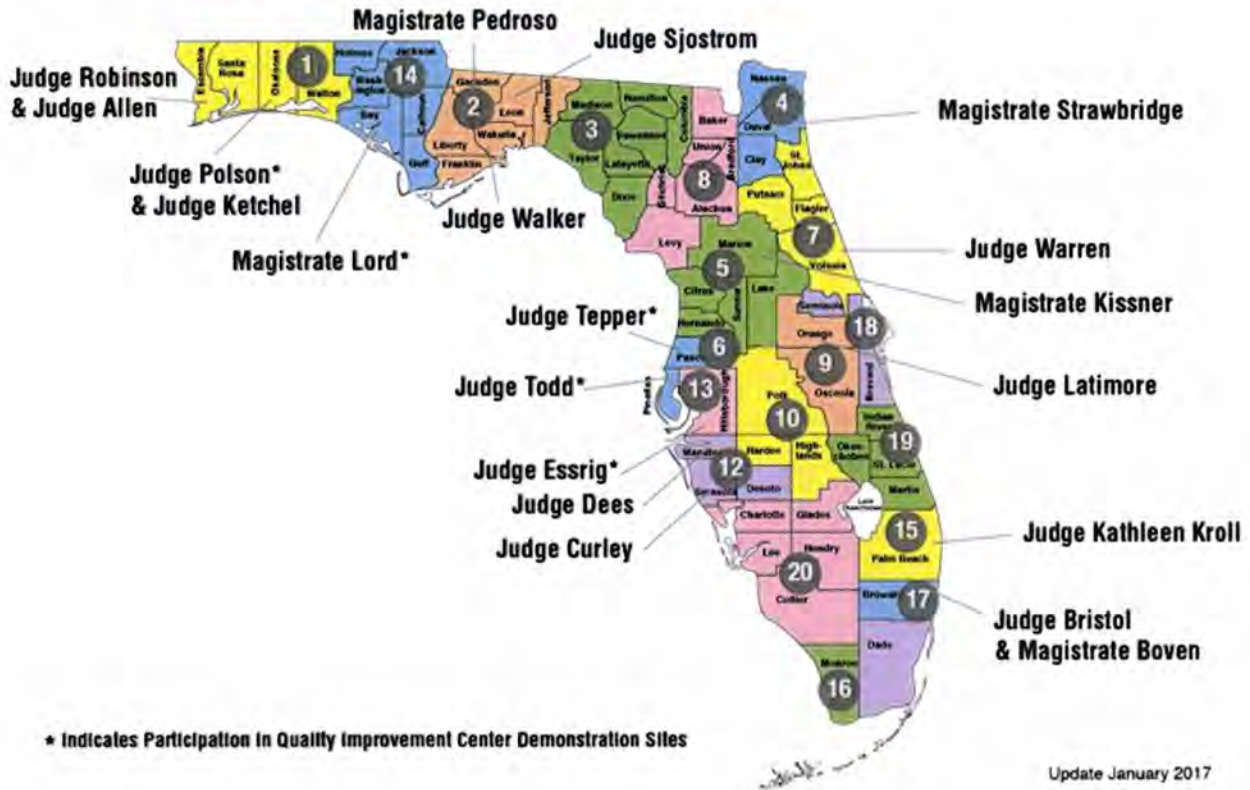
<sup>6</sup> Florida Courts, Office of Court Improvement, *Problem-Solving Courts*, available at: <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/index.stml> (last accessed January 17, 2018).

<sup>7</sup> Id.

<sup>8</sup> Supra, FN 5

permanency, prevent recurrence of maltreatment, and stop the intergenerational cycle of abuse/neglect/violence.<sup>9</sup>

In just over three years, ECC has expanded from the Miami Child Well-Being court to 19 sites in 12 different circuits in Florida:<sup>10</sup>



The ECC have been able to rapidly expand through a partnership between OSCA, the Florida State University Center for Prevention and Early Intervention Policy, and the national ZERO TO THREE<sup>11</sup> organization. In 2015, OSCA received a grant from ZERO TO THREE's Quality improvement Center for Research-Based Infant-Toddler Court Teams.<sup>12</sup>

### Statistics

The following numbers are based on cases closed during calendar year 2016 for children who were removed from their parents' care due to allegations of abandonment, abuse, or neglect.<sup>13</sup>

<sup>9</sup> Id.

<sup>10</sup> Florida Courts, Office of Court Improvement, *Early Childhood Courts*, available at: <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/early-childhood-court.stml> (last accessed January 17, 2018).

<sup>11</sup> ZERO TO THREE is a national nonprofit organization that informs, trains, and supports professionals, policymakers, and parents in efforts to improve and promote the health and development of children under 3 years of age.

<sup>12</sup> Supra, FN 10

<sup>13</sup> Id.; Case closure is defined as the termination of supervision or jurisdiction. The total number of reunifications prior to closure in 2016 for non-ECC children was 2,556, and the total number of reunifications prior to closure in 2016 for ECC children was 79. These two measures compare groups of children ages 0-3 who were in the Early Childhood Court (ECC) program to children ages 0-3 who were not in the ECC program. The total number of closures in 2016 for non-ECC children was 5,466, and the total number of closures in 2016 for ECC children was 59.



Measure	Children not in ECC	Children in ECC
Median number of days from removal to reunification	298.5	226
Median number of days from removal to adoption	704	537
Median number of days from removal to another permanency option	497	385
Re-removal after case closure	3.86%	3.39%

### FSU Center for Prevention & Early Intervention Policy

The FSU Center for Prevention & Early Intervention Policy (CPEIP) was established in February 1991 as part of the FSU Institute for Science and Public Affairs.<sup>14</sup> The purpose of the FSU CPEIP is to investigate what early interventions are most effective on children, families and communities, translate the related research findings into public policy and programs, and evaluate the impact.<sup>15</sup> FSU CPEIP is already a partner in the ECC program and has been integral in the creation and expansion of the program statewide.<sup>16</sup>

### Florida Institute for Child Welfare

In 2014, the Legislature passed s. 1004.615, F.S., establishing the Florida Institute for Child Welfare (FICW) at the Florida State University College of Social Work. The purpose of the FICW is to advance the well-being of children and families by improving the performance of child protection and child welfare services through research, policy analysis, evaluation, and leadership development.<sup>17</sup> Some of the required duties of the FICW are:

- Maintain a program of research which contributes to scientific knowledge and informs both policy and practice;
- Advise the department and other organizations participating in the child protection and child welfare system regarding scientific evidence;
- Provide advice regarding management practices and administrative processes used by the department and other organizations participating in the child protection and child welfare system and recommend improvements; and
- Assess the performance of child protection and child welfare services based on specific outcome measures.<sup>18</sup>

### **Effect of Proposed Language**

HB 1351 requires OSCA, by August 1, 2018, to verify the existence of ECC programs within each circuit court that were established prior to July 1, 2018. The bill requires OSCA, in coordination with the circuit courts, to hire and train a full-time community coordinator at each ECC program site. OSCA may also hire a statewide community coordinator to implement the program.

The bill requires the FSU CPEIP to hire a statewide clinical consultant as well as assemble a clinical oversight team to ensure quality, accountability, and fidelity to the ECC Model. This team would provide training and technical assistance related to clinical services, consultation and guidance, clinical training for court teams, and training in child-parent psychotherapy to support professional development at each ECC program site.

The bill requires OSCA and CPEIP to provide training to participating court teams on meeting the objectives of the ECC program.

<sup>14</sup> Florida State University, Center for Prevention & Early Intervention Policy, About Us, available at: <http://www.cpeip.fsu.edu/about.cfm> (last accessed January 19, 2018).

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> s. 1004.615(1), F.S.

<sup>18</sup> s. 1004.615(4), F.S.

The bill details the primary goal of the ECC program is to improve outcomes of children under 3 years of age by:

- Improving child safety and well-being;
- Addressing parents' trauma-related conditions and associated issues;
- Achieving timely permanency;
- Preventing recurrences of maltreatment; and
- Ending the intergenerational cycle of abuse, neglect, and violence.

The bill lists the core components of an ECC program. It must be modeled after the national ZERO TO THREE Safe Babies Court Team approach, promote community engagement and systems change initiatives, and incorporate:

- An engaged and informed judge who leads the ECC team;
- A continuum of evidence-based mental health interventions to address parent-child attachment, trauma, and promote health relationships; and
- An ECC community coordinator to support the ECC judge.

The bill requires FICW, in consultation with the Department of Children and Families, OSCA, CPEIP, and the national ZERO TO THREE organization, to evaluate the impact of ECC programs on children in the child welfare system. This evaluation must include an analysis of data collected by OSCA, to include:

- The impact of the ECC program on future incidence of maltreatment in ECC court cases;
- Timely permanency;
- Reunification of families; and
- Incidents of children reentering the child welfare system in ECC court cases.

FICW is required to submit the results of the evaluation to the Governor, the President of the Senate, the Speaker of the House, and the Office of Program Policy Analysis and Government Accountability by October 1, 2021. In the interim, the FICW is required to submit reports on the status of the program evaluation to these same parties by December 1, 2019 and 2020.

The bill defines "community coordinator," "Early Childhood Court," "Safe Babies Court Team," and "ZERO TO THREE," as used in the bill.

The bill also provides legislative findings and intent language that details the importance of evidence-based practices and strategies to mitigate the impact of trauma on a child in the first 1,000 days of his or her life, the success of the Safe Babies Court approach, and the importance of the Legislature to provide resources to expand the existing ECC program.

The bill is effective July 1, 2018.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 39.01304, F.S., relating to Early Childhood Court programs.

**Section 2:** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

2. Expenditures:

State Courts

The bill will likely have a negative fiscal impact on the State Courts. OSCA reports that the 23 OPS positions needed to comply with the bill will cost \$1,642,861 in recurring funds from GR commencing in FY 2018-19.<sup>19</sup>

FSU Center for Prevention and Early Intervention Policy

The bill will likely have a negative fiscal impact on the CPEIP. To support the Senate companion, \$386,120 in nonrecurring funds from GR in FY 2018-19 has been requested.<sup>20</sup> However, this is likely a recurring cost.

Florida Institute for Child Welfare

The bill will likely have a negative fiscal impact on the FICW. To support the Senate companion, \$94,104 in nonrecurring funds from GR in FY 2018-19 has been requested.<sup>21</sup> However, this is likely a recurring cost for at least 3 years as the FICW evaluates the program.

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:

Not applicable. The bill does not appear to affect county or municipal government.

2. Other:

None.

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<sup>19</sup> Office of the State Courts Administrator, 2018 Judicial Impact Statement, HB 1351 (January 19, 2018) (on file with Civil Justice & Claims Subcommittee staff).

<sup>20</sup> Local Funding Initiative Request - Fiscal Year 2018=2019, The Florida Senate, Early Childhood Court Program--FS Center for Prevention & Early Intervention Policy, Senator Book, 1/15/18, available at: [https://www.flsenate.gov/PublishedContent/Session/FiscalYear/FY2018-19/LocalFundingInitiativeRequests/FY2018-19\\_S2243.PDF](https://www.flsenate.gov/PublishedContent/Session/FiscalYear/FY2018-19/LocalFundingInitiativeRequests/FY2018-19_S2243.PDF) (last accessed January 19, 2018).

<sup>21</sup> Local Funding Initiative Request - Fiscal Year 2018=2019, The Florida Senate, Early Childhood Court Program--FL Institute for Child Welfare, Senator Book, 1/15/18, available at: [https://www.flsenate.gov/PublishedContent/Session/FiscalYear/FY2018-19/LocalFundingInitiativeRequests/FY2018-19\\_S2242.PDF](https://www.flsenate.gov/PublishedContent/Session/FiscalYear/FY2018-19/LocalFundingInitiativeRequests/FY2018-19_S2242.PDF) (last accessed January 19, 2018).

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill codifies the use of a particular model and national organization. Statewide support by OSCA, CEIEP, and the FICW would only be available to circuits who utilize that particular model.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
2       An act relating to the Early Childhood Court program;  
3       creating s. 39.01304, F.S.; providing legislative  
4       findings and intent; defining terms; requiring the  
5       Office of the State Courts Administrator, by a  
6       specified date, to verify the existence of an Early  
7       Childhood Court Program at certain circuit courts;  
8       requiring the office to coordinate with the  
9       appropriate circuit court to employ and train a  
10      community coordinator for each program site;  
11      authorizing the office to hire a statewide community  
12      coordinator; requiring the Florida State University  
13      Center for Prevention and Early Intervention Policy to  
14      hire a statewide clinical consultant and assemble a  
15      clinical oversight team for specified purposes;  
16      establishing the primary goal of the program and the  
17      means of achieving the goal; requiring that the  
18      program be modeled on a specified approach for  
19      specified purposes; requiring the program to  
20      incorporate specified core components; requiring the  
21      office, in partnership with the center and within  
22      appropriated funds, to provide training to program  
23      court teams; requiring the Florida Institute for Child  
24      Welfare to conduct an evaluation of the program's  
25      impact in consultation with the Department of Children

26 and Families, the office, the center, and a specified  
 27 organization; requiring the evaluation to include  
 28 certain data and recommendations; requiring the  
 29 institute to submit the results of its evaluation to  
 30 the Governor, the Legislature, and the Office of  
 31 Program Policy Analysis and Government Accountability  
 32 by a specified date; requiring the institute to submit  
 33 annual reports; providing an effective date.

34

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

36

37 Section 1. Section 39.01304, Florida Statutes, is created  
 38 to read:

39 39.01304 Early Childhood Court program.-

40 (1) LEGISLATIVE FINDINGS AND INTENT.-

41 (a) The Legislature finds that a child's first 1,000 days  
 42 of life are a critical period during which he or she faces  
 43 either the greatest risk of having to endure lifelong adversity  
 44 or the greatest opportunity for long-term well-being with a  
 45 stable nurturing caregiver.

46 (b) The Legislature also finds it is important to identify  
 47 evidence-based practices and developmentally appropriate  
 48 strategies to mitigate the impact of trauma on young children  
 49 placed in the state's dependency system and to improve outcomes  
 50 for them and their families.

51        (c) The Legislature further finds positive results  
 52 associated with the Safe Babies Court Team approach, advanced by  
 53 the national ZERO TO THREE nonprofit organization, which  
 54 achieves timely permanency, increases a child's well-being, and  
 55 greatly reduces recurrence of child abuse through the  
 56 development and use of specialized dockets, multidisciplinary  
 57 teams, and a nonadversarial approach in connection with  
 58 dependency proceedings.

59        (d) It is the intent of the Legislature to provide  
 60 resources to expand upon the existing specialized Early  
 61 Childhood Court dockets to ensure their adherence to the Safe  
 62 Babies Court Team approach. The Legislature also seeks to assess  
 63 the potential benefits to Florida's children and families from  
 64 adopting this approach, and determine whether expansion of the  
 65 Early Childhood Courts concept in this state is warranted.

66        (2) DEFINITIONS.—As used in this section, the term:

67        (a) "Community coordinator" means an individual who works  
 68 with a judge presiding over an Early Childhood Court, who  
 69 supports the activities of the court, and who facilitates  
 70 coordination and collaboration among the members of the Early  
 71 Childhood Court team.

72        (b) "Early Childhood Court" means a program that has a  
 73 specialized court docket created under this section which is  
 74 modeled after the national ZERO TO THREE Safe Babies Court Team  
 75 approach and which addresses child welfare cases involving

76 children under 3 years of age.

77 (c) "Safe Babies Court Team" means a ZERO TO THREE  
 78 community engagement and systems change initiative focused on  
 79 improving how the courts, child welfare agencies, and related  
 80 child-serving organizations work together to improve and  
 81 expedite services for young children in out-of-home care.

82 (d) "ZERO TO THREE" means the national nonprofit  
 83 organization that informs, trains, and supports professionals,  
 84 policymakers, and parents in efforts to improve and promote the  
 85 health and development of children under 3 years of age.

86 (3) PROGRAM DEVELOPMENT.—

87 (a) By August 1, 2018, the Office of the State Courts  
 88 Administrator shall verify the existence of an Early Childhood  
 89 Court program at each circuit court site that established a  
 90 specialized Early Childhood Court docket before July 1, 2018.  
 91 Multiple program sites may exist in the same county. The Office  
 92 of the State Courts Administrator shall coordinate with the  
 93 appropriate circuit court to hire and train a full-time  
 94 community coordinator at each Early Childhood Court program site  
 95 that was verified pursuant to this paragraph, and may hire a  
 96 statewide community coordinator to implement the program.

97 (b) The Florida State University Center for Prevention and  
 98 Early Intervention Policy shall hire a statewide clinical  
 99 consultant and assemble a clinical oversight team to ensure  
 100 quality, accountability, and fidelity to the Early Childhood



101 Court model, including, but not limited to, training and  
 102 technical assistance related to clinical services, clinical  
 103 consultation and guidance for difficult cases, ongoing clinical  
 104 training for court teams, and training in child-parent  
 105 psychotherapy to expand clinical capacity and support of the  
 106 professional development of clinicians at each Early Childhood  
 107 Court program site.

108 (4) GOALS.—The primary goal of the Early Childhood Court  
 109 program is to improve outcomes of children under 3 years of age  
 110 in Florida's child welfare system by doing all of the following:

111 (a) Improving child safety and well-being.

112 (b) Addressing parents' trauma-related conditions and  
 113 associated issues, including, but not limited to, substance  
 114 abuse, mental health concerns, and family violence, and  
 115 repairing relationships between parents and their children.

116 (c) Achieving timely permanency.

117 (d) Preventing recurrences of maltreatment.

118 (e) Ending the intergenerational cycle of abuse, neglect,  
 119 and violence.

120 (5) CORE COMPONENTS.—The program shall be modeled after  
 121 the national ZERO TO THREE Safe Babies Court Team approach and  
 122 shall promote the adoption of its community engagement and  
 123 systems change initiatives to improve coordination between the  
 124 courts, child welfare agencies, and related organizations for  
 125 the benefit of children under 3 years of age placed in out-of-

126 home care. The program shall incorporate, but not be limited to,  
 127 all of the following core components of the Safe Babies Court  
 128 Team approach:

129 (a) An engaged and informed judge who leads the court team  
 130 in applying a therapeutic approach.

131 (b) A continuum of evidence-based mental health  
 132 interventions to address the parent-child attachment, to heal  
 133 trauma, and to promote healthy relationships.

134 (c) An Early Childhood Court community coordinator who  
 135 works with the judge to support Early Childhood Court  
 136 activities.

137 (6) TRAINING.—Within appropriated funds, the Office of the  
 138 State Courts Administrator, in partnership with the Florida  
 139 State University Center for Prevention and Early Intervention  
 140 Policy, shall provide training to the participating court teams  
 141 on meeting the program objectives.

142 (7) EVALUATION OF THE PROGRAM.—

143 (a) In consultation with the department, the Office of the  
 144 State Courts Administrator, the Florida State University Center  
 145 for Prevention and Early Intervention Policy, and the ZERO TO  
 146 THREE organization, the Florida Institute for Child Welfare  
 147 established in s. 1004.615 shall evaluate the impact of the  
 148 Early Childhood Court program on children and families in  
 149 Florida's child welfare system.

150 (b) The evaluation must include the analysis of data

151 collected by the Office of the State Courts Administrator and  
 152 measurable outcomes, including, but not limited to, the impact  
 153 of the Early Childhood Courts program on the future incidence of  
 154 maltreatment of children whose cases were heard in Early  
 155 Childhood Court, timely permanency, reunification of families,  
 156 and incidents of children reentering the child welfare system  
 157 whose cases were heard in Early Childhood Court. The evaluation  
 158 must provide recommendations as to whether and how the program  
 159 should be expanded, the projected costs of such expansion, and  
 160 projected savings to the state resulting from the Early  
 161 Childhood Courts program.

162 (c) The institute shall submit the results of the  
 163 evaluation to the Governor, the President of the Senate, the  
 164 Speaker of the House of Representatives, and the Office of  
 165 Program Policy Analysis and Government Accountability by October  
 166 1, 2021.

167 (8) ANNUAL REPORTS.—By December 1, 2019, and December 1,  
 168 2020, the Florida Institute for Child Welfare shall provide  
 169 reports on the status of the program to the Governor, the  
 170 President of the Senate, the Speaker of the House of  
 171 Representatives, and the Office of Program Policy Analysis and  
 172 Government Accountability.

173 Section 2. This act shall take effect July 1, 2018.



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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice & Claims  
2 Subcommittee

3 Representative Payne offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7  
8 Section 1. Section 39.01304, Florida Statutes, is created  
9 to read:

10 39.01304 Early Childhood Court program.-

11 (1) LEGISLATIVE FINDINGS AND INTENT.-

12 (a) The Legislature finds that a child's first 1,000 days  
13 of life are a critical period during which he or she faces  
14 either the greatest risk of having to endure lifelong adversity  
15 or the greatest opportunity for long-term well-being with a  
16 stable nurturing caregiver.



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17        (b) The Legislature also finds it is important to identify  
18 evidence-based practices and developmentally appropriate  
19 strategies to mitigate the impact of trauma on young children  
20 placed in the state's dependency system and to improve outcomes  
21 for them and their families.

22        (c) The Legislature further finds positive results  
23 associated with the Safe Babies Court Team approach, advanced by  
24 the national ZERO TO THREE nonprofit organization, which  
25 achieves timely permanency, increases a child's well-being, and  
26 greatly reduces recurrence of child abuse through the  
27 development and use of specialized dockets, multidisciplinary  
28 teams, community coordinators, and early childhood mental health  
29 specialists who provide child-parent therapy to address the  
30 multigenerational trauma.

31        (d) It is the intent of the Legislature to provide  
32 resources to expand upon the existing specialized Early  
33 Childhood Court dockets to ensure their adherence to the Safe  
34 Babies Court Team approach. The Legislature also seeks to assess  
35 the potential benefits to Florida's children and families from  
36 adopting this approach, and determine whether expansion of the  
37 Early Childhood Courts concept in this state is warranted.

38        (2) DEFINITIONS.—As used in this section, the term:

39        (a) "Community coordinator" means an individual who works  
40 with a judge presiding over an Early Childhood Court, who  
41 supports the activities of the court, and who facilitates



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42 coordination and collaboration among the members of the Early  
43 Childhood Court team.

44 (b) "Early Childhood Court" means a program that has a  
45 specialized court docket created under this section which is  
46 modeled after the national ZERO TO THREE Safe Babies Court Team  
47 approach and which addresses child welfare cases involving  
48 children under 3 years of age.

49 (c) "Safe Babies Court Team" means a ZERO TO THREE  
50 community engagement and systems change initiative focused on  
51 improving how the courts, child welfare agencies, and related  
52 child-serving organizations work together to improve and  
53 expedite services for young children in out-of-home care.

54 (d) "ZERO TO THREE" means the national nonprofit  
55 organization that informs, trains, and supports professionals,  
56 policymakers, and parents in efforts to improve and promote the  
57 health and development of children under 3 years of age.

58 (3) PROGRAM DEVELOPMENT.—

59 (a) By August 1, 2018, the Office of the State Courts  
60 Administrator shall verify the existence of an Early Childhood  
61 Court program at each circuit court site that established a  
62 specialized Early Childhood Court docket before July 1, 2018.  
63 Multiple program sites may exist in the same county. The Office  
64 of the State Courts Administrator shall coordinate with the  
65 appropriate circuit court to hire and train a full-time  
66 community coordinator at each Early Childhood Court program site

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67 that was verified pursuant to this paragraph, and may hire a  
68 statewide community coordinator to implement the program.

69 (b) The Florida State University Center for Prevention and  
70 Early Intervention Policy shall hire a statewide clinical  
71 director and assemble a clinical oversight team to ensure  
72 quality, accountability, and fidelity to the Early Childhood  
73 Court model, including, but not limited to, training and  
74 technical assistance related to clinical services, clinical  
75 consultation and guidance for difficult cases, ongoing clinical  
76 training for court teams, and training in child-parent  
77 psychotherapy to expand clinical capacity and support of the  
78 professional development of clinicians at each Early Childhood  
79 Court program site.

80 (4) GOALS.—The primary goal of the Early Childhood Court  
81 program is to improve outcomes of children under 3 years of age  
82 in Florida's child welfare system by doing all of the following:

83 (a) Improving child safety and well-being.

84 (b) Addressing parents' trauma-related conditions and  
85 associated issues, including, but not limited to, substance  
86 abuse, mental health concerns, and family violence, and  
87 repairing relationships between parents and their children.

88 (c) Achieving timely permanency.

89 (d) Preventing recurrences of maltreatment.

90 (e) Ending the intergenerational cycle of abuse, neglect,  
91 and violence.



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92           (5) CORE COMPONENTS.—The program shall be modeled after  
93 the national ZERO TO THREE Safe Babies Court Team approach and  
94 shall promote the adoption of its community engagement and  
95 systems change initiatives to improve coordination between the  
96 courts, child welfare agencies, and related organizations for  
97 the benefit of children under 3 years of age placed in out-of-  
98 home care. The program shall incorporate, but not be limited to,  
99 all of the following core components of the Safe Babies Court  
100 Team approach:

101           (a) An engaged and informed judge who leads the court team  
102 in applying a therapeutic approach.

103           (b) Licensed mental health specialists who are trained in  
104 Child-Parent Psychotherapy to heal trauma and help parents  
105 become invested in their child's safety and well-being and who  
106 play a prominent role in making recommendations to the judge and  
107 the team regarding family progress and permanency for the child.

108           (c) An Early Childhood Court community coordinator who  
109 works with the judge and the team to support Early Childhood  
110 Court activities.

111           (6) TRAINING.—Within appropriated funds, the Office of the  
112 State Courts Administrator, in partnership with the Florida  
113 State University Center for Prevention and Early Intervention  
114 Policy, shall provide training to the participating court teams  
115 on meeting the program objectives.

116           (7) EVALUATION OF THE PROGRAM.—

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117 (a) In consultation with the department, the Office of the  
118 State Courts Administrator, the Florida State University Center  
119 for Prevention and Early Intervention Policy, and the ZERO TO  
120 THREE organization, the Florida Institute for Child Welfare  
121 established in s. 1004.615 shall evaluate the impact of the  
122 Early Childhood Court program on children and families in  
123 Florida's child welfare system.

124 (b) The evaluation must include the analysis of data  
125 collected by the Office of the State Courts Administrator and  
126 measurable outcomes, including, but not limited to, the impact  
127 of the Early Childhood Courts program on the future incidence of  
128 maltreatment of children whose cases were heard in Early  
129 Childhood Court, timely permanency, reunification of families,  
130 and incidents of children reentering the child welfare system  
131 whose cases were heard in Early Childhood Court. The evaluation  
132 must provide recommendations as to whether and how the program  
133 should be expanded, the projected costs of such expansion, and  
134 projected savings to the state resulting from the Early  
135 Childhood Courts program.

136 (c) The institute shall submit the results of the  
137 evaluation to the Governor, the President of the Senate, the  
138 Speaker of the House of Representatives, and the Office of  
139 Program Policy Analysis and Government Accountability by October  
140 1, 2021.

141 (8) ANNUAL REPORTS.—By December 1, 2019 and December 1,



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142 2020, the Florida Institute for Child Welfare shall provide  
 143 reports on the status of the program to the Governor, the  
 144 President of the Senate, the Speaker of the House of  
 145 Representatives, and the Office of Program Policy Analysis and  
 146 Government Accountability.

147 Section 2. This act shall take effect July 1, 2018.

148

149 -----

150 **T I T L E A M E N D M E N T**

151 Remove everything before the enacting clause and insert:

152 A bill to be entitled

153 An act relating to the Early Childhood Court program;  
 154 creating s. 39.01304, F.S.; providing legislative  
 155 findings and intent; defining terms; requiring the  
 156 Office of the State Courts Administrator, by a  
 157 specified date, to verify the existence of an Early  
 158 Childhood Court Program at certain circuit courts;  
 159 requiring the office to coordinate with the  
 160 appropriate circuit court to employ and train a  
 161 community coordinator for each program site;  
 162 authorizing the office to hire a statewide community  
 163 coordinator; requiring the Florida State University  
 164 Center for Prevention and Early Intervention Policy to  
 165 hire a statewide director and assemble a clinical  
 166 oversight team for specified purposes; establishing



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167 the primary goal of the program and the means of  
168 achieving the goal; requiring that the program be  
169 modeled on a specified approach for specified  
170 purposes; requiring the program to incorporate  
171 specified core components; requiring the office, in  
172 partnership with the center and within appropriated  
173 funds, to provide training to program court teams;  
174 requiring the Florida Institute for Child Welfare to  
175 conduct an evaluation of the program's impact in  
176 consultation with the Department of Children and  
177 Families, the office, the center, and a specified  
178 organization; requiring the evaluation to include  
179 certain data and recommendations; requiring the  
180 institute to submit the results of its evaluation to  
181 the Governor, the Legislature, and the Office of  
182 Program Policy Analysis and Government Accountability  
183 by a specified date; requiring the institute to submit  
184 annual reports; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1361 Unclaimed Funds Held by the Clerks of Court  
**SPONSOR(S):** Clemons, Sr.  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Bond MB	Bond MB
2) Appropriations Committee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Florida Disposition of Unclaimed Property Act provides that property held for the benefit of another must be turned over to the state if unclaimed for the statutory length of time. The Department of Financial Services (DFS) administers the program. DFS is responsible for receiving the property, attempting to locate the owner, and returning the property to the owner. Holders of unclaimed property file an annual report and transmit the unclaimed property by May 1st regarding all property that becomes classified by statute as unclaimed in the previous calendar year.

The process differs for unclaimed surplus funds that remain after a foreclosure. Upon the conclusion of a foreclosure, the clerk is to disburse the bid according to the final judgment. If any funds remain undisbursed for 60 days without a legal claim, the clerk is required to appoint a "surplus trustee." A surplus trustee is a private entity who earns a statutory commission if the trustee is able to locate the owner and assist the owner in claiming the foreclosure surplus. The appointment lasts for one year, after which the surplus is turned over to DFS. The 60 day time period starting at the date of the foreclosure sale is the only time during which subordinate lienholders may file a claim seeking monies they may be owed from the surplus.

The bill amends procedures relating to the disbursement of surplus funds after a foreclosure, treating unclaimed foreclosure surpluses similar to any other unclaimed property held by a clerk of court. The bill repeals the statutory authorization for surplus trustees. The bill extends the claim period of subordinate lienholders, providing that any party claiming entitlement to the surplus may file a claim with the court at any time up to the point where the clerk transmits the surplus to DFS. Once transmitted to DFS, only the owner of record may claim the surplus.

Current law contains conflicting statutes regarding unclaimed funds generally held by the clerk of court (outside of foreclosure actions). One statute presumes funds held by a clerk of court are unclaimed after 5 years, requires turnover to DFS after such 5 year period, and requires a court order for DFS to pay the unclaimed monies to the owner; whereas the Act presumes funds are unclaimed after 1 year and provides for claims and payment through DFS without court order. The bill repeals the 5 year provision and its court order requirement.

The bill has an indeterminate, but likely insignificant, fiscal impact on the Department of Financial Services and the clerks of the court.

The effective date of the bill is July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Unclaimed Property, In General

In 1987, the state enacted the Florida Disposition of Unclaimed Property Act. The Act is based on the Uniform Unclaimed Property Act adopted by the Uniform Law Commission. The Act protects the interests of missing owners of property while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever.

Under the Act, the Bureau of Unclaimed Property, a division within the Department of Financial Services (DFS), is responsible for receiving abandoned property, attempting to locate the rightful owner, and returning the property or proceeds to the owner. There is no statute of limitations in the Act; the owner may claim his or her property at any time and at no cost.

Current law provides varying time periods to trigger a finding that the property is presumed unclaimed and must be turned over to the DFS:

- 5 years if held by a person or entity in the private sector.<sup>1</sup>
- 5 years if held by a clerk of court in the court registry.<sup>2</sup>
- 3 years if the property is the unclaimed equity of debt of a business association,<sup>3</sup> except that the period is 6 months if the business is in the course of dissolution.<sup>4</sup>
- 2 years if held by a one in a fiduciary capacity for the benefit of another person under a trust instrument.<sup>5</sup>
- 2 years if resulting from the demutualization, rehabilitation, or reorganization of an insurance company.<sup>6</sup>
- 1 year if held by any public agency, including a clerk of court.<sup>7</sup>
- 1 year if a utility deposit.<sup>8</sup>
- 1 year if a court-ordered refund held by a business.<sup>9</sup>
- 1 year if owed as wages.<sup>10</sup>

Holders of unclaimed property are required to file an annual report with DFS, and must transmit the unclaimed property with the report, between January 1 and May 1 of each year. The report and transmittal must include all property considered unclaimed in the previous calendar year. In the report, the holder of property must indicate the apparent owner of the property.<sup>11</sup>

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.<sup>12</sup> The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to

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<sup>1</sup> s. 717.102(1), F.S.

<sup>2</sup> s. 43.19, F.S. This section conflicts with the 1 year provision in s. 717.113, F.S., see further discussion below.

<sup>3</sup> s. 717.1101, F.S.

<sup>4</sup> s. 717.111, F.S.

<sup>5</sup> s. 717.1125, F.S.

<sup>6</sup> s. 717.1071, F.S.

<sup>7</sup> s. 717.113, F.S. This section conflicts with the 5 year provision in s. 43.19, F.S., see further discussion below.

<sup>8</sup> s. 717.108, F.S.

<sup>9</sup> s. 717.109, F.S.

<sup>10</sup> s. 717.115, F.S.

<sup>11</sup> s. 717.117, F.S.

<sup>12</sup> s. 717.1201, F.S.

DFS may file a claim for the property, subject to certain requirements.<sup>13</sup> Claims for recovery of unclaimed property may be filed by or on behalf of any person with an interest in the property.<sup>14</sup> While the Act provides the opportunity for the owner to recover the full value of their property at no cost, provision is made for claimants to designate someone who may perfect the claim for them. The claimant may designate and empower a representative to pursue the claim by executing a power of attorney agreement. The claimant may also sell the right to the property to certain individuals who are registered with DFS for this purpose.<sup>15</sup> In either case, the transaction is subject to a fee limitation, unless a disclosure statement is provided to the claimant, in the form and with the content specified in the Act.<sup>16</sup>

DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, DFS must deliver or pay over to the claimant the property or the amount DFS actually received or the proceeds, if it has been sold by DFS.<sup>17</sup> All proceeds from unclaimed property are deposited by DFS into the Unclaimed Property Trust Fund.<sup>18</sup> DFS is allowed to retain up to \$15 million to make prompt payment on verified claims and to cover costs incurred by DFS in administering and enforcing the Act. All remaining funds must be deposited into the State School Fund to be used for public education.<sup>19</sup>

### Unclaimed Property Laws Related to the Clerk of Courts

There are conflicting and overlapping laws regarding unclaimed property held by a clerk of court:

- Section 43.19, F.S., provides for the disposition of unclaimed money paid into the court registry. If such unclaimed funds remain in the registry for 5 years or more, the court must direct that the money be deposited with the Chief Financial Officer to the credit of the State School Fund. A person, firm or corporation entitled to any of the money may obtain an order directing the payment of the money to the claimant by petitioning the court and providing written notice to the state attorney and proof of entitlement to the money.<sup>20</sup> Thus, while most unclaimed funds are distributed to the owner upon application approved by DFS, unclaimed funds from the clerks may only be distributed upon court order.
- Section 717.113, F.S., a part of the Florida Disposition of Unclaimed Property Act, provides that property held by the clerk is presumed unclaimed after 1 year, and must be paid to DFS after the 1 year period. Disposition is as provided in the Act.
- Property held by the clerk as a result of a foreclosure sale is subject to the surplus trustee process at ss. 45.032 - .035, F.S. See description below.

Sections 43.19 and 717.113, F.S., appear to conflict with one another. A recent appellate decision attempted to reconcile the two, calling the interaction between the statutes "confusing" and "unclear."<sup>21</sup>

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<sup>13</sup> s. 717.117 and 717.124, F.S.

<sup>14</sup> s. 717.124, F.S.

<sup>15</sup> s. 717.1351, F.S. A person desiring to acquire ownership of or entitlement to property reported to DFS must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, a licensed private investigator, or an employer of a licensed private investigator.

<sup>16</sup> All contracts to acquire ownership of or entitlement to unclaimed property must have a purchase price that discounts the value of the unclaimed property at the time the agreement is executed by the seller at no greater than 20 percent per account held by DFS. The amount paid to the seller for an unclaimed property account must not be discounted in excess of \$1,000 unless full disclosure is provided to the owner of the unclaimed property. Section 717.1351(2), F.S.

<sup>17</sup> s. 717.124, F.S.

<sup>18</sup> s. 717.123, F.S.

<sup>19</sup> *Id.*

<sup>20</sup> s. 43.19(3), F.S.

<sup>21</sup> *Crescenzo v. Atwater (In re Payment of \$13,857.69)*, 136 So.3d 1248 (Fla. 2nd DCA 2014).

## Judicial Sales of Real Property and Surplus Trustees

Foreclosure is the legal process for enforcement of a security interest in real property. Where the parties do not settle or resolve the foreclosure, the property is sold at auction. There are three possible results of a foreclosure sale:

- Where the foreclosing lender is the winning bidder with a bid of the final judgment or some lesser amount, no monies are paid to the clerk for distribution.
- Where the winning bidder is a third party who bid less than the amount of the final judgment, the full amount of the bid minus clerk's fees is distributed to the foreclosing lender.
- Where the winning bidder is any party who bid more than the amount of the final judgment, the foreclosing lender is paid the full amount of the final judgment (or has the amount of the judgment credited against its bid) and the remaining funds are processed according to the statutory procedures for a foreclosure surplus.

At common law, the owner of the real property immediately prior to the sale is entitled to any surplus, subject to claims by inferior creditors whose interest was foreclosed.<sup>22</sup> Current statutory law presumes that the owner of the real property on the day of the filing of the *lis pendens* is entitled to the surplus,<sup>23</sup> and junior lienholders have a 60 day time limit from the date of the foreclosure sale to file a claim against the surplus.<sup>24</sup>

Prior to sale, there are two documents that include notices to all parties regarding a potential surplus. First is the final judgment of foreclosure, which gives notice of the 60 day period.<sup>25</sup> Second is the notice of sale, which must be published twice in a newspaper of general circulation, and which also warns junior lienholders of the 60 day period.<sup>26</sup> After the sale, the clerk must prepare a certificate of disbursements, a copy of which must be furnished to every party to the case.<sup>27</sup> The certificate again informs junior lienholders that they have 60 days from the date of the sale in which to file a claim against the surplus. The certificate of disbursements also clearly lists the amount of the surplus.

The statute provides a form for the prior owner of the property to claim the surplus, and provides that junior lienholders may, during that 60 day period, seek a court order for disbursement of the surplus to satisfy the junior lienholder's claim. This 60 day limit has been upheld by the courts.<sup>28</sup> If no legal claim is made for the surplus within the 60 day period, claims of junior lienholders are barred and the clerk is required to appoint a surplus trustee to locate the owner of the surplus. As part of the process, the clerk is authorized to deduct certain fees from the surplus funds.<sup>29</sup>

A surplus trustee is an entity that holds and administers surplus proceeds from a foreclosure. The primary duty of a surplus trustee is to locate the owner of record within 1 year after appointment. Surplus trustees are certified by DFS.<sup>30</sup> The clerks assign the surplus trustees to cases using a rotational system developed by DFS.<sup>31</sup>

A surplus trustee is entitled to service charges and fees which are disbursed by the clerk and payable from the surplus. Surplus trustees receive a cost advance of 2 percent of the surplus and upon

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<sup>22</sup> *Jelic v. Sears Mortgage Corp.*, 614 So. 2d 1149 (Fla. 4th DCA 1993)(" It appears to be settled beyond all question that one claiming a surplus or the right to share in a surplus resulting from a sale under foreclosure must either own the equity of redemption at the time of the sale or must be one then holding a lien or vested right in the property.")

<sup>23</sup> s. 45.032(1)(a), F.S.

<sup>24</sup> s. 45.032, F.S.

<sup>25</sup> s. 45.031(1)(a), F.S.

<sup>26</sup> s. 45.031(2)(f), F.S.

<sup>27</sup> s. 45.031(7), F.S.

<sup>28</sup> *Saulnier v. Bank of Am., N.A.*, 187 So. 3d 854 (Fla. 4th DCA 2015).

<sup>29</sup> s. 45.035, F.S.

<sup>30</sup> s. 45.034(4), F.S.

<sup>31</sup> ss. 45.034 and 45.035, F.S.





26 from becoming payable or distributable and subject to  
 27 certain reporting requirements; amending ss. 717.124,  
 28 717.138, and 717.1401, F.S.; conforming cross-  
 29 references; providing an effective date.

30

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

32

33 Section 1. Section 43.19, Florida Statutes, is repealed.

34 Section 2. Paragraph (a) of subsection (1), paragraph (f)  
 35 of subsection (2), and paragraph (b) of subsection (7) of  
 36 section 45.031, Florida Statutes, are amended to read:

37 45.031 Judicial sales procedure.—In any sale of real or  
 38 personal property under an order or judgment, the procedures  
 39 provided in this section and ss. 45.0315-45.035 may be followed  
 40 as an alternative to any other sale procedure if so ordered by  
 41 the court.

42 (1) FINAL JUDGMENT.—

43 (a) In the order or final judgment, the court shall direct  
 44 the clerk to sell the property at public sale on a specified day  
 45 that shall be not less than 20 days or more than 35 days after  
 46 the date thereof, on terms and conditions specified in the order  
 47 or judgment. A sale may be held more than 35 days after the date  
 48 of final judgment or order if the plaintiff or plaintiff's  
 49 attorney consents to such time. The final judgment shall contain  
 50 the following statement in conspicuous type:

51 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE  
 52 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE  
 53 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS  
 54 FINAL JUDGMENT.

55 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS  
 56 REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE  
 57 CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS  
 58 UNCLAIMED ~~60 DAYS AFTER THE SALE.~~ IF YOU FAIL TO FILE A TIMELY  
 59 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

60 (2) PUBLICATION OF SALE.—Notice of sale shall be published  
 61 once a week for 2 consecutive weeks in a newspaper of general  
 62 circulation, as defined in chapter 50, published in the county  
 63 where the sale is to be held. The second publication shall be at  
 64 least 5 days before the sale. The notice shall contain:

65 (f) A statement that any person claiming an interest in  
 66 the surplus from the sale, if any, other than the property owner  
 67 as of the date of the lis pendens must file a claim before the  
 68 clerk reports the surplus as unclaimed ~~within 60 days after the~~  
 69 ~~sale.~~

70  
 71 The court, in its discretion, may enlarge the time of the sale.  
 72 Notice of the changed time of sale shall be published as  
 73 provided herein.

74 (7) DISBURSEMENTS OF PROCEEDS.—

75 (b) The certificate of disbursements shall be in

76 substantially the following form:

77 (Caption of Action)

78 CERTIFICATE OF DISBURSEMENTS

79 The undersigned clerk of the court certifies that he or she  
 80 disbursed the proceeds received from the sale of the property as  
 81 provided in the order or final judgment to the persons and in  
 82 the amounts as follows:

83 Name Amount

84 Total disbursements: \$....

85 Surplus retained by clerk, if any: \$....

86 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER  
 87 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE  
 88 DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER~~  
 89 ~~THE SALE~~. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED  
 90 TO ANY REMAINING FUNDS. AFTER THE FUNDS ARE REPORTED AS  
 91 UNCLAIMED ~~60 DAYS~~, ONLY THE OWNER OF RECORD AS OF THE DATE OF  
 92 THE LIS PENDENS MAY CLAIM THE SURPLUS.

93 WITNESS my hand and the seal of the court on ....., ... (year)....

94 ... (Clerk)...

95 By ... (Deputy Clerk)...

96 Section 3. Subsection (5) of section 45.032, Florida  
 97 Statutes, is renumbered as subsection (4), and paragraph (d) of  
 98 subsection (1), subsection (3), and present subsection (4) of  
 99 that section are amended, to read:

100 45.032 Disbursement of surplus funds after judicial sale.-

101 (1) For purposes of ss. 45.031-45.035, the term:  
 102 ~~(d) "Surplus trustee" means a person qualifying as a~~  
 103 ~~surplus trustee pursuant to s. 45.034.~~

104 (3) During the period that ~~60 days after~~ the clerk holds  
 105 ~~issues a certificate of disbursements, the clerk shall hold the~~  
 106 surplus pending a court order:-

107 (a) If the owner of record claims the surplus before the  
 108 date that the clerk reports it as unclaimed ~~during the 60-day~~  
 109 ~~period~~ and there is no subordinate lienholder, the court shall  
 110 order the clerk to deduct any applicable service charges from  
 111 the surplus and pay the remainder to the owner of record. The  
 112 clerk may establish a reasonable requirement that the owner of  
 113 record prove his or her identity before receiving the  
 114 disbursement. The clerk may assist an owner of record in making  
 115 a claim. An owner of record may use the following form in making  
 116 a claim:

117 (Caption of Action)

118 OWNERS CLAIM FOR  
 119 MORTGAGE FORECLOSURE SURPLUS

120 State of ....

121 County of ....

122 Under penalty of perjury, I (we) hereby certify that:

123 1. I was (we were) the owner of the following described  
 124 real property in .... County, Florida, prior to the foreclosure  
 125 sale and as of the date of the filing of the lis pendens:

126 | ...(Legal description of real property)...

127 |         2. I (we) do not owe any money on any mortgage on the  
128 | property that was foreclosed other than the one that was paid  
129 | off by the foreclosure.

130 |         3. I (we) do not owe any money that is the subject of an  
131 | unpaid judgment, tax warrant, condominium lien, cooperative  
132 | lien, or homeowners' association.

133 |         4. I am (we are) not currently in bankruptcy.

134 |         5. I (we) have not sold or assigned my (our) right to the  
135 | mortgage surplus.

136 |         6. My (our) new address is: .....

137 |         7. If there is more than one owner entitled to the  
138 | surplus, we have agreed that the surplus should be paid ....  
139 | jointly, or to: ....., at the following address: .....

140 |         8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED TO  
141 | HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE  
142 | TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY  
143 | MONEY TO WHICH I (WE) MAY BE ENTITLED.

144 |         9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER  
145 | OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE  
146 | PROSECUTED CRIMINALLY FOR PERJURY.

147 | ...(Signatures)...

148 |         Sworn to (or affirmed) and subscribed before me this ....  
149 | day of ....., ...(year)...., by ...(name of person making  
150 | statement)....

151 ... (Signature of Notary Public - State of Florida)...

152 ... (Print, Type, or Stamp Commissioned Name of Notary  
153 Public)...

154 Personally Known .... OR Produced Identification ....

155 Type of Identification Produced.....

156 (b) If any person other than the owner of record claims an  
157 interest in the proceeds prior to the date that the clerk  
158 reports the surplus as unclaimed ~~during the 60-day period~~ or if  
159 the owner of record files a claim for the surplus but  
160 acknowledges that one or more other persons may be entitled to  
161 part or all of the surplus, the court shall set an evidentiary  
162 hearing to determine entitlement to the surplus. At the  
163 evidentiary hearing, an equity assignee has the burden of  
164 proving that he or she is entitled to some or all of the surplus  
165 funds. The court may grant summary judgment to a subordinate  
166 lienholder prior to or at the evidentiary hearing. The court  
167 shall consider the factors in s. 45.033 when hearing a claim  
168 that any person other than a subordinate lienholder or the owner  
169 of record is entitled to the surplus funds.

170 (c) One year after the sale, any surplus remaining with  
171 the clerk of the court that has not been disbursed as provided  
172 herein is presumed unclaimed as set forth in s. 717.113 and must  
173 be reported and remitted to the department in accordance with  
174 ss. 717.117 and 717.119, unless there is a pending court  
175 proceeding regarding entitlement to the surplus. At the

176 conclusion of any court proceeding and any appeal regarding  
 177 entitlement to the surplus, the clerk of the court shall report  
 178 and remit the unclaimed property to the department if directed  
 179 by a court order, to another entity if directed by the court  
 180 order, or, if not directed by the court order, to the owner of  
 181 record. For purposes of establishing entitlement to the surplus  
 182 after the property has been remitted to the department, only the  
 183 owner of record reported by the clerk of the court, or the  
 184 beneficiary, as defined in s. 731.201, of a deceased owner of  
 185 record reported by the clerk, is entitled to the surplus. A  
 186 surplus of less than \$10 escheats to ~~If no claim is filed during~~  
 187 ~~the 60-day period,~~ the clerk shall appoint a surplus trustee  
 188 from a list of qualified surplus trustees as authorized in s.  
 189 45.034. Upon such appointment, the clerk shall prepare a notice  
 190 of appointment of surplus trustee and shall furnish a copy to  
 191 the surplus trustee. The form of the notice may be as follows:

192  
 193 ~~(Caption of Action)~~

194  
 195 ~~NOTICE OF APPOINTMENT~~  
 196 ~~OF SURPLUS TRUSTEE~~

197  
 198 ~~The undersigned clerk of the court certifies that he or she~~  
 199 ~~disbursed the proceeds received from the sale of the property as~~  
 200 ~~provided in the order or final judgment to the persons named in~~



201 ~~the certificate of disbursements, and that surplus funds of~~  
 202 ~~\$. . . . remain and are subject to disbursement to the owner of~~  
 203 ~~record. You have been appointed as surplus trustee for the~~  
 204 ~~purpose of finding the owner of record in order for the clerk to~~  
 205 ~~disburse the surplus, after deducting costs, to the owner of~~  
 206 ~~record.~~

207 ~~WITNESS my hand and the seal of the court on . . . ., . . . (year) . . . .~~  
 208 ~~. . . (Clerk) . . .~~  
 209 ~~By . . . (Deputy Clerk) . . .~~

211 ~~(4) If the surplus trustee is unable to locate the owner~~  
 212 ~~of record entitled to the surplus within 1 year after~~  
 213 ~~appointment, the appointment shall terminate and the clerk shall~~  
 214 ~~notify the surplus trustee that his or her appointment was~~  
 215 ~~terminated. Thirty days after termination of the appointment of~~  
 216 ~~the surplus trustee, the clerk shall treat the remaining funds~~  
 217 ~~as unclaimed property to be deposited with the Chief Financial~~  
 218 ~~Officer pursuant to chapter 717.~~

219 Section 4. Paragraph (d) of subsection (3) of section  
 220 45.033, Florida Statutes, is amended, and paragraph (e) of that  
 221 subsection is redesignated as paragraph (d), to read:

222 45.033 Sale or assignment of rights to surplus funds in a  
 223 property subject to foreclosure.—

224 (3) A voluntary transfer or assignment shall be a transfer  
 225 or assignment qualified under this subsection, thereby entitling

226 the transferee or assignee to the surplus funds or a portion or  
 227 percentage of the surplus funds, if:

228 ~~(d) The transferor or assignee is qualified as a surplus~~  
 229 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~  
 230 ~~45.034.~~

231 Section 5. Section 45.034, Florida Statutes, is repealed.

232 Section 6. Paragraphs (b) and (d) of subsection (2) of  
 233 section 45.035, Florida Statutes, are amended, and paragraph (c)  
 234 of that subsection is redesignated as paragraph (b), to read:

235 45.035 Clerk's fees.—In addition to other fees or service  
 236 charges authorized by law, the clerk shall receive service  
 237 charges related to the judicial sales procedure set forth in ss.  
 238 45.031-45.034 and this section:

239 (2) If there is a surplus resulting from the sale, the  
 240 clerk may receive the following service charges, which shall be  
 241 deducted from the surplus:

242 ~~(b) The clerk is entitled to a service charge of \$15 for~~  
 243 ~~notifying a surplus trustee of his or her appointment.~~

244 ~~(d) The clerk is entitled to a service charge of \$15 for~~  
 245 ~~appointing a surplus trustee, furnishing the surplus trustee~~  
 246 ~~with a copy of the final judgment and the certificate of~~  
 247 ~~disbursements, and disbursing to the surplus trustee the~~  
 248 ~~trustee's cost advance.~~

249 Section 7. Section 717.113, Florida Statutes, is amended  
 250 to read:

251           717.113 Property held by courts and public agencies.—All  
 252 intangible property held for the owner by any court, government  
 253 or governmental subdivision or agency, public corporation, or  
 254 public authority that has not been claimed by the owner for more  
 255 than 1 year after it became payable or distributable is presumed  
 256 unclaimed. Except as provided in s. 45.032(3)(c), money held in  
 257 the court registry and for which no court order has been issued  
 258 to determine an owner does not become payable or distributable  
 259 and is not subject to reporting under this chapter.

260 Notwithstanding the provisions of this section, funds deposited  
 261 in the Minerals Trust Fund pursuant to s. 377.247 are presumed  
 262 unclaimed only if the funds have not been claimed by the owner  
 263 for more than 5 years after the date of first production from  
 264 the well.

265           Section 8. Subsection (8) of section 717.124, Florida  
 266 Statutes, is amended to read:

267           717.124 Unclaimed property claims.—

268           (8) This section applies to all unclaimed property  
 269 reported and remitted to the Chief Financial Officer, including,  
 270 but not limited to, property reported pursuant to ss. ~~43.19,~~  
 271 45.032, 732.107, 733.816, and 744.534.

272           Section 9. Section 717.138, Florida Statutes, is amended  
 273 to read:

274           717.138 Rulemaking authority.—The department shall  
 275 administer and provide for the enforcement of this chapter. The

276 department has authority to adopt rules pursuant to ss.  
 277 120.536(1) and 120.54 to implement the provisions of this  
 278 chapter. The department may adopt rules to allow for electronic  
 279 filing of fees, forms, and reports required by this chapter. The  
 280 authority to adopt rules pursuant to this chapter applies to all  
 281 unclaimed property reported and remitted to the Chief Financial  
 282 Officer, including, but not limited to, property reported and  
 283 remitted pursuant to ss. ~~43.19~~, 45.032, 732.107, 733.816, and  
 284 744.534.

285         Section 10. Section 717.1401, Florida Statutes, is amended  
 286 to read:

287         717.1401 Repeal.—This chapter shall not repeal, but shall  
 288 be additional and supplemental to the existing provisions of ss.  
 289 43.18, ~~43.19~~, and 402.17 and chapter 716.

290         Section 11. This act shall take effect July 1, 2018.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice & Claims  
2 Subcommittee

3 Representative Clemons offered the following:

4

5 **Amendment**

6 Remove line 290 and insert:

7 Section 11. This act shall take effect July 1, 2019.





**STORAGE NAME:** h6543.CJC  
**DATE:** January 19, 2018

January 19, 2018

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: HB 6543 - Representative Perez  
Relief/Estate of Eric Scott Tenner/Miami-Dade County

**THIS IS A CLAIM FOR \$1.45 MILLION BASED ON A SETTLEMENT AGREEMENT BETWEEN THE ESTATE OF ERIC SCOTT TENNER AND MIAMI-DADE COUNTY, RELATING TO THE WRONGFUL DEATH OF ERIC SCOTT TENNER BECAUSE OF THE COUNTY'S NEGLIGENCE. THE COUNTY HAS PAID \$300,000 PURSUANT TO S. 768.28, F.S.**

FINDINGS OF FACT:

This matter arises out of an accident that occurred in the early morning hours of October 8, 2014, in unincorporated Miami-Dade County on a road known as the "Busway." The portion of the Busway where the accident occurred is a two-lane road open only to emergency vehicles and buses, running parallel to U.S. Highway 1. It is paved, straight, and level. The speed limit is 45 miles per hour, and there are posted signs prohibiting bicycles on the Busway. There is a designated path for pedestrians and bicycles on the west side of the Busway. At the time of the accident, it was still dark outside, with operative street lights on the Busway. The weather was warm, clear, and dry.

Eric Scott Tenner, a husband and father of two, was riding his bicycle on the Busway in the early morning hours of October 8, 2014, when he was run over from behind by a transit bus owned and operated by Miami-Dade County. Mr. Tenner was in the

process of training for a triathlon. The driver of the bus, Jose Sequeira, did not stop after hitting Mr. Tenner but instead continued on his bus route. Mr. Sequeira said in a written statement that he did not know he had hit a bicycle. A bus driver trailing behind Mr. Sequeira's bus saw the accident and radioed Mr. Sequeira to return to the scene.

Several people witnessed the accident, including Christopher Hanna, a high school student and passenger on Mr. Sequeira's bus. Mr. Hanna stated that he saw a bicyclist with blinking lights on the roadway. He said that when the collision occurred, other passengers acknowledged a loud sound and a "jolt," but Mr. Sequeira continued on his route. According to Mr. Hanna, Mr. Sequeira looked to the right, bowed his head, and looked shocked. Mr. Hanna stated he later exited the bus and ran back to the scene of the accident to render aid, while Mr. Sequeira continued on his bus route.

Also witnessing the accident was Miguel Mora, the driver of the bus travelling behind Mr. Sequeira's bus. Mr. Mora stated that when there was a distance of about 100 feet between his bus and the bus ahead, he saw a bicyclist "tumble out" from in front of the bus ahead. Mr. Mora stated he stopped his bus, exited, and went to check on Mr. Tenner, who was in a fetal position in the grass, convulsing with his eyes open.

Mike Santiago, another witness, was a passenger on Mr. Mora's bus. Mr. Santiago stated that he had an unobstructed view out of the front window of the bus. Mr. Santiago saw a bicyclist traveling north on the roadway, just inside the white line, with a visible blinking red light on the bicycle's rear. Mr. Santiago stated he saw the bus up ahead strike Mr. Tenner, sending Mr. Tenner off the roadway. Mr. Santiago stated that the bus he was on stopped, and he exited immediately and ran to check on Mr. Tenner, while Mr. Sequeira's bus continued on its way.

A Miami-Dade police officer arrived at the scene of the accident. He saw Mr. Tenner lying in a grassy area east of the Busway, still wearing his helmet. The front and rear lights on his bicycle were still flashing.

Mr. Tenner was transported to Kendall Regional Hospital Trauma Center for treatment. Three days later, as a result of blunt force trauma due to the accident, Mr. Tenner died. He left behind his wife, Maria Tenner, and two minor sons, then 8 and 9 years old.

Mr. Sequeira was arrested and charged with leaving the scene of an accident, in violation of s. 316.027(2), F.S., but the charges were later dropped.

LITIGATION HISTORY:

On May 22, 2015, Mr. Tenner's estate ("Claimant") filed suit against Miami-Dade County ("Respondent") and Jose Sequeira



individually. Trial was set for July 10, 2017. About a month before trial, the case was successfully mediated, with Respondent agreeing to pay Claimant a total of \$1.75 million. Pursuant to the statutory limit, Respondent paid \$300,000, leaving an excess amount of \$1.45 million, which Claimant seeks to recover by this claim bill.

CLAIMANT'S POSITION:

Claimant seeks to recover the remainder of the settlement against Miami-Dade County in the amount of \$1,450,000. Claimant concedes that the lane in which Mr. Tenner was biking at the time of his death was a lane reserved for buses and emergency vehicles only. However, Claimant argues that it was accepted practice that the lane was used for training by competitive cyclists. Claimant argues that this accepted practice of cyclists using the Busway is shown by a video recording of the incident, where a police officer can be seen passing Mr. Tenner with apparent tolerance of Mr. Tenner's use of the Busway. Claimant argues that Respondent was liable for the actions of its driver, Mr. Sequeira, in negligently operating the bus and causing Mr. Tenner's death. Claimant argues that Mr. Tenner was operating his bicycle with proper lights and clothing and should have been highly visible to Mr. Sequeira.

Claimant argues that if the case had gone to trial and a jury had found Mr. Tenner even 50 percent responsible for the accident, economic damages alone would still exceed the amount sought in the claim bill.

RESPONDENT'S POSITION:

Respondent states the Busway upon which Mr. Tenner was riding his bicycle at the time of his death was a dedicated Busway for buses and emergency vehicles, and that the Busway had numerous signs explicitly prohibiting bicycles. Respondent indicates that this is an agreed claim bill and that the facts are mainly undisputed.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or settlement, every claim bill must be reviewed *de novo* in light of the elements of negligence.

Duty & Breach

The driver of a vehicle has a duty to use reasonable care to prevent injuring persons within the vehicle's path.<sup>1</sup> On the morning of the accident, Mr. Tenner was illegally biking on the Busway. Nonetheless, Mr. Sequeira, as the driver of the county bus, had a duty to use reasonable care to avoid a collision with Mr. Tenner.

The evidence shows that on the morning of the accident, Mr.

---

<sup>1</sup> See *Gowdy v. Bell*, 993 So. 2d 585, 586 (Fla. 1st DCA 2008) (where a vehicle hit a pedestrian who had erratically staggered out onto the roadway directly into the vehicle's path, the driver of the vehicle still had a duty to "use reasonable care, in light of the attendant circumstances, to prevent injury to persons within the vehicle's path").

Sequeira should have seen Mr. Tenner's bicycle, which had a flashing light on the back of it. I find that Mr. Sequeira breached his duty to Mr. Tenner when his bus struck Mr. Tenner from behind. Mr. Sequeira was acting within the scope of employment with Miami-Dade County; thus, Respondent is liable for Mr. Sequeira's actions under the doctrine of respondeat superior.

#### Causation

Mr. Tenner and Respondent each bear some of the blame for the accident. Mr. Tenner was illegally riding a bicycle in a lane dedicated to buses and emergency vehicles, and Respondent's bus driver unreasonably and negligently ran over Mr. Tenner.

Based on the evidence presented in the record and at the Special Master hearing, I find Respondent was at least 50% at fault for the accident. Even though the dedicated Busway explicitly prohibited bicycles, the record indicates this prohibition was not consistently enforced. Moreover, in view of witness statements that Mr. Tenner's bicycle had a flashing light on its rear and was visible, Mr. Sequeira should have seen Mr. Tenner's bicycle in front of him on the road.

#### Damages

Mr. Tenner is survived by his wife of eighteen years, Maria Tenner, and two minor sons. Mr. Tenner's death has clearly had a devastating impact on Mrs. Tenner, and it has also affected their sons. Mrs. Tenner is now a single mother who is trying to play the roles of both mother and father for her sons.

Mrs. Tenner testified at the Special Master hearing that her sons require a good deal of therapy. Her older son is still unable to say his father's name or get out of the car at the cemetery to visit his father's grave. Her younger son will not go on any school field trips because he would be required to get on a bus.

Claimant's expert economist, Dr. Fred Raffa, calculated past and future economic losses alone at around \$3.5 million based on Mr. Tenner's remaining life span and earning capacity. At the time of the accident, Mr. Tenner was 45 years old and was making a base salary of about \$177,410 annually plus \$8,973 from an S-Corporation. The \$3.5 million amount was uncontested by Respondent and does not account for the emotional losses suffered by Mrs. Tenner and her sons.

The negotiated total amount of \$1.75 million is reasonable and reflects the weaknesses and strengths of each party's respective positions. Even if Mr. Tenner were 50 percent at fault for the accident, the economic damages *alone* would be about the total amount Claimant seeks. Therefore, I find that the amount sought by Claimant is reasonable.<sup>2</sup>

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<sup>2</sup> In its Order on Petition to Approve Settlement, the court stated that the net proceeds of any monies received through a claim bill would be allocated as follows: 50 percent to Maria Tenner, 25 percent to Logan Tenner (as

ATTORNEY'S/  
LOBBYING FEES:

Claimant's attorneys will limit their fees to 25 percent of any amount awarded by the Legislature. Out of these fees, a lobbyist fee for 5 percent of the total award will be paid. Outstanding costs are \$2,452.64.

COLLATERAL SOURCES:

Mr. Tenner had a \$1,000,000 life insurance policy that was paid upon his death. This amount was discussed at mediation in the context of the negotiated settlement.

RESPONDENT'S ABILITY  
TO PAY:

Any funds awarded by this claim bill would be paid from Respondent's general revenue fund. Respondent states it has the monies for this claim bill available in its risk management fund.

LEGISLATIVE HISTORY:

This is the first time this claim bill has been presented to the Legislature.

SUGGESTED AMENDMENT:

The section addressing the limitation on attorney's fees should be amended to provide for specific fee amounts.

RECOMMENDATION:

I recommend that House Bill 6543 be reported **FAVORABLY**.

Respectfully submitted,

  
**JORDAN JONES**

House Special Master

cc: Representative Perez, House Sponsor  
Senator Garcia, Senate Sponsor  
Dan Looke, Senate Special Master



26 WHEREAS, the total present value of Mr. Tenner's economic  
 27 damages from this incident is calculated to be \$3,563,249.93,  
 28 which consists of his future and past lost earning capacity of  
 29 \$3,531,212 and past medical expenses of \$32,037.93, and

30 WHEREAS, Mr. Tenner is survived by his wife and two minor  
 31 sons, all of whom are being treated by therapists and health  
 32 professionals to cope with the loss of their husband and father,  
 33 who provided for and had a demonstrably close relationship with  
 34 his family, and

35 WHEREAS, the Miami-Dade County Board of Commissioners and  
 36 the Estate of Eric Scott Tenner reached a settlement agreement  
 37 by mediation in the amount of \$1.75 million, of which \$300,000  
 38 will be paid to the Estate of Eric Scott Tenner pursuant to the  
 39 limits of liability set forth in s. 768.28, Florida Statutes,  
 40 and the remainder is conditioned upon the passage of a claim  
 41 bill, which is agreed to by the Miami-Dade County Board of  
 42 Commissioners, in the amount of \$1.45 million, NOW, THEREFORE,

43

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

45

46 Section 1. The facts stated in the preamble to this act  
 47 are found and declared to be true.

48 Section 2. The Miami-Dade County Board of Commissioners is  
 49 authorized and directed to appropriate from funds of the county  
 50 not otherwise appropriated and to draw a warrant in the sum of

HB 6543

2018

51 \$1.45 million, payable to Maria Tenner, as personal  
52 representative of the Estate of Eric Scott Tenner, as  
53 compensation for injuries and damages sustained.

54 Section 3. The amount paid by the Miami-Dade County Board  
55 of Commissioners pursuant to s. 768.28, Florida Statutes, and  
56 the amount awarded under this act are intended to provide the  
57 sole compensation for all present and future claims arising out  
58 of the factual situation described in this act which resulted in  
59 the death of Eric Scott Tenner. The total amount paid for  
60 attorney fees relating to this claim may not exceed 25 percent  
61 of the amount awarded under this act.

62 Section 4. This act shall take effect upon becoming a law.

**Attention Mssrs.:**

Dan Looke  
Special Master  
Florida Senate  
530 Knott Building  
404 South Monroe Street  
Tallahassee, Florida 32399-110

Jordan Jones  
Special Master  
Florida House of Representatives  
417 House Office Building  
402 South Monroe Street  
Tallahassee, Florida 32399-1300

**IN RE: SENATE BILL 26 (ESTATE OF ERIC SCOTT TENNER)  
AFFIDAVIT OF CLAIMANT'S COUNSEL**

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

BEFORE ME, the undersigned authority, personally appeared Christopher Marlowe, Esq., of the Haggard Law Firm, Claimant's Counsel, who first being duly sworn, deposes and states the following:

- 1) The Haggard Law Firm represents the Plaintiff in the above captioned matter as well as the underlying civil suit. The attorney's fees that Maria Tenner has agreed to pay The Haggard Law Firm for legal services is a flat twenty-five percent (25%) of any amount that may be awarded by the Legislature pursuant to the bill petition. The Haggard Law Firm and Maria Tenner agreed to pay the lobbyist, Mr. Albert Balido with Anfield Consulting in Tallahassee, Fl., five percent (5%) of any amount that may be awarded by the Legislature pursuant to the claim bill petition. The lobbyist has no reimbursable costs.
- 2) The attorney's fees specified in paragraph 1 above include the lobbyist fees specified in paragraph 2 above, thus reducing The Haggard Law Firm fee to an effective fee of twenty percent (20%) of any amount that may be awarded by the Legislature pursuant the petition.



Christopher Marlowe, Esq.  
The Haggard Law Firm  
FBN: 571441

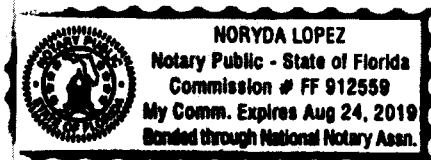
The foregoing instrument was sworn to and subscribed before me this 30<sup>th</sup> day of October, 2017, by Christopher Marlowe, who is personally known to me.



Notary Public of the State of Florida  
My commission expires:

8/24/2019

Place notary seal here:



**The Haggard Law Firm, P.A. - Client Cost**  
 310 Alhambra Circle, Coral Gables, FL 33134

**Transaction List**

All Transactions - As of AP Date 10/30/17 - Cash  
 From Account 7175 To Account 7175

Acct No. er / Type <u>7175</u>	Account Description Date Description <u>TENNER, ERIC</u>	Debit	Credit	Net Change
27833	11/21/14 Maimi-Dade Police Department - copies of Police Records	114.19		
Other	11/22/14 Amexp -HEALTH PORT/ INV# 0142657237 - Invoice No. 0158788355	871.23		
27930	12/16/14 The Wasser Agency, Inc. - Invoice No. 2014-181	2,522.62		
Other	01/13/15 Clerk of Court/All Points Cour	20.00		
28036	01/13/15 Miami Dade Fire Rescue - copies of reports	8.00		
28084	01/21/15 Miami-Dade Medical Examiner Dept - M.E. Case #2014-2843			VOID
28122	01/30/15 Maimi-Dade Medical Examiner - copies of records	31.50		
28133	02/02/15 ALL POINTS COURIER - 1/13/15 Vital Statistic	47.00		
28301	03/02/15 ALL POINTS COURIER - 2/24/15 Medical Examiner	19.00		
28314	03/03/15 LIGHTNING COURIER - 11/1114/ Maria Tenner to Firm	39.00		
Other	05/08/15 Clerk of Court/All Points Cour	74.00		
28662	05/12/15 State Attorney's Office - copies of documents	30.00		
28761	05/27/15 Clerk of the Court - summons	20.00		
28792	06/01/15 ALL POINTS COURIER - 5/12/15 State Atty's Office	38.00		
28792	06/01/15 ALL POINTS COURIER - 5/27/15 DCCH	43.50		
28792	06/01/15 ALL POINTS COURIER - 5/8/15 Civic Center	42.50		
28831	06/08/15 Samuels Professional Servers, Corp. - Invoice No. 2015-310	130.00		
Other	07/08/15 Parking - 07/07/15 Garage G2	6.00		
29167	07/31/15 State Attorney's Office - CD of records	10.00		
29210	08/06/15 Samuels Professional Servers, Corp. - nvoice No. 2015-298	45.00		
29302	09/01/15 ALL POINTS COURIER - 8/3 HLF to State Attorney's Office	33.50		
29718	12/01/15 ALL POINTS COURIER - 11/19 State ASsty	15.00		
29850	01/08/16 Samuels Professional Servers, Corp. - Invoice No 2015-644	45.00		
29851	01/08/16 Samuels Professional Servers, Corp. - Invoice No 2015-633	90.00		
Other	01/12/16 American Express 11/21 to 12/21/15	9.00		
30128	03/02/16 Champion Legal Graphics and Video - Invoice No 2065	355.00		
30162	03/09/16 TAYLOR JONOVIC WHITE GENDRON - nvoice No 80602EJR 2/18 Mike S	255.60		
30163	03/09/16 TAYLOR JONOVIC WHITE GENDRON - Invoice No 80600EJR 2/18 Jean-	307.10		
30741	07/14/16 RAFFA CONSULTING ECONOMISTS - Expert Fee Retainer	1,750.00		
Other	07/15/16 Parking	25.00		
30806	07/19/16 Department of Transportation	130.33		
30907	08/05/16 Universal Court Reporting - Invoice No 20208169/ 7/25 Maria Tenner	280.00		
30921	08/09/16 Universal Court Reporting - Invoice No 20207447 7/25 Maria Tenner	155.00		
30936	08/11/16 TAYLOR JONOVIC WHITE GENDRON - Invoice No 82629EJR	191.90		
30972	08/16/16 Miami-Dade County Attorney's Office - copies records			VOID
30974	08/17/16 Harrtis Technical Services, LLC - 8/9 Appearance at depo	393.75		
30981	08/17/16 TAYLOR JONOVIC WHITE GENDRON - Invoice No 82520EJR 7/21 Det k	296.30		
Other	08/21/16 American Express 07/22/16 to 8/21/16	62.00		



**The Haggard Law Firm, P.A. - Client Cost**  
310 Alhambra Circle, Coral Gables, FL 33134

**Transaction List**

All Transactions - As of AP Date 10/30/17 - Cash  
From Account 7175 To Account 7175

Acct No. er / Type	Account Description Date Description	Debit	Credit	Net Change
<u>7175</u>	<u>TENNER, ERIC</u>			
31042	08/24/16 Pro Translating - Invoice No 90963	250.00		
31043	08/24/16 TAYLOR JONOVIC WHITE GENDRON - Invoice No 82686EJR 8/18 David	3.60		
31044	08/24/16 TAYLOR JONOVIC WHITE GENDRON - Invoice No 82684EJR 8/18 Melvi	129.00		
31046	08/25/16 Miami-Dade County Medical Examiner - Invoice No MF-102751	220.00		
31065	08/29/16 Champion Legal Graphics and Video - Invoice No 2279	279.77		
31068	08/29/16 TAYLOR JONOVIC WHITE GENDRON - Invoice No 82699EJR 8/9 James	355.80		
31069	08/29/16 Champion Legal Graphics and Video - Invoice No 2286	375.00		
31074	08/30/16 Miami-Dasde County Attoenwy'a Office - Request to Produce	180.33		
31076	08/30/16 Miami-Dade Medical Examiner Dept. - Invoice No ME-102751			VOID
31078	08/30/16 TAYLOR JONOVIC WHITE GENDRON - Invoice No 82874EJR, 8/15 Emn	150.60		
31091	09/01/16 RAFFA CONSULTING ECONOMISTS - Professional Services Rendered	4,250.00		
31101	09/06/16 TAYLOR JONOVIC WHITE GENDRON - Invoice No 82942EJR/ 8/22 Jose	249.50		
31165	09/16/16 Executive Protection and - Invoice No 202719	1,400.00		
Other	09/20/16 Ameircan Exoress 8/22/16 to 9/20/16	6.00		
31278	10/11/16 TAYLOR JONOVIC WHITE GENDRON - Invoice No 82939EJR 8/16 Migur	289.10		
31843	02/24/17 RAFFA CONSULTING ECONOMISTS - File# MAR33-TENNERJ	2,250.00		
32155	05/18/17 RAFFA CONSULTING ECONOMISTS - FILEMAR33-TENNERI	4,320.00		
Other	05/21/17 Ameircan Express 4/21/17-05/21/17	1,290.96		
32194	06/01/17 ALL POINTS COURIER - 5/8 DCCH	20.00		
32252	06/15/17 Biscayne Mediation, LLC - 6/14 Mediation Fee	1,657.50		
Other	06/20/17 Ameircan Express 05/22/17-6/20/17	47.14		
32337	07/14/17 VERITEXT Florida Reporting Co. - Invoice No FLA2987585 5/16 County Boa	416.56		
32339	07/14/17 ALM Media, LLC - Invoice No 10000235218-0622	638.24		
32350	07/18/17 ALM Media, LLC - Invoice No 10000235218-0622			VOID
32392	07/27/17 Champion Legal Graphics and Video - Invoice N 2649	3,768.72		
32438	08/11/17 The Wasser Agency, Inc. - Invoice No 2014-181(A)	309.89		
Deposit	09/06/17 7175 TENNER		32,916.37	
Deposit	10/06/17 7175 TENNER - Raffa Consulting chk# 10794		900.00	
		31,363.73	33,816.37	(2,452.64)
<b>Transaction Total</b>			(2,452.64)	

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6543 (2018)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Civil Justice & Claims  
2 Subcommittee

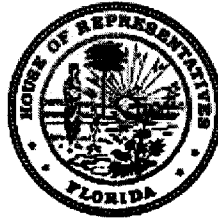
3 Representative Perez offered the following:

4  
5 **Amendment**

6 Remove lines 59-61 and insert:

7 the death of Eric Scott Tenner. Of the amount awarded under this  
8 act, the total amount paid for attorney fees may not exceed  
9 \$290,000, the total amount paid for lobbying fees may not exceed  
10 \$72,500, and the total amount paid for costs and other similar  
11 expenses relating to this claim may not exceed \$2,452.64.





**STORAGE NAME:** h6545.CJC  
**DATE:** 1/19/18

January 19, 2018

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: HB 6545 - Representative Santiago  
Relief/Ramiro Companioni, Jr./City of Tampa

**THIS IS A CONTESTED CLAIM FOR \$17,828,800 BASED ON A JURY VERDICT AGAINST THE CITY OF TAMPA, FOR INJURIES SUSTAINED BY RAMIRO COMPANIONI IN 1996 DUE TO THE NEGLIGENT OPERATION OF A CITY TRUCK BY ONE OF ITS EMPLOYEES. THE CITY HAS PAID \$100,000 PURSUANT TO THE SOVEREIGN IMMUNITY CAP.**

FINDINGS OF FACT:

On November 22, 1996, at approximately 11:57 a.m., Ramiro Companioni, Jr. ("Claimant") was traveling eastbound on his motorcycle on East Hillsborough Avenue in Tampa, wearing a helmet. East Hillsborough Avenue is a major east-west road that has three lanes in each direction with a shared turn lane in the median. On the far right of the south side of the road, three City of Tampa Water Department employees had been working on a water valve, with a large flashing sign behind the three trucks to notify drivers of their presence. The three city employees were driving separate city-owned pickup trucks and had packed up to leave to break for lunch. The drivers were Mr. Pierola, Mr. Foster, and Mr. Allen. Mr. Pierola was driving the truck that was involved in the collision and Mr. Allen was driving the truck pulling the flashing sign board. All three drivers testified that they never saw or heard Claimant prior to the collision.

Mr. Pierola testified that he pulled out behind Mr. Allen and was

headed for a nearby park to eat his lunch he had brought with him that day. He stated that he wanted to cross the eastbound lanes on East Hillsborough Avenue to make a left-hand turn on 50th to go to the park. While crossing these lanes, he testified that he heard a noise and thought a barricade had fallen from the truck bed. Mr. Pierola drove his vehicle into the median turn lane and got out of his truck to retrieve the barricade. It was at this time that Mr. Pierola saw Claimant's motorcycle lodged under the truck's bumper. Mr. Pierola later indicated that he never saw the motorcycle and he never heard the typical loud motorcycle noise before the collision but did feel the impact when he was changing lanes. The collision occurred in the median side lane.

Mr. Foster, who was driving the third vehicle, told the responding officer that after entering the roadway he looked forward and saw that a motorcycle had hit the back of Mr. Pierola's truck. Mr. Foster further testified that the motorcycle must have driven by him as he entered the roadway, but he did not see or hear it.

There is conflicting evidence as to which lane Claimant was in, the speed he was traveling, whether the city's trucks were in the far right lane or off the road on the shoulder, in what order the trucks were parked, which truck pulled from the lane first, and where the trucks were heading. Claimant states he has no memory from the collision other than that he was in the median-side lane. The three city drivers state they never saw the motorcycle. I find that Mr. Pierola's truck pulled out in front of Claimant's motorcycle, even though Claimant had the right-of-way, causing the accident.

Claimant's speed at the time of the accident is a closely contested issue, and there is a wide range of evidence and testimony in the record. Claimant asserts he was traveling 45 miles per hour, the speed limit. Mr. Foster testified the city's trucks were going 5 to 10, and no more than 15, miles per hour. Mr. Pierola states he was going 20 to 25 miles per hour.

Responding Officer Thiel reported that, in his estimate, Claimant was traveling 25 miles per hour over the speed limit based on the damage he observed to the vehicles.<sup>1</sup> His report found that Mr. Pierola had violated Claimant's right-of-way with an improper lane change. Tampa Detective Willenham indicated that he believed both drivers contributed to the accident.

Claimant was rendered unconscious at the scene and was taken to Tampa General Hospital where he remained in an induced coma in ICU for nearly a month. In the months and years since the accident, Claimant has undergone more than twenty surgeries relating to his injuries from the accident, which included internal lacerations of his organs resulting in the loss of

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<sup>1</sup> No citations for excessive speed were issued regarding the accident.

his large intestine, removal of his spleen, multiple fractures of his right hip and the loss of control of his right hip, leg, and foot.

LITIGATION HISTORY:

Claimant sued the City of Tampa ("Respondent") for negligence in circuit court. In March of 2004, the case went to trial and a final judgment was entered for Claimant for \$19,932,000. The jury determined Respondent was 90 percent at fault and Claimant was 10 percent at fault for the accident, and the amount owed by Respondent was reduced to \$17,928,800. Respondent has paid \$100,000 pursuant to the sovereign immunity limit of s. 768.28, F.S., effective at the time of the accident, leaving the amount requested under the claim bill at \$17,828,800.<sup>2</sup>

Respondent filed two motions for new trial and remittitur. The first motion alleged improper conduct by Plaintiff's counsel, and the motion was denied. The trial court granted Respondent's motion for new trial based on allegations of misrepresentations made by two jurors during voir dire who were convicted felons but hid that information from the court. In a split decision, the Second District Court of Appeal reversed the trial court's grant of a new trial.<sup>3</sup> Additionally, Respondent attempted to have the judgment set aside or reduced on the grounds that the verdict was excessive, but those attempts were rejected.<sup>4</sup>

CLAIMANT'S POSITION:

Claimant testified at trial that he was going the speed limit, 45 miles per hour, at the time of the accident. Additionally, at trial, Claimant offered the testimony of former Highway Patrolman and accident investigator Dennis Payne who reviewed medical records, the motorcycle, and photographs of the truck and opined that Claimant was traveling at 45 miles per hour. Mr. Payne further noted that, based on scientific data, it was highly unlikely that Claimant struck the truck at a speed of 55 miles per hour and survived an impact speed of greater than 30 miles per hour. Claimant argued that regardless of his speed, he had the right-of-way, and had Mr. Pierola not improperly entered Claimant's lane and cut him off, the accident might have been avoided.

RESPONDENT'S POSITION:

Respondent argues that Claimant is an untruthful, reckless person who should not be the beneficiary of a claim bill. Respondent contends that it did not receive a fair trial because

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<sup>2</sup> From the \$100,000 paid by Respondent, Claimant has received \$14,504.54. The remaining amount went to attorney's fees, costs, medical liens, and a post-settlement advance.

<sup>3</sup> *Companiononi v. City of Tampa*, 958 So. 2d 404, 417 (Fla. 2d DCA 2007) (holding the City was not entitled to a new trial on the basis of the jurors' prior felony convictions because there was no showing of actual bias or prejudice or that Respondent did not receive a fair and impartial trial).

<sup>4</sup> See *City of Tampa v. Companiononi*, 74 So. 3d 585, 587 (Fla. 2d DCA 2011) ("The verdict against the City is indeed substantial; however, the record reflects that Mr. Companiononi sustained horrific injuries that, as noted by the trial court, are extensive and permanent. We also note that while the City challenges the award as excessive at trial it offered no suggestion to the jury as to what would be a proper award for injuries it acknowledged were 'serious' . . . When it went to deliberate, the jury had only the damage figures suggested by Mr. Companiononi's counsel, and given the nature of the injuries Mr. Companiononi sustained, it is not surprising the jury picked a figure at the high end of the range counsel suggested").

two of the six jurors were convicted felons who concealed this fact.

Respondent argues that both before and after the accident Claimant was cited for violations of excessive speed and reckless driving. Respondent points out that on the day of the accident, Claimant was driving with a suspended license (though Claimant has stated he did not know his license was suspended at the time).

In the accident report from the crash, the police estimated Claimant was traveling 70 miles per hour at the time of the crash. Respondent offered testimony of accident reconstructionist Charles Benedict, who testified that based on his reconstruction of the scene, Claimant was traveling far above 45 miles per hour and but for that speed, Claimant could have avoided the accident. Dr. Benedict stated that Claimant was traveling between 60 and 70 miles per hour and, before the impact, braked to slow down to 55 miles per hour at impact.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or a settlement agreement, every claim bill must be reviewed *de novo* in light of the standard elements of negligence.

Duty, Breach, & Causation

As with all motorists, Mr. Pierola had a duty to operate his vehicle in a reasonable manner and in compliance with the rules of the road. By pulling in front of Claimant—who had the right-of-way—Mr. Pierola breached his duty of care, which was the direct and proximate cause of Claimant's injuries. Respondent, as Mr. Pierola's employer, is liable for Mr. Pierola's negligent act based on the legal doctrine of respondeat superior, since Mr. Pierola was acting in the scope of his employment with Respondent when the accident occurred.

The jury determined that Mr. Pierola, based upon the negligent operation of his vehicle, was 90 percent at fault for the accident. This allocation of fault is supported by the evidence, and I find no reason to disturb the jury's findings on this matter.

Here, Claimant had the right-of-way, had no reason to think Mr. Pierola would come into his lane, and was unable to avoid the accident once Mr. Pierola unlawfully pulled in front of him. This is supported by the city's traffic report and the jury's verdict.

As for Respondent's argument about Claimant's speed, the jury rightfully considered this matter and found Claimant 10 percent at fault. At trial, the jury heard the testimony of Mr. Payne, a former highway patrol trooper and accident reconstructionist. Mr. Payne testified that if Claimant was traveling at the speed listed in the traffic report, the impact would have killed Claimant. Respondent presented the testimony of Dr. Charles Benedict, a mechanical engineer, who estimated Claimant was traveling at

65 miles per hour. Even if Claimant was traveling at excessive speed, it does not bar recovery.<sup>5</sup> I find no reason to disturb the jury's determination that Claimant was 10 percent liable and Respondent was 90 percent liable.

#### Damages

It is clear that Claimant has suffered severe and horrific injuries as a result of this accident. Upon his arrival at the Trauma Unit at Tampa General, it was noted that Claimant's rectum was fileted through the scrotum. Dr. Michael Albrink, his primary physician, testified that Claimant's legs were ripped apart like a wishbone and that he suffered from multiple open fractures of the pelvis, shoulder, elbow, lumbar vertebrae, and right knee. Additionally, Claimant sustained a bowel injury and a ruptured urethra, lost portions of his colon, and suffered bleeding and damage to his peritoneal cavity and organs. His anus was ripped and his sphincter was ruined, which has resulted in a permanent colostomy. Additionally, his genital nerves were injured, permanently damaging his sexual function. Both the femoral artery and sciatic nerve were severely injured.

Claimant underwent a tracheostomy and has tracheal scarring resulting in difficulty swallowing. He must use a colostomy bag to defecate and has bladder spasms and incontinence. He has frequent kidney stones. His core muscles are scarred and atrophied as a result of the accident and the more than twenty surgeries he has undergone since the accident. Claimant's four lower vertebrae and coccyx have been fused; his right hip is fused, and he has arthritis and bone calcification in his knee and hip. Claimant wears a leg brace and part of his right quadriceps has been removed. He is dependent on a cane.

Neither side used a life planner or economist to determine the monetary amount necessary to sustain Claimant. Dr. Albrink, however, testified that Claimant will need a lifetime amount of future medical care for his injuries.

Based on the horrific nature of Claimant's injuries, I find that a multi-million dollar claim bill is not unreasonable. However, the Legislature may determine that the full amount of \$17.8 million is excessive in light of comparable claim bills where severe injury or death has occurred.

#### ATTORNEY'S/ LOBBYING FEES:

Claimant's attorneys will limit their fees to 25 percent of any amount awarded by the Legislature. Outstanding costs are \$5,052.32.

#### RESPONDENT'S ABILITY TO PAY:

Respondent has no insurance in connection with the claim bill and has not specifically appropriated funding to pay the final

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<sup>5</sup> See s. 768.81(2), F.S. ("In a negligence action, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as economic and noneconomic damages for an injury attributable to the claimant's contributory fault, but does not bar recovery").



SPECIAL MASTER'S FINAL REPORT--

Page 6

judgment which is the subject of this claim bill. Respondent states that any required amount in excess of its general liability fund will have to be paid out of general revenue, which will adversely affect Respondent.

LEGISLATIVE HISTORY:

This is the fifth session this claim has been presented to the Legislature. Last session, HB 6551 was temporarily postponed in the Civil Justice and Claims Subcommittee.

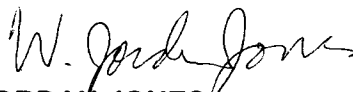
SUGGESTED AMENDMENT:

The section addressing the limitation on attorney's fees should be amended to provide for specific fee amounts. Moreover, the claim bill as filed seeks post-judgment interest, but historically claim bills have not awarded interest.

RECOMMENDATION:

I recommend that House Bill 6545 be reported **FAVORABLY**.

Respectfully submitted,



**JORDAN JONES**

House Special Master

cc: Representative Santiago, House Sponsor  
Senator Galvano, Senate Sponsor  
Diana Caldwell, Senate Special Master

1                                   A bill to be entitled  
 2           An act for the relief of Ramiro Companioni, Jr., by  
 3           the City of Tampa; providing for an appropriation to  
 4           compensate Mr. Companioni for injuries sustained as a  
 5           result of the negligence of an employee of the City of  
 6           Tampa; providing a limitation on the payment of  
 7           compensation and fees; providing an effective date.

8  
 9           WHEREAS, at about noon on November 22, 1996, 34-year-old  
 10          Ramiro Companioni, Jr., was operating his motorcycle in the  
 11          inside, eastbound lane of East Hillsborough Avenue near its  
 12          intersection with North 50th Street, and

13           WHEREAS, a City of Tampa Water Department truck operated by  
 14          city employee Faustino Pierola, which was accompanied by two  
 15          other similar vehicles owned by the city and operated by city  
 16          employees, pulled into the outside, eastbound lane from the  
 17          south shoulder of Hillsborough Avenue and steered across three  
 18          lanes of traffic into the path of Mr. Companioni, and

19           WHEREAS, although Mr. Companioni attempted to avoid the  
 20          collision by laying down his motorcycle, he and his motorcycle  
 21          struck the rear of the city-owned truck, violently ejecting him  
 22          from the motorcycle onto the pavement, causing him massive and  
 23          catastrophic injuries, and

24           WHEREAS, independent eyewitnesses interviewed at the scene  
 25          told traffic accident investigators that they witnessed the

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2018

26 city-owned truck pull away from the shoulder and steer across  
 27 the lanes of traffic into the lane in which Mr. Companioni was  
 28 traveling, and

29 WHEREAS, one eyewitness estimated that Mr. Companioni had  
 30 been traveling at a speed of 40 miles per hour as he approached  
 31 the city-owned truck, which was well within the maximum speed  
 32 limit of 45 miles per hour, and

33 WHEREAS, the eyewitness stated that the driver of the city-  
 34 owned truck, Mr. Pierola, was the cause of the accident, and

35 WHEREAS, witnesses testified at trial that the three-truck  
 36 caravan owned and operated by the city appeared to be a "wagon  
 37 train," and that Mr. Companioni was "cut off" by the trucks and  
 38 had "nowhere to go," and

39 WHEREAS, Mr. Pierola admitted that he failed to observe any  
 40 traffic to the rear of his truck despite an even roadway, clear  
 41 visibility, and the absence of obstructions, proving that he was  
 42 negligent by failing to properly look for rearward traffic, and

43 WHEREAS, despite an obvious conflict of interest, the City  
 44 of Tampa Police Department failed to request an independent law  
 45 enforcement agency to conduct the official traffic accident  
 46 investigation, and the department attributed fault to both Mr.  
 47 Pierola and Mr. Companioni, ignoring the eyewitnesses' testimony  
 48 that Mr. Companioni was not operating his vehicle in excess of  
 49 the speed limit, and

50 WHEREAS, city employees at the scene, including Mr.

51 Pierola, did not tell investigators that Mr. Companioni was  
 52 operating his vehicle in excess of the maximum speed limit, and

53       WHEREAS, as a result of the collision, Mr. Companioni was  
 54 rendered unconscious and suffered massive catastrophic injuries  
 55 resulting in a coma; multiple internal lacerations of the  
 56 midsection organs resulting in the loss of the large intestine  
 57 and necessitating a colostomy and urethral catheter; removal of  
 58 the spleen; multiple fractures of his right hip and four spinal  
 59 vertebrae; a severed right sciatic nerve resulting in loss of  
 60 control of the right hip, leg, and foot; laceration and partial  
 61 severance of the urethra and testicles; and multiple lacerations  
 62 and abrasions from contact with the road surface, causing  
 63 permanent scarring and disfigurement, and

64       WHEREAS, Mr. Companioni's injuries include fusions of his  
 65 hips and lower back, surgeries on his midsection to repair the  
 66 abdomen, multiple bouts of sepsis and infection, reattachment of  
 67 the urethra and testicles, severe concussion syndrome, and  
 68 posttraumatic stress disorder, and

69       WHEREAS, Mr. Companioni's medical expenses totaled more  
 70 than \$1.2 million, and

71       WHEREAS, Mr. Companioni, who was an executive chef at the  
 72 time of the accident, had earned more than \$40,000 in income  
 73 annually, and

74       WHEREAS, according to the unrefuted testimony of a  
 75 prominent Tampa restaurateur, Mr. Companioni was a rising star

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2018

76 in the local restaurant community and would have likely had his  
77 annual income rise to more than \$80,000 annually had he not been  
78 injured, and

79 WHEREAS, as a result of the accident, Mr. Companioni has  
80 suffered a loss of earnings and his earning capacity has been  
81 devastated, and

82 WHEREAS, although permanently disabled, Mr. Companioni has  
83 persevered and attempted to support himself by operating a hot  
84 dog stand at Tampa Bay Buccaneers games and other crowd events,  
85 and

86 WHEREAS, at the time of the accident, Mr. Companioni was an  
87 active, physically fit man in the prime of his life and had  
88 served his country as a Third Class Naval Reservist in a special  
89 unit attached to a Marine Corps and Navy Seal assault landing  
90 craft unit, and

91 WHEREAS, before the accident, Mr. Companioni actively  
92 served his community as a volunteer and was a Mason, which  
93 included volunteering and donating his services for various  
94 charity events at the Shriners Hospital for Children in his role  
95 as a Shriner, volunteering at career days and counseling  
96 students interested in becoming chefs at four high schools in  
97 Tampa, and volunteering at community hospitals as part of the  
98 Navy's "Operation White Hat" program, and has continued  
99 volunteering at events at Christ the King Catholic Church  
100 through organizing the church's food service for various

101 charitable events, and

102           WHEREAS, Mr. Companioni has suffered catastrophic and life-  
 103 changing injuries, severe bodily injury, pain and suffering,  
 104 mental anguish, disfigurement, incontinence which requires the  
 105 use of a colostomy bag, and the loss of enjoyment of life, and

106           WHEREAS, on March 26, 2004, a Hillsborough County jury  
 107 found the City of Tampa, by and through its employee, Mr.  
 108 Pierola, to be negligent and 90 percent at fault for the  
 109 accident and resulting injuries to Mr. Companioni, and found Mr.  
 110 Companioni to be 10 percent comparatively negligent, and

111           WHEREAS, the jury determined Mr. Companioni's damages to be  
 112 in the amount of \$17,928,800, and

113           WHEREAS, final judgment was entered on April 5, 2004, in  
 114 the amount of the jury verdict, plus interest at the statutory  
 115 rate of 7 percent per annum, and

116           WHEREAS, following multiple posttrial motions and appeals,  
 117 which have denied Mr. Companioni justice for more than 10 years,  
 118 the Florida Supreme Court and the Second District Court of  
 119 Appeal upheld the verdict and final judgment, and

120           WHEREAS, the City of Tampa has paid \$100,000, which is the  
 121 sovereign immunity limit applicable to this case, leaving a  
 122 remaining balance of \$17,828,800, plus interest at the statutory  
 123 rate of 7 percent per annum, for which Mr. Companioni seeks  
 124 satisfaction, and

125           WHEREAS, Mr. Companioni has waited more than 21 years for

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2018

126 any compensation in excess of the \$100,000 sovereign immunity  
 127 cap and has lived a tragic life because of his disabilities and  
 128 life-changing permanent injuries, which have been made more  
 129 difficult without receiving adequate compensation, NOW,  
 130 THEREFORE,

131

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

133

134       Section 1. The facts stated in the preamble to this act  
 135 are found and declared to be true.

136       Section 2. The City of Tampa is authorized and directed to  
 137 appropriate from funds not otherwise encumbered and to draw a  
 138 warrant in the sum of \$17,828,800, plus interest at the  
 139 statutory rate of 7 percent per annum, payable to Ramiro  
 140 Companioni, Jr., as compensation for injuries and damages  
 141 sustained.

142       Section 3. The amount paid by the City of Tampa pursuant  
 143 to s. 768.28, Florida Statutes, and the amount awarded under  
 144 this act are intended to provide the sole compensation for all  
 145 present and future claims arising out of the factual situation  
 146 described in this act which resulted in injuries and damages to  
 147 Mr. Companioni. The total amount paid for attorney fees relating  
 148 to this claim may not exceed 25 percent of the amount awarded  
 149 under this act.

150       Section 4. This act shall take effect upon becoming a law.

HB 6545

RELIEF OF RAMIRO COMPANIONI BY THE CITY OF TAMPA/

AFFIDAVIT REGARDING FEES AND COSTS

STATE OF FLORIDA            )

COUNTY OF LEON            )

BEFORE ME, the undersigned authority, personally appeared, LANCE BLOCK, who being first duly sworn, deposes and says:

1. My name is Lance Block and I am the attorney for the claimant, Ramiro Companioni. I am also the lead lobbyist for this claim bill.

2. I am a member of the Florida Bar and am registered as a lobbyist on behalf of the claimant pursuant to Florida Statute 11.045.

3. I am familiar with the fees and costs associated with this claim.

4. The bill limits all fees to twenty-five percent of the total recovery. Payment of fees shall be seventeen percent of the claim bill recovery for legal services and eight percent of the claim bill recovery for lobbying services.

4. The total amount of outstanding costs is \$7,204.25.

I declare that I have read the foregoing affidavit and that the facts stated in it are true and accurate to the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Lance Block

Under penalty of perjury Affiant has verified this affidavit without notarization as authorized by § 92.525, Fla. Stat. (1986). See *Dodrill v. Infe, Inc.*, 837 So.2d 1187 (Fla. 4th DCA 2003); *Goines v. State*, 691 So.2d 593 (Fla. 1st DCA 1997).





Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Civil Justice & Claims  
 2 Subcommittee

3 Representative Santiago offered the following:

4

5 **Amendment**

6 Remove lines 9-149 and insert:

7 WHEREAS, on November 22, 1996, Ramiro Companioni, Jr. was  
 8 seriously injured while operating his motorcycle on East  
 9 Hillsborough Avenue in Tampa, Florida, as a result of a  
 10 collision with a City of Tampa Water Department truck, and

11 WHEREAS, a lawsuit was filed and in 2004 a final judgment  
 12 was entered in favor of Mr. Companioni in the amount of  
 13 \$17,928,800 against the City of Tampa, based on a jury verdict  
 14 in the amount of \$19,932,000, and

15 WHEREAS, after appeals and all legal remedies were  
 16 exhausted, claim bills have been filed annually since the 2014



Amendment No.

17 Legislative session seeking the full amount of the final  
18 judgment, plus interest, for Mr. Companioni, and

19 WHEREAS, the parties have agreed to a compromised  
20 settlement in the amount of \$5,000,000, NOW, THEREFORE,

21

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

23

24 Section 1. The facts stated in the preamble to this act  
25 are found and declared to be true.

26 Section 2. The City of Tampa is authorized and directed to  
27 appropriate from funds not otherwise encumbered and to draw a  
28 warrant in the sum of \$5,000,000, to fund a special needs trust  
29 created for the exclusive use and benefit of Ramiro Companioni,  
30 Jr., as compensation for injuries and damages sustained as  
31 described herein.

32 Section 3. The amount paid by the City of Tampa pursuant  
33 to s. 768.28, Florida Statutes, and the amount awarded under  
34 this act are intended to provide the sole compensation for all  
35 present and future claims arising out of the factual situation  
36 described in this act which resulted in injuries and damages to  
37 Mr. Companioni. Of the amount awarded under this act, the total  
38 amount paid for attorney fees may not exceed \$850,000, the total  
39 amount paid for lobbying fees may not exceed \$400,000, and the  
40 total amount paid for costs and other similar expenses relating  
41 to this claim may not exceed \$7,204.25.

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Amendment No.

42           Section 4. It is the intent of the Legislature that the  
43 state and local government lien interests relating to the  
44 treatment and care of Ramiro Companioni, Jr, if any, are hereby  
45 waived or extinguished.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CJC 18-01 County Court Jurisdiction  
**SPONSOR(S):** Civil Justice & Claims Subcommittee  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1384

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice & Claims Subcommittee		Jones <i>(initials)</i>	Bond <i>YCS</i>

### SUMMARY ANALYSIS

In Florida, the two types of trial courts that hear civil lawsuits are county courts and circuit courts. Pursuant to the Florida Constitution, county courts exercise jurisdiction as provided by general law, and circuit courts exercise jurisdiction in matters not within the jurisdiction of county courts. County courts generally have jurisdiction of actions at law where the amount in controversy does not exceed \$15,000; actions at law where the amount in controversy exceeds \$15,000 must be filed in circuit court.

The bill increases the jurisdictional threshold between county court and circuit courts from \$15,000 to \$50,000 and requires the Florida Supreme Court to adjust the jurisdictional threshold beginning in 2020 and every five years thereafter based on the Consumer Price Index.

The bill appears to have the following recurring fiscal impacts, commencing with FY 2018-19:

- \$4.5 million negative impact on the State Courts Revenue Trust Fund revenues
- \$2.3 million positive fiscal impact on clerks of court revenues
- \$0.12 million negative fiscal impact on the Department of Financial Services Administrative Trust Fund revenues
- \$0.25 million negative fiscal impact on the General Revenue Fund

The effective date of the bill is July 1, 2018. The bill applies to a cause of action filed on or after that date regardless of when the cause of action accrued.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

In Florida, the two types of trial courts that hear civil lawsuits are county courts and circuit courts.<sup>1</sup> The Florida Constitution provides that county courts exercise jurisdiction as provided by general law, and that circuit courts exercise jurisdiction in matters not within the jurisdiction of county courts.<sup>2</sup> Section 34.01, F.S., implements the constitutional provision, establishing that county courts have jurisdiction of certain cases including actions at law where the amount in controversy does not exceed \$15,000, exclusive of interest, costs, and attorney's fees, except those cases within the exclusive jurisdiction of circuit courts.<sup>3</sup> Any general action at law where the amount in controversy exceeds \$15,000 must be filed in circuit court.

The filing fee for a civil lawsuit in circuit court is \$400 or more (depending on the number of defendants and the nature of the case).<sup>4</sup> The circuit court filing fee is allocated as follows: \$195 to the clerk as a filing fee; \$196 to the State Courts Revenue Trust Fund; \$5.50 to the Department of Financial Services Trust Fund; and \$3.50 to the Court Education Trust.<sup>5</sup>

The filing fee for a civil lawsuit in county court ranges from \$50 to a maximum of \$300, depending on the amount in controversy.<sup>6</sup> The county court filing fee for a case with an amount in controversy greater than \$2,500 and up to \$15,000 is allocated as follows: \$280 to the clerk as a filing fee; \$16 to the State Courts Revenue Trust Fund; \$3.50 to the Court Education Trust; and \$0.50 to the Department of Financial Services Trust Fund.<sup>7</sup>

##### **Effect of the Bill**

###### Increased Jurisdictional Threshold Beginning July 1, 2018

The bill amends s. 34.01, F.S., to increase the county court's jurisdictional amount in controversy to \$50,000 beginning on July 1, 2018, through June 30, 2020. This requires actions at law with an amount in controversy up to \$50,000 to be filed in county court beginning July 1, 2018. The bill states that it applies to all causes of action filed on or after July 1, 2018, regardless of when the cause of action accrues.

###### Periodic Adjustment of Amount by Supreme Court

The bill also directs the Florida Supreme Court, beginning July 1, 2020, and every five years thereafter, to adjust the jurisdictional amount of county courts to reflect inflation using a formula based on the unadjusted Consumer Price Index for All Urban Consumers.<sup>8</sup> The amount is rounded to the nearest \$1,000.

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<sup>1</sup> See ss. 26.012(5), 34.01(5), F.S.

<sup>2</sup> FLA. CONST. art. V, ss. 5, 6.; see s. 26.012(2)(a), F.S.

<sup>3</sup> S. 34.01(1)(c), F.S.

<sup>4</sup> SS. 28.241, 44.108(1), F.S.

<sup>5</sup> SS. 28.241(1), 44.108, F.S.

<sup>6</sup> S. 34.041(1)(a), F.S.

<sup>7</sup> SS. 34.041(1), 44.108(1), F.S.

<sup>8</sup> The Consumer Price Index (CPI) is a measure of the average change of prices over time (that is, inflation) and is widely used as an accurate way to adjust dollar values. It is published monthly by the U.S. Bureau of Labor Statistics. See <https://www.bls.gov/cpi/questions-and-answers.htm>.

The effective date of the bill is July 1, 2018. The bill applies to a cause of action filed on or after that date regardless of when the cause of action accrued.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 34.01, F.S. regarding the jurisdiction of county courts.

**Section 2:** Provides an effective date of July 1, 2018.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

**1. Revenues:**

The bill appears to have the following recurring fiscal impacts on state government revenues, commencing with FY 2018-19:

- \$4,510,562 negative fiscal impact on the State Courts Revenue Trust Fund
- \$123,948 negative fiscal impact on the Department of Financial Services Administrative Trust Fund
- \$247,203 negative fiscal impact on the General Revenue Fund

**2. Expenditures:**

None.

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

**1. Revenues:**

The bill appears to have a recurring positive fiscal impact on clerk of courts revenues of \$2,285,093 commencing July 1, 2018.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill appears to have a positive fiscal impact on the private sector because some filing fees will be lower.

**D. FISCAL COMMENTS:**

The filing fee for a civil lawsuit in circuit court is generally \$400,<sup>9</sup> currently allocated as follows: \$195 to the clerk as a filing fee; \$196 to the State Courts Revenue Trust Fund; \$5.50 to the Department of Financial Services Trust Fund; and \$3.50 to the Court Education Trust.<sup>10</sup>

The county court filing fee for a case with an amount in controversy greater than \$2,500 and up to \$15,000 is \$300, currently allocated as follows: \$280 to the clerk as a filing fee; \$16 to the State Courts Revenue Trust Fund; \$3.50 to the Court Education Trust; and \$0.50 to the Department of Financial Services Trust Fund.<sup>11</sup>

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<sup>9</sup> SS. 28.241, 44.108(1), F.S.

<sup>10</sup> SS. 28.241(1), 44.108, F.S.

<sup>11</sup> SS. 34.041(1), 44.108(1), F.S.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

#### **B. RULE-MAKING AUTHORITY:**

Not applicable.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



1                                   A bill to be entitled  
 2           An act relating to the jurisdiction of county courts;  
 3           amending s. 34.01, F.S.; increasing the jurisdictional  
 4           limit for actions at law by county courts for a  
 5           specified period of time; providing a formula for use  
 6           by the Supreme Court when adjusting the jurisdictional  
 7           limit; providing an effective date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11           Section 1. Subsections (2) through (5) of section 34.01,  
 12   Florida Statutes, are renumbered as subsections (3) through (6),  
 13   respectively, paragraph (c) of subsection (1) is amended, and a  
 14   new subsection (2) is added to that section, to read:

15           34.01 Jurisdiction of county court.—

16           (1) County courts shall have original jurisdiction:

17           (c) Of all actions at law in which the matter in  
 18   controversy does not exceed the sum of \$50,000 through June 30,  
 19   2020, and as set by the Supreme Court under subsection (2) on  
 20   and after July 1, 2020 ~~\$15,000~~, exclusive of interest, costs,  
 21   and attorney ~~attorney's~~ fees, except those within the exclusive  
 22   jurisdiction of the circuit courts; and

23           (2) The Supreme Court shall adjust the jurisdictional  
 24   limit for the county courts every 5 years beginning July 1,  
 25   2020. The adjusted jurisdictional limit shall equal the sum of

26 the current jurisdictional amount and the cumulative percentage  
27 change in the preceding 5 years of the unadjusted Consumer Price  
28 Index for All Urban Consumers published by the United States  
29 Department of Labor. The jurisdictional limit shall be rounded  
30 to the nearest \$1,000.

31 Section 2. This act shall take effect July 1, 2018, and  
32 shall apply to a cause of action filed on or after that date  
33 regardless of when the cause of action accrued.