



Healthy Families Subcommittee

Meeting Packet

Wednesday, February 5, 2014
1:00 PM – 3:00 PM
12 HOB

Will Weatherford
Speaker

Gayle B. Harrell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Healthy Families Subcommittee

Start Date and Time: Wednesday, February 05, 2014 01:00 pm

End Date and Time: Wednesday, February 05, 2014 03:00 pm

Location: 12 HOB

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 91 State Ombudsman Program by Roberson, K.

HB 123 Fees and Costs in Guardianship Proceedings by Schwartz

Presentations on Human Trafficking


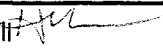
Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Tuesday, February 4, 2014.

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., Tuesday, February 4, 2014.

NOTICE FINALIZED on 01/29/2014 14:22 by Villar.Melissa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 91 State Ombudsman Program
SPONSOR(S): Roberson
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee		Poche 	Brazzell 
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 91 revises the operating structure and internal procedures of the State Long-Term Care Ombudsman Program (LTCOP), housed in the Department of Elder Affairs (DOEA), to reflect current practices, maximize operational and program efficiencies, and conform to the federal Older Americans Act (OAA), 42 U.S.C. §§ 3001, et seq. The LTCOP is operated pursuant to part I of chapter 400, F.S.

The bill revises part I of chapter 400, F.S., to:

- Provide the state ombudsman with final authority to appoint district ombudsmen;
- Include definitions of "district", "state ombudsman," and "representative of the office," revise the definition of "resident," and delete the definition of "local council" to reflect a change in organizational structure;
- Revise the duties of the State Long-Term Care Ombudsman Council;
- Revise and clarify the application and training requirements in order to be appointed as an ombudsman, including the addition of a level 2 background screening as part of the application process;
- Expand the duties of ombudsmen in the local districts to comply with the OAA, to include clarified parameters for complaint resolution and the authority to establish resident and family councils within long-term care facilities;
- Remove the notice publication requirement for internal LTCOP district staff meetings;
- Clarify the complaint investigation process and the facility assessment process;
- Conform the complaint investigation process to the requirements of the OAA; and
- Require certain information to be provided to a resident of a long-term care facility upon first entering the facility to confirm that retaliatory action against a resident for filing a grievance or exercising a resident's rights is prohibited.

The bill appears to have no significant fiscal impact on state or local government.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Department of Elder Affairs

Florida has nearly 4,400,000 residents aged 60 and older.¹ The state is first in the nation in the percentage of citizens who are elders, measuring 23% of total population in 2010 and estimated to soar to 35% of total population in 2030.²

The Department of Elder Affairs (DOEA), established in 1992, serves as the primary agency for administering human services programs for the elderly and developing policy recommendations for long-term care.³ Section 20.41, F.S., creates the DOEA and details some of its roles and responsibilities.⁴ For example, the DOEA is statutorily required to administer the State Long-Term Care Ombudsman Council⁵ and the local long-term care ombudsman councils,^{6,7} which provide advocacy on behalf of residents of long-term care facilities by identifying, investigating, and resolving complaints made by or on behalf of residents.

The DOEA is designated as the State Unit on Aging, as defined in the Older Americans Act of 1965 (OAA).⁸ Under the OAA, the DOEA is responsible for organizing, coordinating, and providing community-based services and opportunities for older Floridians and their families, including the oversight of services to help elders age in place with dignity and independence and to preserve the rights of the most vulnerable.⁹

The DOEA contracts with an Area Agency on Aging (AAA) in each of eleven Planning and Service Areas (PSAs) to provide coordinated and integrated long-term care services and prevention and early intervention services to the elderly population of Florida.¹⁰ Each of the AAAs then contract with community care lead agencies to provide actual services to the elderly in each PSA.¹¹

The DOEA is authorized to administer certain trust funds, in conjunction with federal funds provided to the state, to operate programs and provide services for the elderly.¹² The programs and services include, but are not limited to, home and community based services, nursing home diversion, the Alzheimer's disease initiative, the Comprehensive Assessment and Review for Long-Term Care Services (CARES) program, and consumer assistance programs, such as the State Long-Term Care Ombudsman Program.

¹ Florida Office of Economic and Demographic Research, *2010 Census Summary File 1 Profiles-Detailed Age by Race/Hispanic Origin by Gender*, available at <http://edr.state.fl.us/Content/population-demographics/2010-census/data/index.cfm> (last viewed December 10, 2013).

² Florida Department of Elder Affairs, *Summary of Programs and Services 2013*, page 9, available at <http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2013/2013%20SOPS.pdf>

³ S. 430.03(1), F.S.

⁴ Art. IV, s. 12 of the Florida Constitution permits the creation of the Department of Elder Affairs. The number of executive branch agencies is capped at twenty-five, exclusive of agencies specifically mentioned in the constitution.

⁵ S. 400.0067, F.S.

⁶ S. 400.0069, F.S.

⁷ S. 20.41(4), F.S.

⁸ S. 20.41(5), F.S.

⁹ S. 430.04, F.S.

¹⁰ S. 20.41(6), F.S.

¹¹ *Id.*

¹² S. 20.415, F.S.

State Long-Term Care Ombudsman Program

The State Long-Term Care Ombudsman Program (LTCOP) is a statewide, volunteer-based system of local councils that act as advocates for residents of long-term care facilities.¹³ The LTCOP was established by Title VII of the federal Older Americans Act¹⁴ and its operation is governed by state statute.¹⁵ Through 17 districts¹⁶ that together cover the entire state, volunteers identify, investigate, and resolve complaints made by, or on behalf of, residents of nursing homes, assisted living facilities, adult family care homes, and continuing care retirement communities. In addition to investigating and resolving complaints, the LTCOP performs the following services or activities:

- Monitoring of and commenting on the development and implementation of federal, state, and local laws, regulations, and policies regarding health, safety, and welfare of residents in long-term care facilities.
- Providing information and referrals with regard to long-term care facilities.
- Conducting annual assessments of long-term care facilities.
- Aiding the development of resident and family councils.¹⁷

An ombudsman “is a specially trained and certified volunteer who has been given authority under federal and state law to identify, investigate and resolve complaints made by, or on behalf of, long-term care facility residents.”¹⁸ It is important to note that the LTCOP does not have enforcement or regulatory oversight. Certified ombudsmen in the local councils work as independent advocates for residents to mediate disputes on an informal basis.

Florida law requires that the Office of State Long-Term Care Ombudsman (office) maintain a statewide system for collecting and analyzing data relating to complaints and conditions in long-term care facilities.¹⁹ The office must also publish the information pertaining to the number and types of complaints received by the program on a quarterly basis.²⁰ Additionally, federal law requires the office to have a statewide data system to collect, analyze, and report data on residents, facilities, and complaints to federal officials as well as the National Ombudsman Resource Center.²¹

Ombudsmen also complete annual assessments of each long-term care facility in the state to ensure the health, safety, and welfare of the residents.²² No advance warning of the assessment is to be given to the long-term care facility. An ombudsman is not allowed to forcibly enter the facility to complete the assessment; however, the administrator of the facility commits a violation of part I of ch. 400, F.S., if the ombudsman is not allowed to enter the facility, and, in such circumstances, the Agency for Health Care Administration (AHCA) may use appropriate administrative remedies.²³ The AHCA also conducts

¹³ For 2011-2012, 356 volunteers worked an estimated 85,440 hours which resulted in estimated average savings in salaries and administrative costs of \$1,861,737. See Florida’s Long-Term Care Ombudsman Program, *2011-2012 Annual Report*, available at [http://ombudsman.myflorida.com/publications/ar/LTCOP%20ANNUAL%20REPORT%202011-2012\[1\].pdf](http://ombudsman.myflorida.com/publications/ar/LTCOP%20ANNUAL%20REPORT%202011-2012[1].pdf) (also on file with Healthy Families Subcommittee staff).

¹⁴ 42 U.S.C. §§ 3001 et seq. (as amended by Public Law 106-501).

¹⁵ Part I, Ch. 400, F.S.

¹⁶ The 17 districts are: Northwest Florida, Panhandle, North Central Florida, Withlacoochee Area, First Coast South, First Coast, Mid & South Pinellas, Pasco & North Pinellas, West Central Florida, East Central Florida, Southwest Florida, Palm Beach County, Treasure Coast, Broward County, South Dade & the Keys, North Dade, and South Central Florida. See Florida Department of Elder Affairs, *Summary of Programs & Services 2013*, January 2013, page 27 (available at <http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2013/2013%20SOPS.pdf>).

¹⁷ Florida Department of Elder Affairs, *Summary of Programs & Services 2013*, January 2013, page 77 (available at <http://elderaffairs.state.fl.us/doea/pubs/pubs/sops2013/2013%20SOPS.pdf>).

¹⁸ Florida’s Long-Term Care Ombudsman Program, *Residents and Families*, available at <http://ombudsman.myflorida.com/ResidentFam.php> (last visited December 10, 2013).

¹⁹ S. 400.0089, F.S.

²⁰ Id.

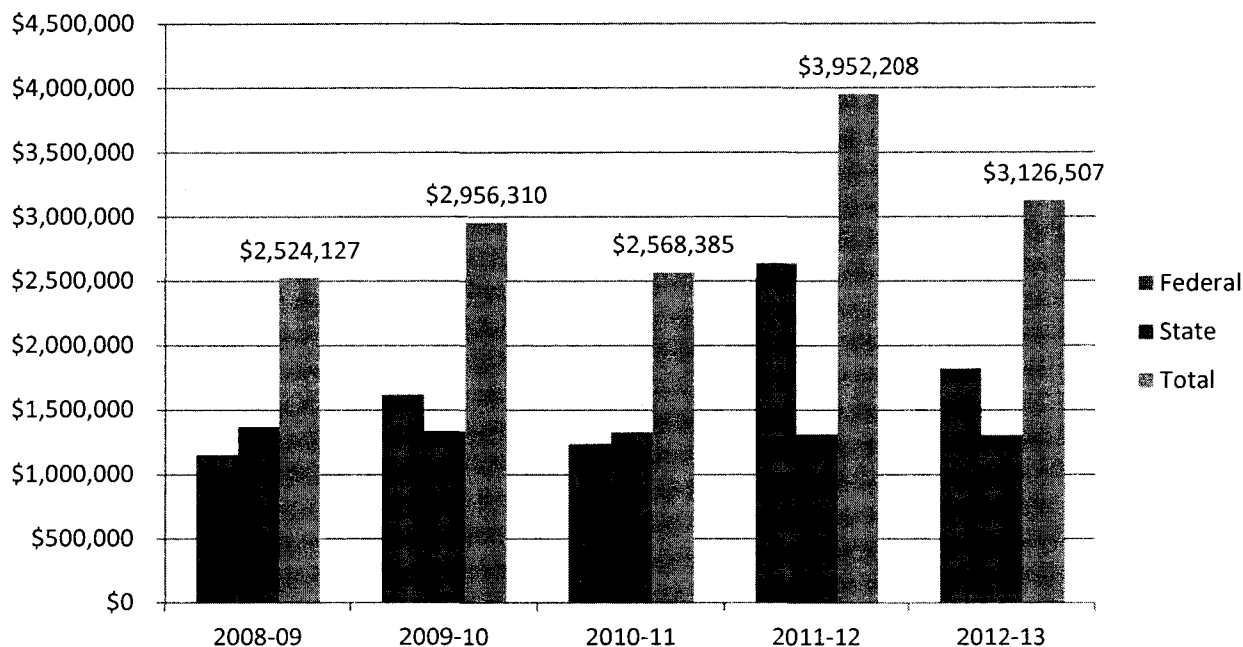
²¹ 42 U.S.C. s. 3058g(c) and 42 U.S.C. s. 3058g(h)(1).

²² S. 400.0074, F.S.; the entire list of responsibilities of an ombudsman can be found at s. 400.0065(1), F.S.

²³ Id.

routine licensure and complaint surveys of nursing homes, assisted living facilities, and adult day care homes. As part of the survey process, the AHCA must complete offsite survey preparation, which includes a review of information about the facility prior to the survey. One of the sources of this information is the State Long-Term Care Ombudsman.

The following chart shows the recent appropriation history of the LTCOP²⁴:



The following chart details some of the activities of the LTCOP, including the number of facilities assessed, the total number of assessments conducted, and the number of complaints investigated²⁵:

FEDERAL REPORTING YEAR	FACILITIES	ASSESSMENTS	COMPLAINTS INVESTIGATED
2008-2009	3,932	3,932	8,302
2009-2010	4,016	4,016	8,651
2010-2011	4,039	3,347	7,534
2011-2012	4,039	4,269	8,600

Effect of Proposed Changes

The bill revises the operating structure and internal procedures of the LTCOP to reflect current practices, maximize operational and program efficiencies, and conform to the OAA.²⁶ The bill establishes local ombudsman districts to replace the current council structure and outlines district membership, duties and responsibilities.

Definitions

The bill amends the definitions applicable to part I of chapter 400, F.S., by deleting the term “local council.” The bill adds the definition of “district” to refer to a geographical area of the state, as designated by the state ombudsman, where certified ombudsmen carry out the duties of the LTCOP. The bill revises the definition of “ombudsman” to mean an individual certified by the state ombudsman

²⁴ Id. at page 78.

²⁵ Id. at page 79.

²⁶ See supra, FN 14.

under the statute to carry out the duties of the LTCOP and creates a separate definition of "state ombudsman" to refer to the person appointed by the Secretary of the DOEA to lead the LTCOP. The bill revises the definition of "resident" to include a person aged 18 years or older who resides in a long-term care facility. The bill adds the definition of "representative of the office" to mean the state ombudsman, employees of his or her office, and persons certified to serve as ombudsmen under the LTCOP. Finally, the bill adds the definition of "state ombudsman program" to mean the LTCOP operating under the direction of the state ombudsman's office.

The bill revises many sections of part I of chapter 400, F.S., to remove reference to the current ombudsman councils and replaces that term with more specific terms referring to districts, the ombudsman or ombudsmen, and representatives of the those offices. This change in terminology is consistent with the terms of the OAA.

State Long-Term Care Ombudsman and Office Representative Duties and Responsibilities

In s. 400.0065(2)(c), F.S., which outlines the duties and responsibilities of the State Long-Term Care Ombudsman, the bill deletes reference to staff positions established for the purpose of coordinating the activities of the local councils. The bill specifies who may be a representative of the office of the ombudsman and the requirements for the certification.

The bill eliminates the authority of the state ombudsman to enter into an agreement with the State Advocacy Council for the purpose of coordinating activities and avoiding duplication of effort.

State Long-Term Care Ombudsman Council

The bill removes references to the local councils in the outline of the duties of the State Long-Term Care Ombudsman Council (Council), established in s. 400.0067, F.S. The bill requires the state ombudsman to submit a list of his or her recommendations for individuals to serve in at-large positions on the Council to the Secretary of DOEA, who will then appoint those members of the Council. Current law gives the Governor the authority to appoint at-large members to the Council. The bill also permits the district manager, in consultation with the district ombudsmen, to recommend replacement of the selected ombudsman who represents the district on the Council. If a replacement ombudsman is named by the district manager, the state ombudsman must be notified of the replacement.

The bill also revises the internal operational aspects of the Council, such as permitting the Council to perform its duties if one or more positions are vacant and providing procedures for dealing with the absence of a member from 50 percent or more of the meetings.

Long-Term Care Ombudsman Districts

The bill revises s. 400.0069, F.S., which establishes local ombudsman councils and details their duties and membership. The bill deletes reference to the term "local council" and replaces it with "long-term care ombudsman districts." This reflects the change in structure of the LTCOP from a large state council with multiple local councils, each acting autonomously, to a more hierarchal structure consisting of a district ombudsman and representatives of the office of the state ombudsman. Every person working in a district ombudsman office will be certified as an ombudsman and will be permitted to carry out the duties and responsibilities of an ombudsman.

The state ombudsman is given the authority to appoint ombudsmen in the districts. At his or her discretion, the state ombudsman may appoint an ombudsman to a district other than where he or she resides. This reflects the change in program structure to emphasize that the LTCOP is to be directed and administered by the state ombudsman and the districts are to act as an extension of the state ombudsman with regard to policy and operations. The district ombudsmen may provide technical assistance in forming resident and family councils within the long-term care facilities.

The bill provides a list of individuals who may not be appointed as an ombudsman. The list includes:

- An owner or representative of a long-term care facility;
- A provider or representative of long-term care services;
- An employee of the Agency for Health Care Administration;
- An employee of the Department of Elder Affairs (except for representatives of the office);
- An employee of the Department of Children and Families; or
- An employee of the Agency for Persons with Disabilities.

The bill requires a person to successfully complete a level 2 background screening before he or she can be appointed as an ombudsman. A Level 2 background screening is detailed in ss. 435.04 and 430.0402, F.S. The bill clarifies that the state ombudsman has final authority to appoint an individual as an ombudsman. The bill also gives the state ombudsman the authority to rescind any appointment of an ombudsman.

Training

When a person is appointed as an ombudsman, the bill states that the person may participate in district activities but may not represent the office or conduct an investigation until he or she completes initial training required under s. 400.0091(1), F.S., and is certified as an ombudsman by the state ombudsman. The bill specifies certain training requirements for all representatives of the office of the state ombudsman contained in s. 400.0091, F.S. First, the bill requires all representatives of the office to have a minimum of 20 hours of training upon appointment as an ombudsman. Second, the bill requires 10 hours of training each year after appointment.

Complaint Investigations and Facility Assessments

The bill revises s. 400.0073, F.S., to address complaint investigations. The bill removes reference to "local council" and replaces it with "district", which is consistent with the elimination of the local councils and the implementation of the district structure. A representative of the office of the ombudsman is now tasked with identifying and investigating any complaint by or on behalf of a resident that meets specified criteria already in law. The bill replaces reference to the local council with "representative of the office" to clarify who has responsibility in complaint investigations.

The bill requires onsite administrative assessments to be completed by representatives of the office in a resident-centered manner. The bill requires an ombudsman who is denied access to a facility by a facility administrator to report the denial to the state ombudsman, who shall then report the incident to the AHCA for possible disciplinary action, including action against the facility license. Lastly, the bill permits the DOEA, in consultation with the state ombudsman, to develop rules to implement procedures for conducting onsite assessments of long-term care facilities.

The bill makes changes to the notification and resolution process for complaints contained in s. 400.0075, F.S. First, the bill permits a representative of the office of the ombudsman to identify a verified complaint and bring it to the attention of the facility administrator, while adhering to the confidentiality provisions in s. 400.0077, F.S. The administrator must set target dates, with the concurrence of the ombudsman, for resolution of the complaint. If the complaint is not resolved by the target date or remedial action to address the complaint is not forthcoming, the bill permits the representative of the office to extend the target date if he or she believes that additional time will lead to a resolution of the complaint or refer the complaint to the district manager.²⁷

If an ombudsman determines, during an investigation, that the health, safety, welfare, or rights of a resident are in immediate danger, the bill requires immediate notification of the district manager. The bill then requires the district manager, after verifying the nature of the threat, to notify appropriate state

²⁷ The district manager is a state employee who provides administrative management for the district office.

agencies, law enforcement, the state ombudsman, and legal advocate.²⁸ The bill permits the legal advocate to provide appropriate information to law enforcement to initiate an investigation if he or she believes a criminal act was committed in conjunction with the complaint.

The bill requires the DOEA to consult with the state ombudsman to develop rules governing conflicts of interest involving ombudsmen and implementing state and local complaint procedures. The bill requires that the rules governing complaint procedures include rules on receiving, investigating, and resolving complaints of residents of long-term care facilities.

The bill requires the state ombudsman or his or her designee to assume responsibility for resolving a complaint that has been referred by a district. The bill grants the state ombudsman the authority to take certain action if the facility fails to resolve or remedy the complaint. These actions by the state ombudsman can include publicizing the complaint, publicizing the recommendations for resolution of the complaint, and recommending facility reviews to the appropriate state agency that licenses a particular non-compliant facility to ensure the conditions that gave rise to the original complaint are resolved and do not recur.

The bill requires the office of the state ombudsman to establish an email address for receiving complaints from, or on behalf of, residents of long-term care facilities. The bill also requires that each resident, or his or her representative, upon first entering a long-term care facility and as part of the initial information packet provided by the facility, receive specific information stating that retaliatory action cannot be taken against a resident for filing a grievance against the facility or otherwise exercising his or her resident's rights.

The bill clarifies, in light of eliminating the local council structure and implementing the district structure, that representatives of the office of the state ombudsman and the members of the Council have immunity from civil and criminal liability for any action taken in good faith performance of their duties as outlined in the statute.

Conforming Changes

Finally, the bill makes conforming changes to the following statutes to reflect the provisions of the bill: sections 20.41, 400.021, 400.022, 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23, 400.235, 415.1034, 415.104, 415.1055, 415.106, 415.107, 429.02, 429.07, 429.19, 429.26, 429.28, 429.34, 429.35, 429.67, 429.85, and 744.444, F.S.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 400.0060, F.S., relating to definitions.
- Section 2:** Amends s. 400.0061, F.S., relating to legislative findings and intent; long-term care facilities.
- Section 3:** Amends s. 400.0063, F.S., relating to establishment of Office of State Long-Term Care Ombudsman; designation of ombudsman and legal advocate.
- Section 4:** Amends s. 400.0065, F.S., relating to State Long-Term Care Ombudsman; duties and responsibilities.
- Section 5:** Amends s. 400.0067, F.S., relating to State Long-Term Care Ombudsman Council; duties; membership.
- Section 6:** Amends s. 400.0069, F.S., relating to local long-term care ombudsman councils; duties; membership.
- Section 7:** Amends s. 400.0070, F.S., relating to conflicts of interest.

²⁸ The legal advocate is established in the Office of the State Long-Term Care Ombudsman by s. 400.0063(3), F.S. The legal advocate is selected by the state ombudsman and must be a member in good standing with The Florida Bar. Some of the duties of the legal advocate include assisting the state ombudsman in carrying out his or her duties with respect to abuse, neglect, or violation of rights of residents of long-term care facilities and pursuing administrative, legal, and other appropriate remedies on behalf of residents.

- Section 8:** Amends s. 400.0071, F.S., relating to State Long-Term Care ombudsman program complaint procedures.
- Section 9:** Amends s. 400.0073, F.S., relating to state and local ombudsman council investigations.
- Section 10:** Amends s. 400.0074, F.S., relating to local ombudsman council onsite administrative assessments.
- Section 11:** Amends s. 400.0075, F.S., relating to complaint notification and resolution procedures.
- Section 12:** Amends s. 400.0078, F.S., relating to citizen access to state Long-Term Care ombudsman program services.
- Section 13:** Amends s. 400.0079, F.S., relating to immunity.
- Section 14:** Amends s. 400.0081, F.S., relating to access to facilities, residents, and records.
- Section 15:** Amends s. 400.0083, F.S., relating to interference; retaliation; penalties.
- Section 16:** Amends s. 400.0087, F.S., relating to department oversight; funding.
- Section 17:** Amends s. 400.0089, F.S., relating to complaint data reports.
- Section 18:** Amends s. 400.0091, F.S., relating to training.
- Section 19:** Amends s. 20.41, F.S., relating to Department of Elder Affairs.
- Section 20:** Amends s. 400.021, F.S., relating to definitions.
- Section 21:** Amends s. 400.022, F.S., relating to residents' rights.
- Section 22:** Amends s. 400.0255, F.S., relating to resident transfer or discharge; requirements and procedures; hearings.
- Section 23:** Amends s. 400.1413, F.S., relating to volunteers in nursing homes.
- Section 24:** Amends s. 400.162, F.S., relating to property and personal affairs of residents.
- Section 25:** Amends s. 400.19, F.S., relating to right of entry and inspection.
- Section 26:** Amends s. 400.191, F.S., relating to availability, distribution, and posting of reports and records.
- Section 27:** Amends s. 400.23, F.S., relating to rules; evaluation and deficiencies; licensure status.
- Section 28:** Amends s. 400.235, F.S., relating to nursing home quality and licensure status; Gold Seal Program.
- Section 29:** Amends s. 415.1034, F.S., relating to mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.
- Section 30:** Amends s. 415.104, F.S., relating to protective investigations of cases of abuse, neglect, or exploitation of vulnerable adults; transmittal of records to state attorney.
- Section 31:** Amends s. 415.1055, F.S., relating to notification to administrative entities.
- Section 32:** Amends s. 415.106, F.S., relating to cooperation by the department and criminal justice and other agencies.
- Section 33:** Amends s. 415.107, F.S., relating to confidentiality of reports and records.
- Section 34:** Amends s. 429.02, F.S., relating to definitions.
- Section 35:** Amends s. 429.07, F.S., relating to license required; fee.
- Section 36:** Amends s. 429.19, F.S., relating to violations; imposition of administrative fines; grounds.
- Section 37:** Amends s. 429.26, F.S., relating to appropriateness of placements; examinations of residents.
- Section 38:** Amends s. 429.28, F.S., relating to resident of bill of rights.
- Section 39:** Amends s. 429.34, F.S., relating to right of entry and inspection.
- Section 40:** Amends s. 429.35, F.S., relating to maintenance of records; reports.
- Section 41:** Amends s. 429.67, F.S., relating to licensure.
- Section 42:** Amends s. 429.85, F.S., relating to residents' bill of rights.
- Section 43:** Amends s. 744.444, F.S., relating to power of guardian without court approval.
- Section 44:** Provides an effective date of July 1, 2014.

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:

By eliminating the local council structure, the bill removes internal staff meetings at the district level from the requirements of the Sunshine Act. As a result, the bill removes the notice requirement for internal staff meetings, which is expected to save the DOEA an average of \$3,382 per year, based on costs over the last three years.

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:

None.

B. RULE-MAKING AUTHORITY:

The DOEA has appropriate rule-making authority to institute the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 91

2014

1 A bill to be entitled
2 An act relating to the state ombudsman program;
3 amending s. 400.0060, F.S.; revising and providing
4 definitions; amending s. 400.0061, F.S.; revising
5 legislative intent with respect to citizen ombudsmen;
6 deleting references to ombudsman councils and
7 transferring their responsibilities to representatives
8 of the Office of State Long-Term Care Ombudsman;
9 amending s. 400.0063, F.S.; revising duties of the
10 office; amending s. 400.0065, F.S.; revising the
11 purpose of state and local ombudsman councils;
12 establishing districts; requiring the state ombudsman
13 to submit an annual report to the Governor, the
14 Legislature, and specified agencies and entities;
15 amending s. 400.0067, F.S.; revising duties and
16 membership of the State Long-Term Care Ombudsman
17 Council; amending s. 400.0069, F.S.; requiring the
18 state ombudsman to designate and direct program
19 districts; providing duties of representatives of the
20 office in the districts; providing for appointment and
21 qualifications of district ombudsmen; prohibiting
22 certain individuals from serving as ombudsmen;
23 amending s. 400.0070, F.S.; providing conditions under
24 which a representative of the office could be found to
25 have a conflict of interest; amending s. 400.0071,
26 F.S.; requiring the Department of Elderly Affairs to

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0091-00

27 | consult with the state ombudsman before adopting rules
 28 | pertaining to complaint resolution; amending s.
 29 | 400.0073, F.S.; providing procedures for investigation
 30 | of complaints; amending s. 400.0074, F.S.; revising
 31 | procedures for conducting onsite administrative
 32 | assessments; authorizing the department to adopt
 33 | rules; amending s. 400.0075, F.S.; revising complaint
 34 | notification and resolution procedures; amending s.
 35 | 400.0078, F.S.; providing for a resident or
 36 | representative of a resident to receive additional
 37 | information regarding resident rights; amending s.
 38 | 400.0079, F.S.; providing immunity from liability for
 39 | a representative of the office under certain
 40 | circumstances; amending s. 400.0081, F.S.; requiring
 41 | long-term care facilities to provide representatives
 42 | of the office with access to facilities, residents,
 43 | and records for certain purposes; amending s.
 44 | 400.0083, F.S.; conforming provisions to changes made
 45 | by the act; amending s. 400.0087, F.S.; providing for
 46 | the office to coordinate ombudsman services with
 47 | Disability Rights Florida; amending s. 400.0089, F.S.;
 48 | conforming provisions to changes made by the act;
 49 | amending s. 400.0091, F.S.; revising training
 50 | requirements for representatives of the office and
 51 | ombudsmen; amending ss. 20.41, 400.021, 400.022,
 52 | 400.0255, 400.1413, 400.162, 400.19, 400.191, 400.23,

53 400.235, 415.1034, 415.104, 415.1055, 415.106,
 54 415.107, 429.02, 429.07, 429.19, 429.26, 429.28,
 55 429.34, 429.35, 429.67, 429.85, and 744.444, F.S.;

56 conforming provisions to changes made by the act;
 57 providing an effective date.

58

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

60

61 Section 1. Section 400.0060, Florida Statutes, is amended
 62 to read:

63 400.0060 Definitions.—When used in this part, unless the
 64 context clearly dictates otherwise, the term:

65 (1) "Administrative assessment" means a review of
 66 conditions in a long-term care facility which impact the rights,
 67 health, safety, and welfare of residents with the purpose of
 68 noting needed improvement and making recommendations to enhance
 69 the quality of life for residents.

70 (2) "Agency" means the Agency for Health Care
 71 Administration.

72 (3) "Department" means the Department of Elderly Affairs.

73 (4) "District" means a geographical area designated by the
 74 state ombudsman in which individuals certified as ombudsmen
 75 carry out the duties of the state ombudsman program. ~~"Local~~
 76 ~~council" means a local long-term care ombudsman council~~
 77 ~~designated by the ombudsman pursuant to s. 400.0069. Local~~

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78 ~~councils are also known as district long-term care ombudsman~~
 79 ~~councils or district councils.~~

80 (5) "Long-term care facility" means a nursing home
 81 facility, assisted living facility, adult family-care home,
 82 board and care facility, facility where continuing long-term
 83 care is provided, or any other similar residential adult care
 84 facility.

85 (6) "Office" means the Office of State Long-Term Care
 86 Ombudsman created by s. 400.0063.

87 (7) "Ombudsman" means an individual who has been certified
 88 by the state ombudsman as meeting the requirements of ss.
 89 400.0069, 400.0070, and 400.0091 ~~the individual appointed by the~~
 90 ~~Secretary of Elderly Affairs to head the Office of State Long-~~
 91 ~~Term Care Ombudsman.~~

92 (8) "Representative of the office" means the state
 93 ombudsman, an employee of the office, or an individual certified
 94 as an ombudsman.

95 (9)(8) "Resident" means an individual 18 ~~60~~ years of age
 96 or older who resides in a long-term care facility.

97 (10)(9) "Secretary" means the Secretary of Elderly
 98 Affairs.

99 (11)(10) "State council" means the State Long-Term Care
 100 Ombudsman Council created by s. 400.0067.

101 (12) "State ombudsman" means the individual appointed by
 102 the Secretary of Elderly Affairs to head the Office of State
 103 Long-Term Care Ombudsman.

104 (13) "State ombudsman program" means the program operating
 105 under the direction of the office.

106 Section 2. Section 400.0061, Florida Statutes, is amended
 107 to read:

108 400.0061 Legislative findings and intent; long-term care
 109 facilities.—

110 (1) The Legislature finds that conditions in long-term
 111 care facilities in this state are such that the rights, health,
 112 safety, and welfare of residents are not fully ensured by rules
 113 of the Department of Elderly Affairs or the Agency for Health
 114 Care Administration or by the good faith of owners or operators
 115 of long-term care facilities. Furthermore, there is a need for a
 116 formal mechanism whereby a long-term care facility resident, a
 117 representative of a long-term care facility resident, or any
 118 other concerned citizen may make a complaint against the
 119 facility or its employees, or against other persons who are in a
 120 position to restrict, interfere with, or threaten the rights,
 121 health, safety, or welfare of a long-term care facility
 122 resident. The Legislature finds that concerned citizens are
 123 often more effective advocates for the rights of others than
 124 governmental agencies. The Legislature further finds that in
 125 order to be eligible to receive an allotment of funds authorized
 126 and appropriated under the federal Older Americans Act, the
 127 state must establish and operate an Office of State Long-Term
 128 Care Ombudsman, to be headed by the state ~~Long-Term Care~~

129 | ombudsman, and carry out a state ~~long-term care~~ ombudsman
 130 | program.

131 | (2) It is the intent of the Legislature, therefore, to
 132 | utilize voluntary citizen ombudsmen ~~ombudsman councils~~ under the
 133 | leadership of the state ombudsman, and, through them, to operate
 134 | a state ~~an~~ ombudsman program, which shall, without interference
 135 | by any executive agency, undertake to discover, investigate, and
 136 | determine the presence of conditions or individuals who ~~which~~
 137 | constitute a threat to the rights, health, safety, or welfare of
 138 | the residents of long-term care facilities. To ensure that the
 139 | effectiveness and efficiency of such investigations are not
 140 | impeded by advance notice or delay, the Legislature intends that
 141 | representatives of the office ~~ombudsman and ombudsman councils~~
 142 | ~~and their designated representatives~~ not be required to obtain
 143 | warrants in order to enter into or conduct investigations or
 144 | onsite administrative assessments of long-term care facilities.
 145 | It is the further intent of the Legislature that the environment
 146 | in long-term care facilities be conducive to the dignity and
 147 | independence of residents and that investigations by
 148 | representatives of the office ~~ombudsman councils shall~~ further
 149 | the enforcement of laws, rules, and regulations that safeguard
 150 | the health, safety, and welfare of residents.

151 | Section 3. Section 400.0063, Florida Statutes, is amended
 152 | to read:

153 | 400.0063 Establishment of Office of State Long-Term Care
 154 | Ombudsman; designation of ombudsman and legal advocate.-

155 (1) There is created an Office of State Long-Term Care
 156 Ombudsman in the Department of Elderly Affairs.

157 (2) (a) The Office of State Long-Term Care Ombudsman shall
 158 be headed by the state ~~Long-Term Care~~ ombudsman, who shall serve
 159 on a full-time basis and shall personally, or through
 160 representatives of the office, carry out the purposes and
 161 functions of the state ombudsman program ~~office~~ in accordance
 162 with state and federal law.

163 (b) The state ombudsman shall be appointed by and shall
 164 serve at the pleasure of the Secretary of Elderly Affairs. The
 165 secretary shall appoint a person who has expertise and
 166 experience in the fields of long-term care and advocacy to serve
 167 as state ombudsman.

168 (3) (a) There is created in the office the position of
 169 legal advocate, who shall be selected by and serve at the
 170 pleasure of the state ombudsman and shall be a member in good
 171 standing of The Florida Bar.

172 (b) The duties of the legal advocate shall include, but
 173 not be limited to:

174 1. Assisting the state ombudsman in carrying out the
 175 duties of the office with respect to the abuse, neglect,
 176 exploitation, or violation of rights of residents of long-term
 177 care facilities.

178 2. Assisting the state council and representatives of the
 179 office ~~local councils~~ in carrying out their responsibilities
 180 under this part.

181 3. Pursuing administrative, legal, and other appropriate
 182 remedies on behalf of residents.

183 4. Serving as legal counsel to the state council and
 184 representatives of the office ~~local councils, or individual~~
 185 ~~members thereof,~~ against whom any suit or other legal action is
 186 initiated in connection with the performance of the official
 187 duties of the state ombudsman program ~~councils or an individual~~
 188 ~~member.~~

189 Section 4. Section 400.0065, Florida Statutes, is amended
 190 to read:

191 400.0065 Office of State Long-Term Care Ombudsman; duties
 192 and responsibilities.--

193 (1) The purpose of the Office of State Long-Term Care
 194 Ombudsman is ~~shall be~~ to:

195 (a) Identify, investigate, and resolve complaints made by
 196 or on behalf of residents of long-term care facilities relating
 197 to actions or omissions by providers or representatives of
 198 providers of long-term care services, other public or private
 199 agencies, guardians, or representative payees that may adversely
 200 affect the health, safety, welfare, or rights of the residents.

201 (b) Provide services that assist in protecting the health,
 202 safety, welfare, and rights of residents.

203 (c) Inform residents, their representatives, and other
 204 citizens about obtaining the services of the state ~~Long-Term~~
 205 ~~Care~~ ombudsman program and its representatives.

206 (d) Ensure that residents have regular and timely access
 207 to the services provided through the office and that residents
 208 and complainants receive timely responses from representatives
 209 of the office to their complaints.

210 (e) Represent the interests of residents before
 211 governmental agencies and seek administrative, legal, and other
 212 remedies to protect the health, safety, welfare, and rights of
 213 the residents.

214 (f) Administer the state council ~~and local councils~~.

215 (g) Analyze, comment on, and monitor the development and
 216 implementation of federal, state, and local laws, rules, and
 217 regulations, and other governmental policies and actions, that
 218 pertain to the health, safety, welfare, and rights of the
 219 residents, with respect to the adequacy of long-term care
 220 facilities and services in the state, and recommend any changes
 221 in such laws, rules, regulations, policies, and actions as the
 222 office determines to be appropriate and necessary.

223 (h) Provide technical support for the development of
 224 resident and family councils to protect the well-being and
 225 rights of residents.

226 (2) The state ~~Long-Term-Care~~ ombudsman has ~~shall~~ have the
 227 duty and authority to:

228 (a) Establish and coordinate districts ~~local councils~~
 229 throughout the state.

230 (b) Perform the duties specified in state and federal law,
 231 rules, and regulations.

232 (c) Within the limits of appropriated federal and state
 233 funding, employ such personnel as are necessary to perform
 234 adequately the functions of the office and provide or contract
 235 for legal services to assist the state council and
 236 representatives of the office ~~local councils~~ in the performance
 237 of their duties. ~~Staff positions established for the purpose of~~
 238 ~~coordinating the activities of each local council and assisting~~
 239 ~~its members may be filled by the ombudsman after approval by the~~
 240 ~~secretary. Notwithstanding any other provision of this part,~~
 241 ~~upon certification by the ombudsman that the staff member hired~~
 242 ~~to fill any such position has completed the initial training~~
 243 ~~required under s. 400.0091, such person shall be considered a~~
 244 ~~representative of the State Long-Term Care Ombudsman Program for~~
 245 ~~purposes of this part.~~

246 (d) Contract for services necessary to carry out the
 247 activities of the office.

248 (e) Apply for, receive, and accept grants, gifts, or other
 249 payments, including, but not limited to, real property, personal
 250 property, and services from a governmental entity or other
 251 public or private entity or person, and make arrangements for
 252 the use of such grants, gifts, or payments.

253 (f) Coordinate, to the greatest extent possible, state and
 254 local ombudsman services with the protection and advocacy
 255 systems for individuals with developmental disabilities and
 256 mental illnesses and with legal assistance programs for the poor
 257 through adoption of memoranda of understanding and other means.

258 ~~(g) Enter into a cooperative agreement with the Statewide~~
 259 ~~Advocacy Council for the purpose of coordinating and avoiding~~
 260 ~~duplication of advocacy services provided to residents.~~

261 (g)(h) Enter into a cooperative agreement with the
 262 Medicaid Fraud Division as prescribed under s. 731(e)(2)(B) of
 263 the Older Americans Act.

264 (h)(i) Prepare an annual report describing the activities
 265 carried out by the office, the state council, and the districts
 266 ~~local councils~~ in the year for which the report is prepared. The
 267 state ombudsman shall submit the report to the secretary, the
 268 United States Assistant Secretary for Aging, the Governor, the
 269 President of the Senate, the Speaker of the House of
 270 Representatives, the Secretary of Children and Families, and the
 271 Secretary of Health Care Administration at least 30 days before
 272 the convening of the regular session of the Legislature. ~~The~~
 273 ~~secretary shall in turn submit the report to the United States~~
 274 ~~Assistant Secretary for Aging, the Governor, the President of~~
 275 ~~the Senate, the Speaker of the House of Representatives, the~~
 276 ~~Secretary of Children and Family Services, and the Secretary of~~
 277 ~~Health Care Administration.~~ The report shall, at a minimum:

- 278 1. Contain and analyze data collected concerning
- 279 complaints about and conditions in long-term care facilities and
- 280 the disposition of such complaints.
- 281 2. Evaluate the problems experienced by residents.
- 282 3. Analyze the successes of the state ombudsman program
- 283 during the preceding year, including an assessment of how

284 successfully the office ~~program~~ has carried out its
 285 responsibilities under the Older Americans Act.

286 4. Provide recommendations for policy, regulatory, and
 287 statutory changes designed to solve identified problems; resolve
 288 residents' complaints; improve residents' lives and quality of
 289 care; protect residents' rights, health, safety, and welfare;
 290 and remove any barriers to the optimal operation of the state
 291 ~~Long-Term Care~~ ombudsman program.

292 5. Contain recommendations from the state ~~Long-Term Care~~
 293 ~~Ombudsman~~ council regarding program functions and activities and
 294 recommendations for policy, regulatory, and statutory changes
 295 designed to protect residents' rights, health, safety, and
 296 welfare.

297 6. Contain any relevant recommendations from
 298 representatives of the office ~~local councils~~ regarding program
 299 functions and activities.

300 Section 5. Section 400.0067, Florida Statutes, is amended
 301 to read:

302 400.0067 State Long-Term Care Ombudsman Council; duties;
 303 membership.—

304 (1) There is created, within the Office of State Long-Term
 305 Care Ombudsman, the State Long-Term Care Ombudsman Council.

306 (2) The state ~~Long-Term Care Ombudsman~~ council shall:

307 (a) Serve as an advisory body to assist the state
 308 ombudsman in reaching a consensus among districts ~~local councils~~

309 on issues affecting residents and impacting the optimal
 310 operation of the program.

311 (b) Serve as an appellate body in receiving from the
 312 districts ~~local councils~~ complaints not resolved at the district
 313 ~~local~~ level. Any individual member or members of the state
 314 council may enter any long-term care facility involved in an
 315 appeal, pursuant to the conditions specified in s. 400.0074(2).

316 (c) Assist the state ombudsman to discover, investigate,
 317 and determine the existence of abuse or neglect in any long-term
 318 care facility, and work with the adult protective services
 319 program as required in ss. 415.101-415.113.

320 (d) Assist the state ombudsman in eliciting, receiving,
 321 responding to, and resolving complaints made by or on behalf of
 322 residents.

323 (e) Elicit and coordinate state, district ~~local~~, and
 324 voluntary organizational assistance for the purpose of improving
 325 the care received by residents.

326 (f) Assist the state ombudsman in preparing the annual
 327 report described in s. 400.0065.

328 (3) The state ~~Long-Term Care Ombudsman~~ council shall be
 329 composed of one active certified ombudsman from each district
 330 ~~local council member elected by each local council~~ plus three
 331 at-large members appointed by the secretary ~~Governor~~.

332 (a) Each district manager, in consultation with the
 333 district ombudsmen, shall select a district ombudsman ~~local~~
 334 ~~council shall elect by majority vote a representative from among~~

335 ~~the council members~~ to represent the interests of the district
 336 ~~local council~~ on the state council. ~~A local council chair may~~
 337 ~~not serve as the representative of the local council on the~~
 338 ~~state council.~~

339 (b)1. The state ombudsman secretary, ~~after consulting with~~
 340 ~~the ombudsman~~, shall submit to the secretary Governor a list of
 341 individuals ~~persons~~ recommended for appointment to the at-large
 342 positions on the state council. The list shall not include the
 343 name of any individual person who is currently serving in a
 344 district on a local council.

345 2. The secretary Governor shall appoint three at-large
 346 members chosen from the list.

347 3. If the secretary Governor does not appoint an at-large
 348 member to fill a vacant position within 60 days after the list
 349 is submitted, the state secretary, ~~after consulting with the~~
 350 ~~ombudsman~~, shall appoint an at-large member to fill that vacant
 351 position.

352 (4) (a) ~~(c)~~1. ~~All~~ State council members shall serve 3-year
 353 terms.

354 2. A member of the state council may not serve more than
 355 two consecutive terms.

356 (b) ~~3~~. A district manager, in consultation with the
 357 district ombudsmen, local council may recommend replacement
 358 ~~removal~~ of its selected ombudsman elected representative from
 359 the state council ~~by a majority vote~~. If the district manager,
 360 in consultation with the district ombudsmen, selects a

361 replacement ombudsman, ~~council votes to remove its~~
 362 ~~representative, the local council chair shall immediately notify~~
 363 the state ombudsman must be notified. ~~The secretary shall advise~~
 364 ~~the Governor of the local council's vote upon receiving notice~~
 365 ~~from the ombudsman.~~

366 ~~(c)4.~~ The position of any member missing three state
 367 council meetings within a 1-year period without cause may be
 368 declared vacant by the state ombudsman. The findings of the
 369 state ombudsman regarding cause shall be final and binding.

370 ~~(d)5.~~ Any vacancy on the state council shall be filled in
 371 the same manner as the original appointment.

372 ~~(e)(d)1.~~ The state council shall elect a chair to serve
 373 for a term of 1 year. A chair may not serve more than two
 374 consecutive terms.

375 2. The chair shall select a vice chair from among the
 376 members. The vice chair shall preside over the state council in
 377 the absence of the chair.

378 3. The chair may create additional executive positions as
 379 necessary to carry out the duties of the state council. Any
 380 person appointed to an executive position shall serve at the
 381 pleasure of the chair, and his or her term shall expire on the
 382 same day as the term of the chair.

383 4. A chair may be immediately removed from office before
 384 ~~prior to~~ the expiration of his or her term by a vote of two-
 385 thirds of all state council members present at any meeting at
 386 which a quorum is present. If a chair is removed from office

387 before ~~prior to~~ the expiration of his or her term, a replacement
 388 chair shall be chosen during the same meeting in the same manner
 389 as described in this paragraph, and the term of the replacement
 390 chair shall begin immediately. The replacement chair shall serve
 391 for the remainder of the term and is eligible to serve two
 392 subsequent consecutive terms.

393 ~~(f)(e)~~1. The state council shall meet upon the call of the
 394 chair or upon the call of the state ombudsman. The state council
 395 shall meet at least quarterly but may meet more frequently as
 396 needed.

397 2. A quorum shall be considered present if more than 50
 398 percent of all active state council members are in attendance at
 399 the same meeting.

400 3. The state council may not vote on or otherwise make any
 401 decisions resulting in a recommendation that will directly
 402 impact the state council or any district ~~local council~~, outside
 403 of a publicly noticed meeting at which a quorum is present.

404 ~~(g)(f)~~ Members shall receive no compensation but shall,
 405 with approval from the state ombudsman, be reimbursed for per
 406 diem and travel expenses as provided in s. 112.061.

407 Section 6. Section 400.0069, Florida Statutes, is amended
 408 to read:

409 400.0069 ~~Local~~ Long-term care ombudsman districts
 410 ~~councils~~; duties; appointment membership.-

411 (1)(a) The state ombudsman shall designate districts ~~local~~
 412 ~~long-term care ombudsman councils~~ to carry out the duties of the

413 state ~~Long-Term Care~~ ombudsman program ~~within local communities~~.
 414 Each district ~~local council~~ shall function under the direction
 415 of the state ombudsman.

416 (b) The state ombudsman shall ensure that there are
 417 representatives of the office ~~is at least one local council~~
 418 ~~operating in each district of the department's planning and~~
 419 ~~service areas. The ombudsman may create additional local~~
 420 ~~councils~~ as necessary to ensure that residents throughout the
 421 state have adequate access to state ~~Long-Term Care~~ ombudsman
 422 program services. ~~The ombudsman, after approval from the~~
 423 ~~secretary, shall designate the jurisdictional boundaries of each~~
 424 ~~local council.~~

425 (2) The duties of the representatives of the office in the
 426 districts ~~local councils~~ are to:

427 (a) Provide services to assist in ~~Serve as a third-party~~
 428 ~~mechanism for~~ protecting the health, safety, welfare, and ~~civil~~
 429 ~~and human~~ rights of residents.

430 (b) Discover, investigate, and determine the existence of
 431 abuse, or neglect, or exploitation using in any long-term care
 432 ~~facility and to use~~ the procedures provided for in ss. 415.101-
 433 415.113 when applicable.

434 (c) Identify ~~Elicit, receive,~~ investigate, ~~respond to,~~ and
 435 resolve complaints made by or on behalf of residents relating to
 436 actions or omissions by providers or representatives of
 437 providers of long-term care services, other public or private

438 agencies, guardians, or representative payees that may adversely
 439 affect the health, safety, welfare, or rights of residents.

440 (d) Review and, if necessary, comment on all existing or
 441 proposed rules, regulations, and other governmental policies and
 442 actions relating to long-term care facilities that may
 443 potentially have an effect on the rights, health, safety, and
 444 welfare of residents.

445 (e) Review personal property and money accounts of
 446 residents who are receiving assistance under the Medicaid
 447 program pursuant to an investigation to obtain information
 448 regarding a specific complaint ~~or problem~~.

449 (f) Recommend that the state ombudsman and the legal
 450 advocate seek administrative, legal, and other remedies to
 451 protect the health, safety, welfare, and rights of ~~the~~
 452 residents.

453 (g) Provide technical assistance for the development of
 454 resident and family councils within long-term care facilities.

455 ~~(h)(g)~~ Carry out other activities that the state ombudsman
 456 determines to be appropriate.

457 (3) In order to carry out the duties specified in
 458 subsection (2), a representative of the office may ~~member of a~~
 459 ~~local council is authorized to~~ enter any long-term care facility
 460 without notice or without first obtaining a warrant; however,
 461 ~~subject to the provisions of s. 400.0074(2) may apply regarding~~
 462 notice of a followup administrative assessment.

463 (4) Each district local council shall be composed of
 464 ombudsmen members whose primary residences are residence is
 465 located within the boundaries of the district local council's
 466 jurisdiction.

467 (a) Upon good cause shown, the state ombudsman, in his or
 468 her sole discretion, may appoint an ombudsman to another
 469 district. The ombudsman shall strive to ensure that each local
 470 council include the following persons as members:

471 1. ~~At least one medical or osteopathic physician whose~~
 472 ~~practice includes or has included a substantial number of~~
 473 ~~geriatric patients and who may practice in a long-term care~~
 474 ~~facility;~~

475 2. ~~At least one registered nurse who has geriatric~~
 476 ~~experience;~~

477 3. ~~At least one licensed pharmacist;~~

478 4. ~~At least one registered dietitian;~~

479 5. ~~At least six nursing home residents or representative~~
 480 ~~consumer advocates for nursing home residents;~~

481 6. ~~At least three residents of assisted living facilities~~
 482 ~~or adult family care homes or three representative consumer~~
 483 ~~advocates for alternative long-term care facility residents;~~

484 7. ~~At least one attorney; and~~

485 8. ~~At least one professional social worker.~~

486 (b) The following individuals may not be appointed as
 487 ombudsmen:

- 488 1. The owner or representative of a long-term care
 489 facility.
- 490 2. A provider or representative of a provider of long-term
 491 care services.
- 492 3. An employee of the agency.
- 493 4. An employee of the department, except for a
 494 representative of the office.
- 495 5. An employee of the Department of Children and Families.
- 496 6. An employee of the Agency for Persons with
 497 Disabilities. In no case shall the medical director of a long-
 498 term care facility or an employee of the agency, the department,
 499 the Department of Children and Family Services, or the Agency
 500 for Persons with Disabilities serve as a member or as an ex
 501 officio member of a council.
- 502 (5) (a) To be appointed as an ombudsman, an individual
 503 must:
- 504 1. Individuals wishing to join a local council shall
 505 submit an application to the state ombudsman or his or her
 506 designee.
- 507 2. Successfully complete level 2 background screening
 508 pursuant to s. 430.0402 and chapter 435. The ombudsman shall
 509 review the individual's application and advise the secretary of
 510 his or her recommendation for approval or disapproval of the
 511 candidate's membership on the local council. If the secretary
 512 approves of the individual's membership, the individual shall be
 513 appointed as a member of the local council.

514 (b) The state ombudsman shall approve or deny the
 515 appointment of the individual as an ombudsman. ~~The secretary may~~
 516 ~~rescind the ombudsman's approval of a member on a local council~~
 517 ~~at any time. If the secretary rescinds the approval of a member~~
 518 ~~on a local council, the ombudsman shall ensure that the~~
 519 ~~individual is immediately removed from the local council on~~
 520 ~~which he or she serves and the individual may no longer~~
 521 ~~represent the State Long-Term Care Ombudsman Program until the~~
 522 ~~secretary provides his or her approval.~~

523 (c) Upon appointment as an ombudsman, the individual may
 524 participate in district activities but may not represent the
 525 office or conduct any authorized program duties until the
 526 individual has completed the initial training specified in s.
 527 400.0091(1) and has been certified by the state ombudsman.

528 (d) The state ombudsman, for good cause shown, such as
 529 development of a conflict of interest, failure to adhere to the
 530 policies and procedures established by the office, or
 531 demonstrated inability to carry out the responsibilities of the
 532 office, may rescind the appointment of an individual as an
 533 ombudsman. After the appointment is rescinded, the individual
 534 may not conduct any duties as an ombudsman and may not represent
 535 the office or the state ombudsman program. ~~A local council may~~
 536 ~~recommend the removal of one or more of its members by~~
 537 ~~submitting to the ombudsman a resolution adopted by a two-thirds~~
 538 ~~vote of the members of the council stating the name of the~~
 539 ~~member or members recommended for removal and the reasons for~~

540 ~~the recommendation. If such a recommendation is adopted by a~~
 541 ~~local council, the local council chair or district coordinator~~
 542 ~~shall immediately report the council's recommendation to the~~
 543 ~~ombudsman. The ombudsman shall review the recommendation of the~~
 544 ~~local council and advise the secretary of his or her~~
 545 ~~recommendation regarding removal of the council member or~~
 546 ~~members.~~

547 ~~(c) (a) Each local council shall elect a chair for a term~~
 548 ~~of 1 year. There shall be no limitation on the number of terms~~
 549 ~~that an approved member of a local council may serve as chair.~~

550 ~~(b) The chair shall select a vice chair from among the~~
 551 ~~members of the council. The vice chair shall preside over the~~
 552 ~~council in the absence of the chair.~~

553 ~~(c) The chair may create additional executive positions as~~
 554 ~~necessary to carry out the duties of the local council. Any~~
 555 ~~person appointed to an executive position shall serve at the~~
 556 ~~pleasure of the chair, and his or her term shall expire on the~~
 557 ~~same day as the term of the chair.~~

558 ~~(d) A chair may be immediately removed from office prior~~
 559 ~~to the expiration of his or her term by a vote of two thirds of~~
 560 ~~the members of the local council. If any chair is removed from~~
 561 ~~office prior to the expiration of his or her term, a replacement~~
 562 ~~chair shall be elected during the same meeting, and the term of~~
 563 ~~the replacement chair shall begin immediately. The replacement~~
 564 ~~chair shall serve for the remainder of the term of the person he~~
 565 ~~or she replaced.~~

566 ~~(7) Each local council shall meet upon the call of its~~
 567 ~~chair or upon the call of the ombudsman. Each local council~~
 568 ~~shall meet at least once a month but may meet more frequently if~~
 569 ~~necessary.~~

570 (6)(8) An ombudsman ~~A member of a local council~~ shall
 571 receive no compensation but shall, with approval from the state
 572 ombudsman, be reimbursed for travel expenses ~~both within and~~
 573 ~~outside the jurisdiction of the local council~~ in accordance with
 574 ~~the provisions of s. 112.061.~~

575 (7)(9) The representatives of the office ~~local councils~~
 576 are authorized to call upon appropriate state agencies ~~of state~~
 577 ~~government~~ for such professional assistance as ~~may be~~ needed in
 578 the discharge of their duties, and such. ~~All~~ state agencies
 579 shall cooperate ~~with the local councils~~ in providing requested
 580 information and agency representation ~~at council meetings.~~

581 Section 7. Section 400.0070, Florida Statutes, is amended
 582 to read:

583 400.0070 Conflicts of interest.—

584 (1) A representative of the office may ~~The ombudsman shall~~
 585 not:

586 (a) Have a direct involvement in the licensing or
 587 certification of, or an ownership or investment interest in, a
 588 long-term care facility or a provider of a long-term care
 589 service.

590 (b) Be employed by, or participate in the management of, a
 591 long-term care facility.

592 (c) Receive, or have a right to receive, directly or
 593 indirectly, remuneration, in cash or in kind, under a
 594 compensation agreement with the owner or operator of a long-term
 595 care facility.

596 (2) Each representative ~~employee~~ of the office, ~~each state~~
 597 ~~council member, and each local council member~~ shall certify that
 598 he or she has no conflict of interest.

599 (3) The department, in consultation with the state
 600 ombudsman, shall define by rule:

601 (a) Situations that constitute an individual's ~~a person~~
 602 having a conflict of interest that could materially affect the
 603 objectivity or capacity of the individual ~~a person~~ to serve as a
 604 representative ~~on an ombudsman council, or as an employee of the~~
 605 ~~office, while carrying out the purposes of the State Long Term~~
 606 ~~Care Ombudsman Program as specified in this part.~~

607 (b) The procedure by which an individual ~~a person~~ listed
 608 in subsection (2) shall certify that he or she has no conflict
 609 of interest.

610 Section 8. Section 400.0071, Florida Statutes, is amended
 611 to read:

612 400.0071 State ~~Long Term Care~~ ombudsman program complaint
 613 procedures.—The department, in consultation with the state
 614 ombudsman, shall adopt rules implementing state and local
 615 complaint procedures. The rules must include procedures for
 616 receiving, investigating, identifying, and resolving complaints
 617 concerning the health, safety, welfare, and rights of residents.

618 ~~(1) Receiving complaints against a long-term care facility~~
 619 ~~or an employee of a long-term care facility.~~

620 ~~(2) Conducting investigations of a long-term care facility~~
 621 ~~or an employee of a long-term care facility subsequent to~~
 622 ~~receiving a complaint.~~

623 ~~(3) Conducting onsite administrative assessments of long-~~
 624 ~~term care facilities.~~

625 Section 9. Section 400.0073, Florida Statutes, is amended
 626 to read:

627 400.0073 Complaint ~~State and local ombudsman council~~
 628 investigations.-

629 (1) A representative of the office ~~local council~~ shall
 630 identify and investigate, ~~within a reasonable time after a~~
 631 ~~complaint is made,~~ any complaint made by or on behalf of a
 632 resident that, ~~a representative of a resident, or any other~~
 633 ~~credible source based on an action or omission by an~~
 634 ~~administrator, an employee, or a representative of a long-term~~
 635 ~~care facility which~~ might be:

- 636 (a) Contrary to law;
- 637 (b) Unreasonable, unfair, oppressive, or unnecessarily
- 638 discriminatory, even though in accordance with law;
- 639 (c) Based on a mistake of fact;
- 640 (d) Based on improper or irrelevant grounds;
- 641 (e) Unaccompanied by an adequate statement of reasons;
- 642 (f) Performed in an inefficient manner; or

643 (g) Otherwise adversely affecting the health, safety,
 644 welfare, or rights of a resident.

645 ~~(2) In an investigation, both the state and local councils~~
 646 ~~have the authority to hold public hearings.~~

647 ~~(3) Subsequent to an appeal from a local council, the~~
 648 ~~state council may investigate any complaint received by the~~
 649 ~~local council involving a long-term care facility or a resident.~~

650 (2)(4) If a representative of the office ~~the ombudsman or~~
 651 ~~any state or local council member~~ is not allowed to enter a
 652 long-term care facility, the administrator of the facility shall
 653 be considered to have interfered with a representative of the
 654 office, ~~the state council, or the local council~~ in the
 655 performance of official duties as described in s. 400.0083(1)
 656 and to have committed a violation of this part. The
 657 representative of the office ombudsman shall report a facility's
 658 refusal to allow entry to the facility to the state ombudsman or
 659 his or her designee, who shall then report the incident to the
 660 agency, and the agency shall record the report and take it into
 661 consideration when determining actions allowable under s.
 662 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
 663 429.71.

664 Section 10. Section 400.0074, Florida Statutes, is amended
 665 to read:

666 400.0074 ~~Local ombudsman council~~ Onsite administrative
 667 assessments.-

668 (1) A representative of the office must ~~In addition to any~~
 669 ~~specific investigation conducted pursuant to a complaint, the~~
 670 ~~local council shall~~ conduct, at least annually, an onsite
 671 administrative assessment of each nursing home, assisted living
 672 facility, and adult family-care home ~~within its jurisdiction.~~
 673 This administrative assessment must be resident-centered and
 674 must shall focus on factors affecting the rights, health,
 675 safety, and welfare of the residents. ~~Each local council is~~
 676 ~~encouraged to conduct a similar onsite administrative assessment~~
 677 ~~of each additional long-term care facility within its~~
 678 ~~jurisdiction.~~

679 (2) An onsite administrative assessment is ~~conducted by a~~
 680 ~~local council shall~~ be subject to the following conditions:

681 (a) To the extent possible and reasonable, the
 682 administrative assessment ~~assessments~~ shall not duplicate the
 683 efforts of ~~the agency~~ surveys and inspections conducted by state
 684 agencies of long-term care facilities ~~under part II of this~~
 685 ~~chapter and parts I and II of chapter 429.~~

686 (b) An administrative assessment shall be conducted at a
 687 time and for a duration necessary to produce the information
 688 required to complete the assessment ~~carry out the duties of the~~
 689 ~~local council.~~

690 (c) Advance notice of an administrative assessment may not
 691 be provided to a long-term care facility, except that notice of
 692 followup assessments on specific problems may be provided.

693 (d) A representative of the office ~~local council member~~
 694 ~~physically~~ present for the administrative assessment must ~~shall~~
 695 identify himself or herself to the administrator ~~and cite the~~
 696 ~~specific statutory authority for his or her assessment of the~~
 697 facility or his or her designee.

698 (e) An administrative assessment may not unreasonably
 699 interfere with the programs and activities of residents.

700 (f) A representative of the office ~~local council member~~
 701 may not enter a single-family residential unit within a long-
 702 term care facility during an administrative assessment without
 703 the permission of the resident or the representative of the
 704 resident.

705 (g) An administrative assessment must be conducted in a
 706 manner that will impose no unreasonable burden on a long-term
 707 care facility.

708 ~~(3) Regardless of jurisdiction, the ombudsman may~~
 709 ~~authorize a state or local council member to assist another~~
 710 ~~local council to perform the administrative assessments~~
 711 ~~described in this section.~~

712 ~~(3)(4)~~ An onsite administrative assessment may not be
 713 accomplished by forcible entry. However, if a representative of
 714 the office ~~ombudsman or a state or local council member~~ is not
 715 allowed to enter a long-term care facility, the administrator of
 716 the facility shall be considered to have interfered with a
 717 representative of the office, ~~the state council, or the local~~
 718 ~~council~~ in the performance of official duties as described in s.

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719 400.0083(1) and to have committed a violation of this part. The
 720 representative of the office ombudsman shall report the refusal
 721 by a facility to allow entry to the state ombudsman or his or
 722 her designee, who shall then report the incident to the agency,
 723 and the agency shall record the report and take it into
 724 consideration when determining actions allowable under s.
 725 400.102, s. 400.121, s. 429.14, s. 429.19, s. 429.69, or s.
 726 429.71.

727 (4) The department, in consultation with the state
 728 ombudsman, may adopt rules implementing procedures for
 729 conducting onsite administrative assessments of long-term care
 730 facilities.

731 Section 11. Section 400.0075, Florida Statutes, is amended
 732 to read:

733 400.0075 Complaint notification and resolution
 734 procedures.—

735 (1)(a) Any complaint ~~or problem~~ verified by a
 736 representative of the office an ombudsman council as a result of
 737 an investigation may or onsite administrative assessment, which
 738 ~~complaint or problem is determined to require remedial action by~~
 739 ~~the local council,~~ shall be identified and brought to the
 740 attention of the long-term care facility administrator subject
 741 to the confidentiality provisions of s. 400.0077 in writing.

742 Upon receipt of the information such document, the
 743 administrator, with the concurrence of the representative of the
 744 office local council chair, shall establish target dates for

745 taking appropriate remedial action. If, by the target date, the
 746 remedial action is not completed or forthcoming, the
 747 representative may extend the target date if there is reason to
 748 believe such action would facilitate the resolution of the
 749 complaint, or the representative may refer the complaint to the
 750 district manager ~~local council chair may, after obtaining~~
 751 ~~approval from the ombudsman and a majority of the members of the~~
 752 ~~local council:~~

753 ~~1. Extend the target date if the chair has reason to~~
 754 ~~believe such action would facilitate the resolution of the~~
 755 ~~complaint.~~

756 ~~2. In accordance with s. 400.0077, publicize the~~
 757 ~~complaint, the recommendations of the council, and the response~~
 758 ~~of the long-term care facility.~~

759 ~~3. Refer the complaint to the state council.~~

760 (b) If an ombudsman determines ~~the local council chair~~
 761 ~~believes~~ that the health, safety, welfare, or rights of a ~~the~~
 762 resident are in imminent danger, the ombudsman must immediately
 763 notify the district manager. ~~The district manager chair shall~~
 764 ~~notify the ombudsman or legal advocate, who,~~ after verifying
 765 that such imminent danger exists, must notify the appropriate
 766 state agencies, including law enforcement, the state ombudsman,
 767 and the legal advocate to ensure the protection of ~~shall seek~~
 768 ~~immediate legal or administrative remedies to protect the~~
 769 resident.

770 (c) If the state ombudsman or legal advocate has reason to
 771 believe that the long-term care facility or an employee of the
 772 facility has committed a criminal act, the state ombudsman or
 773 legal advocate shall provide the local law enforcement agency
 774 with the relevant information to initiate an investigation of
 775 the case.

776 (2)~~(a)~~ Upon referral from a district ~~local council~~, the
 777 state ombudsman or his or her designee ~~council~~ shall assume the
 778 responsibility for the disposition of the complaint. If a long-
 779 term care facility fails to take action to resolve or remedy the
 780 ~~on a~~ complaint ~~by the state council~~, the state ombudsman ~~council~~
 781 may, ~~after obtaining approval from the ombudsman and a majority~~
 782 ~~of the state council members:~~

783 (a)1- In accordance with s. 400.0077, publicize the
 784 complaint, the recommendations of the representatives of the
 785 office ~~local or state council~~, and the response of the long-term
 786 care facility.

787 (b)2- Recommend to the department and the agency a series
 788 of facility reviews pursuant to s. 400.19, s. 429.34, or s.
 789 429.67 to ensure correction and nonrecurrence of the conditions
 790 that gave ~~give~~ rise to the complaint ~~complaints~~ against the a
 791 long-term care facility.

792 (c)3- Recommend to the department and the agency that the
 793 long-term care facility no longer receive payments under any
 794 state assistance program, including Medicaid.

795 (d)4. Recommend to the department and the agency that
 796 procedures be initiated for action against ~~revocation of~~ the
 797 long-term care facility's license in accordance with chapter
 798 120.

799 ~~(b) If the state council chair believes that the health,~~
 800 ~~safety, welfare, or rights of the resident are in imminent~~
 801 ~~danger, the chair shall notify the ombudsman or legal advocate,~~
 802 ~~who, after verifying that such imminent danger exists, shall~~
 803 ~~seek immediate legal or administrative remedies to protect the~~
 804 ~~resident.~~

805 (3)(e) If the state ombudsman, after consultation with the
 806 legal advocate, has reason to believe that the long-term care
 807 facility or an employee of the facility has committed a criminal
 808 act, the office ombudsman shall provide local law enforcement
 809 with the relevant information to initiate an investigation of
 810 the case.

811 Section 12. Section 400.0078, Florida Statutes, is amended
 812 to read:

813 400.0078 Citizen access to state ~~Long-Term-Care~~ ombudsman
 814 program services.-

815 (1) The office shall establish a statewide toll-free
 816 telephone number and e-mail address for receiving complaints
 817 concerning matters adversely affecting the health, safety,
 818 welfare, or rights of residents.

819 (2) ~~Every resident or representative of a resident shall~~
 820 ~~receive,~~ Upon admission to a long-term care facility, each

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821 resident or representative of a resident must receive
 822 information regarding:

823 (a) The purpose of the state ~~Long-Term-Care~~ ombudsman
 824 program.

825 (b) The statewide toll-free telephone number and e-mail
 826 address for receiving complaints.

827 (c) Information that retaliatory action cannot be taken
 828 against a resident for presenting grievances or for exercising
 829 any other resident rights.

830 (d) Other relevant information regarding how to contact
 831 representatives of the office program.

832
 833 Residents or their representatives must be furnished additional
 834 copies of this information upon request.

835 Section 13. Section 400.0079, Florida Statutes, is amended
 836 to read:

837 400.0079 Immunity.—

838 (1) Any person making a complaint pursuant to this part
 839 who does so in good faith shall be immune from any liability,
 840 civil or criminal, that otherwise might be incurred or imposed
 841 as a direct or indirect result of making the complaint.

842 (2) Representatives of the office and ~~The ombudsman or any~~
 843 ~~person authorized by the ombudsman to act on behalf of the~~
 844 ~~office, as well as all~~ members of the state council ~~and local~~
 845 ~~councils,~~ shall be immune from any liability, civil or criminal,

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846 that otherwise might be incurred or imposed during the good
 847 faith performance of official duties.

848 Section 14. Section 400.0081, Florida Statutes, is amended
 849 to read:

850 400.0081 Access to facilities, residents, and records.—

851 (1) A long-term care facility shall provide
 852 representatives of the office with, ~~the state council and its~~
 853 ~~members, and the local councils and their members access to:~~

854 (a) Access to ~~Any portion of~~ the long-term care facility
 855 and residents any resident as necessary to investigate or
 856 ~~resolve a complaint.~~

857 (b) Appropriate access to medical and social records of a
 858 resident for review ~~as necessary to investigate or resolve a~~
 859 ~~complaint,~~ if:

860 1. The representative of the office has the permission of
 861 the resident or the legal representative of the resident; or

862 2. The resident is unable to consent to the review and has
 863 no legal representative.

864 (c) Access to medical and social records of a ~~the~~ resident
 865 ~~as necessary to investigate or resolve a complaint,~~ if:

866 1. A legal representative or guardian of the resident
 867 refuses to give permission;

868 2. A representative of the office has reasonable cause to
 869 believe that the legal representative or guardian is not acting
 870 in the best interests of the resident; and

871 | 3. The representative of the office ~~state or local council~~
 872 | ~~member~~ obtains the approval of the state ombudsman.

873 | (d) Access to the administrative records, policies, and
 874 | documents to which residents or the general public have access.

875 | (e) Upon request, copies of all licensing and
 876 | certification records maintained by the state with respect to a
 877 | long-term care facility.

878 | (2) The department, in consultation with the state
 879 | ombudsman ~~and the state council~~, may adopt rules to establish
 880 | procedures to ensure access to facilities, residents, and
 881 | records as described in this section.

882 | Section 15. Section 400.0083, Florida Statutes, is amended
 883 | to read:

884 | 400.0083 Interference; retaliation; penalties.—

885 | (1) It shall be unlawful for any person, long-term care
 886 | facility, or other entity to willfully interfere with a
 887 | representative of the office or, ~~the state council, or a local~~
 888 | ~~council~~ in the performance of official duties.

889 | (2) It shall be unlawful for any person, long-term care
 890 | facility, or other entity to knowingly or willfully take action
 891 | or retaliate against any resident, employee, or other person for
 892 | filing a complaint with, providing information to, or otherwise
 893 | cooperating with any representative of the office or, ~~the state~~
 894 | ~~council, or a local council~~.

895 | (3) Any person, long-term care facility, or other entity
 896 | that violates this section:

897 (a) Shall be liable for damages and equitable relief as
 898 determined by law.

899 (b) Commits a misdemeanor of the second degree, punishable
 900 as provided in s. 775.083.

901 Section 16. Section 400.0087, Florida Statutes, is amended
 902 to read:

903 400.0087 Department oversight; funding.—

904 (1) The department shall meet the costs associated with
 905 the state ~~Long-Term-Care~~ ombudsman program from funds
 906 appropriated to it.

907 (a) The department shall include the costs associated with
 908 support of the state ~~Long-Term-Care~~ ombudsman program when
 909 developing its budget requests for consideration by the Governor
 910 and submittal to the Legislature.

911 (b) The department may divert from the federal ombudsman
 912 appropriation an amount equal to the department's administrative
 913 cost ratio to cover the costs associated with administering the
 914 state ombudsman program. The remaining allotment from the Older
 915 Americans Act program shall be expended on direct ombudsman
 916 activities.

917 (2) The department shall monitor the office and, the state
 918 council, ~~and the local councils~~ to ensure that each is carrying
 919 out the duties delegated to it by state and federal law.

920 (3) The department is responsible for ensuring that the
 921 office:

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922 (a) Has the objectivity and independence required to
 923 qualify it for funding under the federal Older Americans Act.

924 (b) Provides information to public and private agencies,
 925 legislators, and others.

926 (c) Provides appropriate training to representatives of
 927 the office ~~or of the state or local councils~~.

928 (d) Coordinates ombudsman services with Disability Rights
 929 Florida ~~the Advocacy Center for Persons with Disabilities~~ and
 930 with providers of legal services to residents ~~of long-term care~~
 931 ~~facilities~~ in compliance with state and federal laws.

932 (4) The department shall also:

933 (a) Receive and disburse state and federal funds for
 934 purposes that the state ombudsman has formulated in accordance
 935 with the Older Americans Act.

936 (b) Whenever necessary, act as liaison between agencies
 937 and branches of the federal and state governments and the office
 938 ~~State Long-Term Care Ombudsman Program~~.

939 Section 17. Section 400.0089, Florida Statutes, is amended
 940 to read:

941 400.0089 Complaint data reports.—The office shall maintain
 942 a statewide uniform reporting system to collect and analyze data
 943 relating to complaints and conditions in long-term care
 944 facilities and to residents for the purpose of identifying and
 945 resolving significant complaints ~~problems~~. The office shall
 946 publish quarterly and make readily available information
 947 pertaining to the number and types of complaints received by the

948 state ~~Long-Term Care~~ ombudsman program and shall include such
 949 information in the annual report required under s. 400.0065.

950 Section 18. Section 400.0091, Florida Statutes, is amended
 951 to read:

952 400.0091 Training.—The state ombudsman shall ensure that
 953 appropriate training is provided to all representatives
 954 ~~employees~~ of the office ~~and to the members of the state and~~
 955 ~~local councils.~~

956 (1) All representatives ~~state and local council members~~
 957 ~~and employees~~ of the office shall be given a minimum of 20 hours
 958 of training upon employment with the office or appointment as an
 959 ombudsman. ~~Ten approval as a state or local council member and~~
 960 ~~10~~ hours of continuing education is required annually
 961 thereafter.

962 (2) The state ombudsman shall approve the curriculum for
 963 the initial and continuing education training, which must, at a
 964 minimum, address:

- 965 (a) Resident confidentiality.
- 966 (b) Guardianships and powers of attorney.
- 967 (c) Medication administration.
- 968 (d) Care and medication of residents with dementia and
 969 Alzheimer's disease.
- 970 (e) Accounting for residents' funds.
- 971 (f) Discharge rights and responsibilities.
- 972 (g) Cultural sensitivity.

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973 (h) Any other topic related to residency within a long-
 974 term care facility recommended by the secretary.

975 (3) An individual ~~No employee, officer, or representative~~
 976 ~~of the office or of the state or local councils,~~ other than the
 977 state ombudsman, may not hold himself or herself out as a
 978 representative of the office ~~State Long-Term Care Ombudsman~~
 979 ~~Program~~ or conduct any authorized program duty described in this
 980 part unless the individual ~~person~~ has received the training
 981 required by this section and has been certified by the state
 982 ombudsman as qualified to carry out ombudsman activities on
 983 behalf of the office ~~or the state or local councils.~~

984 Section 19. Subsection (4) of section 20.41, Florida
 985 Statutes, is amended to read:

986 20.41 Department of Elderly Affairs.—There is created a
 987 Department of Elderly Affairs.

988 (4) The department shall administer the Office of State
 989 Long-Term Care Ombudsman Council, created by s. 400.0063
 990 ~~400.0067,~~ and the ~~local long-term care ombudsman councils,~~
 991 ~~created by s. 400.0069~~ and shall, as required by s. 712 of the
 992 federal Older Americans Act of 1965, ensure that ~~both~~ the state
 993 office operates and ~~local long-term care ombudsman councils~~
 994 ~~operate~~ in compliance with the Older Americans Act.

995 Section 20. Subsections (11) through (19) of section
 996 400.021, Florida Statutes, are renumbered as subsections (10)
 997 through (18), respectively, and present subsections (10) and
 998 (18) are amended to read:

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999 400.021 Definitions.—When used in this part, unless the
 1000 context otherwise requires, the term:

1001 ~~(10) "Local ombudsman council" means a local long-term~~
 1002 ~~care ombudsman council established pursuant to s. 400.0069,~~
 1003 ~~located within the Older Americans Act planning and service~~
 1004 ~~areas.~~

1005 (17)~~(18)~~ "State ombudsman program council" means the
 1006 Office of State Long-Term Care Ombudsman Council established
 1007 pursuant to s. 400.0063 ~~400.0067~~.

1008 Section 21. Paragraph (c) of subsection (1) and
 1009 subsections (2) and (3) of section 400.022, Florida Statutes,
 1010 are amended to read:

1011 400.022 Residents' rights.—

1012 (1) All licensees of nursing home facilities shall adopt
 1013 and make public a statement of the rights and responsibilities
 1014 of the residents of such facilities and shall treat such
 1015 residents in accordance with the provisions of that statement.
 1016 The statement shall assure each resident the following:

1017 (c) Any entity or individual that provides health, social,
 1018 legal, or other services to a resident has the right to have
 1019 reasonable access to the resident. The resident has the right to
 1020 deny or withdraw consent to access at any time by any entity or
 1021 individual. Notwithstanding the visiting policy of the facility,
 1022 the following individuals must be permitted immediate access to
 1023 the resident:

1024 1. Any representative of the federal or state government,
 1025 including, but not limited to, representatives of the Department
 1026 of Children and Family Services, the Department of Health, the
 1027 Agency for Health Care Administration, the Office of the
 1028 Attorney General, and the Department of Elderly Affairs; any law
 1029 enforcement officer; representatives ~~members~~ of the state ~~or~~
 1030 ~~local~~ ombudsman program ~~council~~; and the resident's individual
 1031 physician.

1032 2. Subject to the resident's right to deny or withdraw
 1033 consent, immediate family or other relatives of the resident.

1034

1035 The facility must allow representatives of the state ~~Long-Term~~
 1036 ~~Care~~ ombudsman program ~~Council~~ to examine a resident's clinical
 1037 records with the permission of the resident or the resident's
 1038 legal representative and consistent with state law.

1039 (2) The licensee for each nursing home shall orally inform
 1040 the resident of the resident's rights and provide a copy of the
 1041 statement required by subsection (1) to each resident or the
 1042 resident's legal representative at or before the resident's
 1043 admission to a facility. The licensee shall provide a copy of
 1044 the resident's rights to each staff member of the facility. Each
 1045 such licensee shall prepare a written plan and provide
 1046 appropriate staff training to implement ~~the provisions of this~~
 1047 section. The written statement of rights must include a
 1048 statement that a resident may file a complaint with the agency
 1049 or state ~~local~~ ombudsman program ~~council~~. The statement must be

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1050 in boldfaced type and shall include the ~~name, address, and~~
 1051 telephone number and e-mail address of the ~~state numbers of the~~
 1052 ~~local~~ ombudsman program council and the telephone number of the
 1053 central abuse hotline where complaints may be lodged.

1054 (3) Any violation of the resident's rights set forth in
 1055 this section shall constitute grounds for action by the agency
 1056 under ~~the provisions of~~ s. 400.102, s. 400.121, or part II of
 1057 chapter 408. In order to determine whether the licensee is
 1058 adequately protecting residents' rights, the licensure
 1059 inspection of the facility shall include private informal
 1060 conversations with a sample of residents to discuss residents'
 1061 experiences within the facility with respect to rights specified
 1062 in this section and general compliance with standards, and
 1063 consultation with the state ombudsman program council ~~in the~~
 1064 ~~local planning and service area of the Department of Elderly~~
 1065 ~~Affairs in which the nursing home is located.~~

1066 Section 22. Subsections (8) and (9) and (11) through (14)
 1067 of section 400.0255, Florida Statutes, are amended to read:

1068 400.0255 Resident transfer or discharge; requirements and
 1069 procedures; hearings.—

1070 (8) The notice required by subsection (7) must be in
 1071 writing and must contain all information required by state and
 1072 federal law, rules, or regulations applicable to Medicaid or
 1073 Medicare cases. The agency shall develop a standard document to
 1074 be used by all facilities licensed under this part for purposes
 1075 of notifying residents of a discharge or transfer. Such document

1076 must include a means for a resident to request the state ~~local~~
 1077 ~~long-term care~~ ombudsman program ~~council~~ to review the notice
 1078 and request information about or assistance with initiating a
 1079 fair hearing with the department's Office of Appeals Hearings.
 1080 In addition to any other pertinent information included, the
 1081 form shall specify the reason allowed under federal or state law
 1082 that the resident is being discharged or transferred, with an
 1083 explanation to support this action. Further, the form shall
 1084 state the effective date of the discharge or transfer and the
 1085 location to which the resident is being discharged or
 1086 transferred. The form shall clearly describe the resident's
 1087 appeal rights and the procedures for filing an appeal, including
 1088 the right to request the state ~~local~~ ombudsman program ~~council~~
 1089 to review the notice of discharge or transfer. A copy of the
 1090 notice must be placed in the resident's clinical record, and a
 1091 copy must be transmitted to the resident's legal guardian or
 1092 representative and to the state ~~local~~ ombudsman program ~~council~~
 1093 within 5 business days after signature by the resident or
 1094 resident designee.

1095 (9) A resident may request that the state ~~local~~ ombudsman
 1096 program ~~council~~ review any notice of discharge or transfer given
 1097 to the resident. When requested by a resident to review a notice
 1098 of discharge or transfer, the state ~~local~~ ombudsman program
 1099 ~~council~~ shall do so within 7 days after receipt of the request.
 1100 The nursing home administrator, or the administrator's designee,
 1101 must forward the request for review contained in the notice to

1102 the state ~~local~~ ombudsman program ~~council~~ within 24 hours after
 1103 such request is submitted. Failure to forward the request within
 1104 24 hours after the request is submitted shall toll the running
 1105 of the 30-day advance notice period until the request has been
 1106 forwarded.

1107 (11) Notwithstanding paragraph (10)(b), an emergency
 1108 discharge or transfer may be implemented as necessary pursuant
 1109 to state or federal law during the period of time after the
 1110 notice is given and before the time a hearing decision is
 1111 rendered. Notice of an emergency discharge or transfer to the
 1112 resident, the resident's legal guardian or representative, and
 1113 the state ~~local~~ ombudsman program ~~council~~ if requested pursuant
 1114 to subsection (9) must be by telephone or in person. This notice
 1115 shall be given before the transfer, if possible, or as soon
 1116 thereafter as practicable. A representative of the state ~~local~~
 1117 ombudsman program ~~council~~ conducting a review under this
 1118 subsection shall do so within 24 hours after receipt of the
 1119 request. The resident's file must be documented to show who was
 1120 contacted, whether the contact was by telephone or in person,
 1121 and the date and time of the contact. If the notice is not given
 1122 in writing, written notice meeting the requirements of
 1123 subsection (8) must be given the next working day.

1124 (12) After receipt of any notice required under this
 1125 section, the state ~~local~~ ombudsman program ~~council~~ may request a
 1126 private informal conversation with a resident to whom the notice
 1127 is directed, and, if known, a family member or the resident's

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1128 | legal guardian or designee, to ensure that the facility is
 1129 | proceeding with the discharge or transfer in accordance with ~~the~~
 1130 | ~~requirements of~~ this section. If requested, the state local
 1131 | ombudsman program council shall assist the resident with filing
 1132 | an appeal of the proposed discharge or transfer.

1133 | (13) The following persons must be present at all hearings
 1134 | authorized under this section:

1135 | (a) The resident, or the resident's legal representative
 1136 | or designee.

1137 | (b) The facility administrator, or the facility's legal
 1138 | representative or designee.

1139 |
 1140 | A representative of the state local ~~long term care~~ ombudsman
 1141 | program council may be present at all hearings authorized by
 1142 | this section.

1143 | (14) In any hearing under this section, the following
 1144 | information concerning the parties shall be confidential and
 1145 | exempt from ~~the provisions of~~ s. 119.07(1):

1146 | (a) Names and addresses.

1147 | (b) Medical services provided.

1148 | (c) Social and economic conditions or circumstances.

1149 | (d) Evaluation of personal information.

1150 | (e) Medical data, including diagnosis and past history of
 1151 | disease or disability.

1152 | (f) Any information received verifying income eligibility
 1153 | and amount of medical assistance payments. Income information

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1154 received from the Social Security Administration or the Internal
 1155 Revenue Service must be safeguarded according to the
 1156 requirements of the agency that furnished the data.

1157
 1158 The exemption created by this subsection does not prohibit
 1159 access to such information by the state ombudsman program ~~and~~
 1160 ~~local long-term care ombudsman council~~ upon request, by a
 1161 reviewing court if such information is required to be part of
 1162 the record upon subsequent review, or as specified in s. 24(a),
 1163 Art. I of the State Constitution.

1164 Section 23. Subsection (2) of section 400.1413, Florida
 1165 Statutes, is amended to read:

1166 400.1413 Volunteers in nursing homes.—

1167 (2) This section does not affect the activities of the
 1168 ~~state or local long-term care ombudsman program councils~~
 1169 authorized under part I.

1170 Section 24. Paragraph (d) of subsection (5) of section
 1171 400.162, Florida Statutes, is amended to read:

1172 400.162 Property and personal affairs of residents.—

1173 (5)

1174 (d) If, at any time during the period for which a license
 1175 is issued, a licensee that has not purchased a surety bond or
 1176 entered into a self-insurance agreement, as provided in
 1177 paragraphs (b) and (c), is requested to provide safekeeping for
 1178 the personal funds of a resident, the licensee shall notify the
 1179 agency of the request and make application for a surety bond or

1180 for participation in a self-insurance agreement within 7 days
 1181 after ~~of~~ the request, exclusive of weekends and holidays. Copies
 1182 of the application, along with written documentation of related
 1183 correspondence with an insurance agency or group, shall be
 1184 maintained by the licensee for review by the agency and the
 1185 state ~~Nursing Home and Long Term Care Facility~~ ombudsman program
 1186 Council.

1187 Section 25. Subsections (1) and (4) of section 400.19,
 1188 Florida Statutes, are amended to read:

1189 400.19 Right of entry and inspection.—

1190 (1) In accordance with part II of chapter 408, the agency
 1191 and any duly designated officer or employee thereof or a
 1192 representative member of the state ~~Long Term Care~~ ombudsman
 1193 program Council ~~or the local long term care ombudsman council~~
 1194 shall have the right to enter upon and into the premises of any
 1195 facility licensed pursuant to this part, or any distinct nursing
 1196 home unit of a hospital licensed under chapter 395 or any
 1197 freestanding facility licensed under chapter 395 that provides
 1198 extended care or other long-term care services, at any
 1199 reasonable time in order to determine the state of compliance
 1200 with ~~the provisions of~~ this part, part II of chapter 408, and
 1201 applicable rules in force pursuant thereto. The agency shall,
 1202 within 60 days after receipt of a complaint made by a resident
 1203 or resident's representative, complete its investigation and
 1204 provide to the complainant its findings and resolution.

1205 (4) The agency shall conduct unannounced onsite facility
 1206 reviews following written verification of licensee noncompliance
 1207 in instances in which the state ombudsman program ~~a long-term~~
 1208 ~~care ombudsman council~~, pursuant to ss. 400.0071 and 400.0075,
 1209 has received a complaint and has documented deficiencies in
 1210 resident care or in the physical plant of the facility that
 1211 threaten the health, safety, or security of residents, or when
 1212 the agency documents through inspection that conditions in a
 1213 facility present a direct or indirect threat to the health,
 1214 safety, or security of residents. However, the agency shall
 1215 conduct unannounced onsite reviews every 3 months of each
 1216 facility while the facility has a conditional license.
 1217 Deficiencies related to physical plant do not require followup
 1218 reviews after the agency has determined that correction of the
 1219 deficiency has been accomplished and that the correction is of
 1220 the nature that continued compliance can be reasonably expected.

1221 Section 26. Subsection (1) of section 400.191, Florida
 1222 Statutes, is amended to read:

1223 400.191 Availability, distribution, and posting of reports
 1224 and records.—

1225 (1) The agency shall provide information to the public
 1226 about all of the licensed nursing home facilities operating in
 1227 the state. The agency shall, within 60 days after a licensure
 1228 inspection visit or within 30 days after any interim visit to a
 1229 facility, send copies of the inspection reports to the state
 1230 ~~local long-term care ombudsman program council~~, the agency's

1231 local office, and a public library or the county seat for the
 1232 county in which the facility is located. The agency may provide
 1233 electronic access to inspection reports as a substitute for
 1234 sending copies.

1235 Section 27. Subsection (6) and paragraph (c) of subsection
 1236 (7) of section 400.23, Florida Statutes, is amended to read:

1237 400.23 Rules; evaluation and deficiencies; licensure
 1238 status.—

1239 (6) Before ~~Prior to~~ conducting a survey of the facility,
 1240 the survey team shall obtain a copy of the state local long term
 1241 ~~care~~ ombudsman program council report on the facility. Problems
 1242 noted in the report shall be incorporated into and followed up
 1243 through the agency's inspection process. This procedure does not
 1244 preclude the state local long term care ombudsman program
 1245 ~~council~~ from requesting the agency to conduct a followup visit
 1246 to the facility.

1247 (7) The agency shall, at least every 15 months, evaluate
 1248 all nursing home facilities and make a determination as to the
 1249 degree of compliance by each licensee with the established rules
 1250 adopted under this part as a basis for assigning a licensure
 1251 status to that facility. The agency shall base its evaluation on
 1252 the most recent inspection report, taking into consideration
 1253 findings from other official reports, surveys, interviews,
 1254 investigations, and inspections. In addition to license
 1255 categories authorized under part II of chapter 408, the agency

1256 shall assign a licensure status of standard or conditional to
 1257 each nursing home.

1258 (c) In evaluating the overall quality of care and services
 1259 and determining whether the facility will receive a conditional
 1260 or standard license, the agency shall consider the needs and
 1261 limitations of residents in the facility and the results of
 1262 interviews and surveys of a representative sampling of
 1263 residents, families of residents, representatives of the state
 1264 ombudsman program ~~council members in the planning and service~~
 1265 ~~area in which the facility is located~~, guardians of residents,
 1266 and staff of the nursing home facility.

1267 Section 28. Paragraph (a) of subsection (3), paragraph (f)
 1268 of subsection (5), and subsection (6) of section 400.235,
 1269 Florida Statutes, are amended to read:

1270 400.235 Nursing home quality and licensure status; Gold
 1271 Seal Program.—

1272 (3)(a) The Gold Seal Program shall be developed and
 1273 implemented by the Governor's Panel on Excellence in Long-Term
 1274 Care which shall operate under the authority of the Executive
 1275 Office of the Governor. The panel shall be composed of three
 1276 persons appointed by the Governor, to include a consumer
 1277 advocate for senior citizens and two persons with expertise in
 1278 the fields of quality management, service delivery excellence,
 1279 or public sector accountability; three persons appointed by the
 1280 Secretary of Elderly Affairs, to include an active member of a
 1281 nursing facility family and resident care council and a member

1282 of the University Consortium on Aging; a representative of the
 1283 Office of State Long-Term Care Ombudsman; one person appointed
 1284 by the Florida Life Care Residents Association; one person
 1285 appointed by the State Surgeon General; two persons appointed by
 1286 the Secretary of Health Care Administration; one person
 1287 appointed by the Florida Association of Homes for the Aging; and
 1288 one person appointed by the Florida Health Care Association.
 1289 Vacancies on the panel shall be filled in the same manner as the
 1290 original appointments.

1291 (5) Facilities must meet the following additional criteria
 1292 for recognition as a Gold Seal Program facility:

1293 (f) Evidence an outstanding record regarding the number
 1294 and types of substantiated complaints reported to the Office of
 1295 State Long-Term Care Ombudsman Council within the 30 months
 1296 preceding application for the program.

1297
 1298 A facility assigned a conditional licensure status may not
 1299 qualify for consideration for the Gold Seal Program until after
 1300 it has operated for 30 months with no class I or class II
 1301 deficiencies and has completed a regularly scheduled relicensure
 1302 survey.

1303 (6) The agency, nursing facility industry organizations,
 1304 consumers, Office of State Long-Term Care Ombudsman Council, and
 1305 members of the community may recommend to the Governor
 1306 facilities that meet the established criteria for consideration
 1307 for and award of the Gold Seal. The panel shall review nominees

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1308 and make a recommendation to the Governor for final approval and
 1309 award. The decision of the Governor is final and is not subject
 1310 to appeal.

1311 Section 29. Paragraph (a) of subsection (1) of section
 1312 415.1034, Florida Statutes, is amended to read:

1313 415.1034 Mandatory reporting of abuse, neglect, or
 1314 exploitation of vulnerable adults; mandatory reports of death.—

1315 (1) MANDATORY REPORTING.—

1316 (a) Any person, including, but not limited to, any:

1317 1. Physician, osteopathic physician, medical examiner,
 1318 chiropractic physician, nurse, paramedic, emergency medical
 1319 technician, or hospital personnel engaged in the admission,
 1320 examination, care, or treatment of vulnerable adults;

1321 2. Health professional or mental health professional other
 1322 than one listed in subparagraph 1.;

1323 3. Practitioner who relies solely on spiritual means for
 1324 healing;

1325 4. Nursing home staff; assisted living facility staff;
 1326 adult day care center staff; adult family-care home staff;
 1327 social worker; or other professional adult care, residential, or
 1328 institutional staff;

1329 5. State, county, or municipal criminal justice employee
 1330 or law enforcement officer;

1331 6. ~~An~~ Employee of the Department of Business and
 1332 Professional Regulation conducting inspections of public lodging
 1333 establishments under s. 509.032;

1334 7. Florida advocacy council member or representative of
 1335 the Office of State Long-Term Care Ombudsman ~~council member~~; or

1336 8. Bank, savings and loan, or credit union officer,
 1337 trustee, or employee,
 1338
 1339 who knows, or has reasonable cause to suspect, that a vulnerable
 1340 adult has been or is being abused, neglected, or exploited shall
 1341 immediately report such knowledge or suspicion to the central
 1342 abuse hotline.

1343 Section 30. Subsection (1) of section 415.104, Florida
 1344 Statutes, is amended to read:

1345 415.104 Protective investigations of cases of abuse,
 1346 neglect, or exploitation of vulnerable adults; transmittal of
 1347 records to state attorney.—

1348 (1) The department shall, upon receipt of a report
 1349 alleging abuse, neglect, or exploitation of a vulnerable adult,
 1350 begin within 24 hours a protective investigation of the facts
 1351 alleged therein. If a caregiver refuses to allow the department
 1352 to begin a protective investigation or interferes with the
 1353 conduct of such an investigation, the appropriate law
 1354 enforcement agency shall be contacted for assistance. If, during
 1355 the course of the investigation, the department has reason to
 1356 believe that the abuse, neglect, or exploitation is perpetrated
 1357 by a second party, the appropriate law enforcement agency and
 1358 state attorney shall be orally notified. The department and the
 1359 law enforcement agency shall cooperate to allow the criminal

1360 investigation to proceed concurrently with, and not be hindered
 1361 by, the protective investigation. The department shall make a
 1362 preliminary written report to the law enforcement agencies
 1363 within 5 working days after the oral report. The department
 1364 shall, within 24 hours after receipt of the report, notify the
 1365 appropriate Florida local advocacy council, or state long-term
 1366 ~~care~~ ombudsman program council, when appropriate, that an
 1367 alleged abuse, neglect, or exploitation perpetrated by a second
 1368 party has occurred. Notice to the Florida local advocacy council
 1369 or state long-term care ~~ombudsman program council~~ may be
 1370 accomplished orally or in writing and shall include the name and
 1371 location of the vulnerable adult alleged to have been abused,
 1372 neglected, or exploited and the nature of the report.

1373 Section 31. Subsection (8) of section 415.1055, Florida
 1374 Statutes, is amended to read:

1375 415.1055 Notification to administrative entities.—

1376 (8) At the conclusion of a protective investigation at a
 1377 facility, the department shall notify either the Florida local
 1378 advocacy council or state long-term care ~~ombudsman program~~
 1379 ~~council~~ of the results of the investigation. This notification
 1380 must be in writing.

1381 Section 32. Subsection (2) of section 415.106, Florida
 1382 Statutes, is amended to read:

1383 415.106 Cooperation by the department and criminal justice
 1384 and other agencies.—

1385 (2) To ensure coordination, communication, and cooperation
 1386 with the investigation of abuse, neglect, or exploitation of
 1387 vulnerable adults, the department shall develop and maintain
 1388 interprogram agreements or operational procedures among
 1389 appropriate departmental programs and the Office of State Long-
 1390 Term Care Ombudsman Council, the Florida Statewide Advocacy
 1391 Council, and other agencies that provide services to vulnerable
 1392 adults. These agreements or procedures must cover such subjects
 1393 as the appropriate roles and responsibilities of the department
 1394 in identifying and responding to reports of abuse, neglect, or
 1395 exploitation of vulnerable adults; the provision of services;
 1396 and related coordinated activities.

1397 Section 33. Paragraph (g) of subsection (3) of section
 1398 415.107, Florida Statutes, is amended to read:

1399 415.107 Confidentiality of reports and records.—

1400 (3) Access to all records, excluding the name of the
 1401 reporter which shall be released only as provided in subsection
 1402 (6), shall be granted only to the following persons, officials,
 1403 and agencies:

1404 (g) Any appropriate official of the Florida advocacy
 1405 council or state long-term care ombudsman program council
 1406 investigating a report of known or suspected abuse, neglect, or
 1407 exploitation of a vulnerable adult.

1408 Section 34. Subsection (20) of section 429.02, Florida
 1409 Statutes, is amended to read:

1410 429.02 Definitions.—When used in this part, the term:

1411 (20) "Resident's representative or designee" means a
 1412 person other than the owner, or an agent or employee of the
 1413 facility, designated in writing by the resident, if legally
 1414 competent, to receive notice of changes in the contract executed
 1415 pursuant to s. 429.24; to receive notice of and to participate
 1416 in meetings between the resident and the facility owner,
 1417 administrator, or staff concerning the rights of the resident;
 1418 to assist the resident in contacting the state ombudsman program
 1419 ~~council~~ if the resident has a complaint against the facility; or
 1420 to bring legal action on behalf of the resident pursuant to s.
 1421 429.29.

1422 Section 35. Paragraph (b) of subsection (3) of section
 1423 429.07, Florida Statutes, is amended to read:

1424 429.07 License required; fee.—

1425 (3) In addition to the requirements of s. 408.806, each
 1426 license granted by the agency must state the type of care for
 1427 which the license is granted. Licenses shall be issued for one
 1428 or more of the following categories of care: standard, extended
 1429 congregate care, limited nursing services, or limited mental
 1430 health.

1431 (b) An extended congregate care license shall be issued to
 1432 facilities providing, directly or through contract, services
 1433 beyond those authorized in paragraph (a), including services
 1434 performed by persons licensed under part I of chapter 464 and
 1435 supportive services, as defined by rule, to persons who would

1436 otherwise be disqualified from continued residence in a facility
 1437 licensed under this part.

1438 1. In order for extended congregate care services to be
 1439 provided, the agency must first determine that all requirements
 1440 established in law and rule are met and must specifically
 1441 designate, on the facility's license, that such services may be
 1442 provided and whether the designation applies to all or part of
 1443 the facility. Such designation may be made at the time of
 1444 initial licensure or relicensure, or upon request in writing by
 1445 a licensee under this part and part II of chapter 408. The
 1446 notification of approval or the denial of the request shall be
 1447 made in accordance with part II of chapter 408. Existing
 1448 facilities qualifying to provide extended congregate care
 1449 services must have maintained a standard license and may not
 1450 have been subject to administrative sanctions during the
 1451 previous 2 years, or since initial licensure if the facility has
 1452 been licensed for less than 2 years, for any of the following
 1453 reasons:

- 1454 a. A class I or class II violation;
- 1455 b. Three or more repeat or recurring class III violations
 1456 of identical or similar resident care standards from which a
 1457 pattern of noncompliance is found by the agency;
- 1458 c. Three or more class III violations that were not
 1459 corrected in accordance with the corrective action plan approved
 1460 by the agency;

1461 d. Violation of resident care standards which results in
 1462 requiring the facility to employ the services of a consultant
 1463 pharmacist or consultant dietitian;

1464 e. Denial, suspension, or revocation of a license for
 1465 another facility licensed under this part in which the applicant
 1466 for an extended congregate care license has at least 25 percent
 1467 ownership interest; or

1468 f. Imposition of a moratorium pursuant to this part or
 1469 part II of chapter 408 or initiation of injunctive proceedings.

1470 2. A facility that is licensed to provide extended
 1471 congregate care services shall maintain a written progress
 1472 report on each person who receives services which describes the
 1473 type, amount, duration, scope, and outcome of services that are
 1474 rendered and the general status of the resident's health. A
 1475 registered nurse, or appropriate designee, representing the
 1476 agency shall visit the facility at least quarterly to monitor
 1477 residents who are receiving extended congregate care services
 1478 and to determine whether ~~if~~ the facility is in compliance with
 1479 this part, part II of chapter 408, and relevant rules. One of
 1480 the visits may be in conjunction with the regular survey. The
 1481 monitoring visits may be provided through contractual
 1482 arrangements with appropriate community agencies. A registered
 1483 nurse shall serve as part of the team that inspects the
 1484 facility. The agency may waive one of the required yearly
 1485 monitoring visits for a facility that has been licensed for at
 1486 least 24 months to provide extended congregate care services,

1487 if, during the inspection, the registered nurse determines that
 1488 extended congregate care services are being provided
 1489 appropriately, and if the facility has no class I or class II
 1490 violations and no uncorrected class III violations. The agency
 1491 must first consult with the state long-term care ombudsman
 1492 program council for the area in which the facility is located to
 1493 determine whether ~~if~~ any complaints have been made and
 1494 substantiated about the quality of services or care. The agency
 1495 may not waive one of the required yearly monitoring visits if
 1496 complaints have been made and substantiated.

1497 3. A facility that is licensed to provide extended
 1498 congregate care services must:

1499 a. Demonstrate the capability to meet unanticipated
 1500 resident service needs.

1501 b. Offer a physical environment that promotes a homelike
 1502 setting, provides for resident privacy, promotes resident
 1503 independence, and allows sufficient congregate space as defined
 1504 by rule.

1505 c. Have sufficient staff available, taking into account
 1506 the physical plant and firesafety features of the building, to
 1507 assist with the evacuation of residents in an emergency.

1508 d. Adopt and follow policies and procedures that maximize
 1509 resident independence, dignity, choice, and decisionmaking to
 1510 permit residents to age in place, so that moves due to changes
 1511 in functional status are minimized or avoided.

1512 e. Allow residents or, if applicable, a resident's
 1513 representative, designee, surrogate, guardian, or attorney in
 1514 fact to make a variety of personal choices, participate in
 1515 developing service plans, and share responsibility in
 1516 decisionmaking.

1517 f. Implement the concept of managed risk.

1518 g. Provide, directly or through contract, the services of
 1519 a person licensed under part I of chapter 464.

1520 h. In addition to the training mandated in s. 429.52,
 1521 provide specialized training as defined by rule for facility
 1522 staff.

1523 4. A facility that is licensed to provide extended
 1524 congregate care services is exempt from the criteria for
 1525 continued residency set forth in rules adopted under s. 429.41.
 1526 A licensed facility must adopt its own requirements within
 1527 guidelines for continued residency set forth by rule. However,
 1528 the facility may not serve residents who require 24-hour nursing
 1529 supervision. A licensed facility that provides extended
 1530 congregate care services must also provide each resident with a
 1531 written copy of facility policies governing admission and
 1532 retention.

1533 5. The primary purpose of extended congregate care
 1534 services is to allow residents, as they become more impaired,
 1535 the option of remaining in a familiar setting from which they
 1536 would otherwise be disqualified for continued residency. A
 1537 facility licensed to provide extended congregate care services

1538 may also admit an individual who exceeds the admission criteria
 1539 for a facility with a standard license, if the individual is
 1540 determined appropriate for admission to the extended congregate
 1541 care facility.

1542 6. Before the admission of an individual to a facility
 1543 licensed to provide extended congregate care services, the
 1544 individual must undergo a medical examination as provided in s.
 1545 429.26(4) and the facility must develop a preliminary service
 1546 plan for the individual.

1547 7. When a facility can no longer provide or arrange for
 1548 services in accordance with the resident's service plan and
 1549 needs and the facility's policy, the facility shall make
 1550 arrangements for relocating the person in accordance with s.
 1551 429.28(1)(k).

1552 8. Failure to provide extended congregate care services
 1553 may result in denial of extended congregate care license
 1554 renewal.

1555 Section 36. Subsection (9) of section 429.19, Florida
 1556 Statutes, is amended to read:

1557 429.19 Violations; imposition of administrative fines;
 1558 grounds.—

1559 (9) The agency shall develop and disseminate an annual
 1560 list of all facilities sanctioned or fined for violations of
 1561 state standards, the number and class of violations involved,
 1562 the penalties imposed, and the current status of cases. The list
 1563 shall be disseminated, at no charge, to the Department of

1564 Elderly Affairs, the Department of Health, the Department of
 1565 Children and Families ~~Family Services~~, the Agency for Persons
 1566 with Disabilities, the area agencies on aging, the Florida
 1567 Statewide Advocacy Council, and the state ~~and local~~ ombudsman
 1568 program ~~councils~~. The Department of Children and Families ~~Family~~
 1569 ~~Services~~ shall disseminate the list to service providers under
 1570 contract to the department who are responsible for referring
 1571 persons to a facility for residency. The agency may charge a fee
 1572 commensurate with the cost of printing and postage to other
 1573 interested parties requesting a copy of this list. This
 1574 information may be provided electronically or through the
 1575 agency's Internet site.

1576 Section 37. Subsection (8) of section 429.26, Florida
 1577 Statutes, is amended to read:

1578 429.26 Appropriateness of placements; examinations of
 1579 residents.--

1580 (8) The Department of Children and Families ~~Family~~
 1581 ~~Services~~ may require an examination for supplemental security
 1582 income and optional state supplementation recipients residing in
 1583 facilities at any time and shall provide the examination
 1584 whenever a resident's condition requires it. Any facility
 1585 administrator; personnel of the agency, the department, or the
 1586 Department of Children and Families ~~Family Services~~; or
 1587 representative of the state ~~long-term care~~ ombudsman program
 1588 ~~council member~~ who believes a resident needs to be evaluated
 1589 shall notify the resident's case manager, who shall take

1590 appropriate action. A report of the examination findings shall
 1591 be provided to the resident's case manager and the facility
 1592 administrator to help the administrator meet his or her
 1593 responsibilities under subsection (1).

1594 Section 38. Subsection (2) and paragraph (b) of subsection
 1595 (3) of section 429.28, Florida Statutes, are amended to read:
 1596 429.28 Resident bill of rights.-

1597 (2) The administrator of a facility shall ensure that a
 1598 written notice of the rights, obligations, and prohibitions set
 1599 forth in this part is posted in a prominent place in each
 1600 facility and read or explained to residents who cannot read.
 1601 This notice shall include the statewide toll-free telephone
 1602 number and e-mail address ~~name, address, and telephone numbers~~
 1603 of the state local ~~ombudsman~~ program ~~council~~ and central abuse
 1604 hotline and, when applicable, the Advocacy Center for Persons
 1605 with Disabilities, Inc., and the Florida local advocacy council,
 1606 where complaints may be lodged. The facility must ensure a
 1607 resident's access to a telephone to call the state local
 1608 ombudsman ~~program~~ ~~council~~, central abuse hotline, Advocacy
 1609 Center for Persons with Disabilities, Inc., and the Florida
 1610 local advocacy council.

1611 (3)

1612 (b) In order to determine whether the facility is
 1613 adequately protecting residents' rights, the biennial survey
 1614 shall include private informal conversations with a sample of
 1615 residents and consultation with the state ~~ombudsman~~ program

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1616 ~~council~~ in the planning and service area in which the facility
 1617 is located to discuss residents' experiences within the
 1618 facility.

1619 Section 39. Section 429.34, Florida Statutes, is amended
 1620 to read:

1621 429.34 Right of entry and inspection.—In addition to the
 1622 requirements of s. 408.811, any duly designated officer or
 1623 employee of the department, the Department of Children and
 1624 Families ~~Family Services~~, the Medicaid Fraud Control Unit of the
 1625 Office of the Attorney General, the state or local fire marshal,
 1626 or a representative member of the state ~~or local long-term care~~
 1627 ~~ombudsman program council~~ shall have the right to enter
 1628 unannounced upon and into the premises of any facility licensed
 1629 pursuant to this part in order to determine the state of
 1630 compliance with ~~the provisions of~~ this part, part II of chapter
 1631 408, and applicable rules. Data collected by the state ~~or local~~
 1632 ~~long-term care ombudsman program councils~~ or the state or local
 1633 advocacy councils may be used by the agency in investigations
 1634 involving violations of regulatory standards.

1635 Section 40. Subsection (2) of section 429.35, Florida
 1636 Statutes, is amended to read:

1637 429.35 Maintenance of records; reports.—

1638 (2) Within 60 days after the date of the biennial
 1639 inspection visit required under s. 408.811 or within 30 days
 1640 after the date of any interim visit, the agency shall forward
 1641 the results of the inspection to the state ~~local~~ ombudsman

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1642 ~~program council in whose planning and service area, as defined~~
 1643 ~~in part II of chapter 400, the facility is located;~~ to at least
 1644 one public library or, in the absence of a public library, the
 1645 county seat in the county in which the inspected assisted living
 1646 facility is located; and, when appropriate, to the district
 1647 Adult Services and Mental Health Program Offices.

1648 Section 41. Subsection (6) of section 429.67, Florida
 1649 Statutes, is amended to read:

1650 429.67 Licensure.—

1651 (6) In addition to the requirements of s. 408.811, access
 1652 to a licensed adult family-care home must be provided at
 1653 reasonable times for the appropriate officials of the
 1654 department, the Department of Health, the Department of Children
 1655 and Family Services, the agency, and the State Fire Marshal, who
 1656 are responsible for the development and maintenance of fire,
 1657 health, sanitary, and safety standards, to inspect the facility
 1658 to assure compliance with these standards. In addition, access
 1659 to a licensed adult family-care home must be provided at
 1660 reasonable times to representatives of the Office of State ~~for~~
 1661 ~~the local~~ Long-Term Care Ombudsman ~~council~~.

1662 Section 42. Subsection (2) of section 429.85, Florida
 1663 Statutes, is amended to read:

1664 429.85 Residents' bill of rights.—

1665 (2) The provider shall ensure that residents and their
 1666 legal representatives are made aware of the rights, obligations,
 1667 and prohibitions set forth in this part. Residents must also be

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1668 given the statewide toll-free telephone number and e-mail
 1669 address of the state ombudsman program and the telephone number
 1670 of names, addresses, and telephone numbers of the local
 1671 ~~ombudsman council~~ and the central abuse hotline where they may
 1672 lodge complaints.

1673 Section 43. Subsection (17) of section 744.444, Florida
 1674 Statutes, is amended to read:

1675 744.444 Power of guardian without court approval.—Without
 1676 obtaining court approval, a plenary guardian of the property, or
 1677 a limited guardian of the property within the powers granted by
 1678 the order appointing the guardian or an approved annual or
 1679 amended guardianship report, may:

1680 (17) Provide confidential information about a ward that is
 1681 related to an investigation arising under part I of chapter 400
 1682 to a representative of the local or state ombudsman program
 1683 ~~council member~~ conducting such an investigation. Any such
 1684 ombudsman shall have a duty to maintain the confidentiality of
 1685 such information.

1686 Section 44. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 123 Fees and Costs in Guardianship Proceedings

SPONSOR(S): Schwartz

TIED BILLS: HB 125 **IDEN./SIM. BILLS:** SB 120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) Healthy Families Subcommittee		McElroy <i>LM</i>	Brazzell <i>LM</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

Guardianships may be established for both adults and minors:

- For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own estate. If the adult is mentally competent this can be accomplished voluntarily. However, in situations where an individual's mental competence is in question, an involuntary guardianship may be required. The involuntary guardianship is established through an adjudication of incompetence, which is based upon the determination of the examination committee.
- For a minor child, the parents are the natural guardians and can generally act on minor's behalf. There are however exceptions, including settlement of claims, which require the appointment of a guardian ad litem for the minor.

The bill:

- Allows a court to authorize payments to experts and professionals acting on behalf of the guardianship without the need for expert testimony regarding whether the billed amounts are reasonable.
- Requires the state to pay the fees of an examining committee in the event that the court finds that an adult is not incapacitated. In such case, if the court finds the petitioner acted in bad faith, the court may require the petitioner to reimburse these fees.
- Establishes the standard to be utilized by the court in its determination of the need for the appointment of a guardian ad litem for the settlement of a minor's claim.
- Makes technical, grammatical, clarifying and style changes to guardianship statutes.

The bill appears to have a minimal negative fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments.

The bill takes effect upon becoming law and applies to all pending proceedings.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Guardianships may be established for both adults and minors. For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own estate. If the adult is mentally competent this can be accomplished voluntarily. However, in situations where an individual's mental competence is in question, an involuntary guardianship may be required. The involuntary guardianship is established through an adjudication of incompetence, which is based upon the determination of the examination committee. For a minor child, the parents are the natural guardians and can generally act on minor's behalf. There are however exceptions, including settlement of claims, which require the appointment of a guardian ad litem for the minor.

Costs and Fees Associated with Guardianship Administration

Current Situation

Section 744.108, F.S., governs awards of compensation to a guardian or attorney in connection with a guardianship. It provides that "a guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee for services rendered and reimbursement of costs incurred on behalf of the ward."¹ Similarly, s. 744.311(7), F.S.,² provides that any attorney appointed under s. 744.311(2), F.S., is entitled to a reasonable fee to be determined by the court.

Under s. 744.108(8), F.S., fees and costs incurred in determining compensation are part of the guardianship administration and are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.³ It is unclear whether the scope of this subsection covers all requests for attorney's fees or is limited to only fees for the guardian's attorney. Specifically, the statute does not address whether an attorney who has rendered services to a ward, such as court-appointed counsel for the ward, is entitled to recover attorney fees and costs associated with proceedings to review and determine compensation.

Further, it is unclear whether expert testimony is required to establish a reasonable fee for a guardian or an attorney. Section 744.108, F.S., is silent on the subject. Practitioners report that many attorneys and judges interpret the current law as requiring testimony from an expert witness to establish a reasonable attorney's fee unless a statute dispenses with that requirement.⁴ If this is a correct interpretation of existing law, then expert testimony is presently required in all guardianship proceedings for an award of attorney's fees.

Cost considerations are a significant factor in many guardianships. Requiring expert testimony at every hearing for determination of interim guardian's fees or attorney's fees adds a layer of costs that deplete the ward's estate. Practitioners report that the judiciary is capable of determining a reasonable fee without expert testimony in the vast majority of cases. In those cases where expert testimony would be necessary, the interested party may present such testimony.

¹ Section 744.108(1), F.S.

² This section provides that an attorney will be provided for the alleged incompetent.

³ Section 744.108(8), F.S.

⁴ See, *Shwartz, Gold & Cohen, P.A. v. Streicher*, 549 So.2d 1044 (Fla. 4th DCA 1989); *Estate of Cordiner v. Evans*, 497 So.2d 920 (Fla. 2d DCA 1986); *Clark v. Squire, Sanders & Dempsey*, 495 So.2d 264 (Fla. 3d DCA 1986).

Effect of Proposed Changes

The bill adds subsection (9) to s. 744.108, F.S., dispensing with any requirement for expert testimony to support an award of fees unless requested. Expert testimony may be offered at the option of either party after giving notice to interested parties. If expert testimony is offered, a reasonable expert witness fee must be awarded by the court and paid from the assets of the ward.⁵

The bill amends s. 744.108(8), F.S., to provide that the court may award attorneys' fees and costs associated with proceedings to determine the fees of a guardian or an attorney who has rendered services to a guardian or ward, including court-appointed counsel.

Claims of Minors

Current Situation

Pursuant to s. 744.3025(1)(a), F.S., the court may appoint a guardian ad litem before approving a settlement of a minor's claim in any case in which the gross settlement of the claim exceeds \$15,000.⁶ The statute is silent as to the specific criteria to be utilized by the court in its determination of the need for the appointment of a guardian ad litem.

Effect of Proposed Changes

The bill amends s. 744.3025(1)(a), F.S., to provide the standard to be utilized by the court in its determination of the need for the appointment of a guardian ad litem. Specifically, the bill provides that the court may appoint a guardian ad litem "if the court believes that a guardian ad litem is necessary to protect the minor's interest."

Costs and Fees Associated with Adjudication

Current Situation

When a petition for incapacity is filed, the court is required to appoint an examining committee consisting of three members, at least one of which must be a psychiatrist or other physician.⁷ The remaining members must be either a psychologist or gerontologist, another psychiatrist or physician, a registered nurse, nurse practitioner, licensed social worker with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training or education may, in the court's discretion, "advise the court in the form of an expert opinion."⁸

Each member of the examining committee is charged with examining the alleged incapacitated person, making a comprehensive assessment, and rendering to the court a professional opinion as to a diagnosis, a prognosis and a recommended course of treatment. This evaluation includes an assessment of the capacity of the individual to exercise enumerated rights in s. 744.3215, F.S.

Compensation of examining committee members is governed by s. 744.331(7), F.S., which provides generally that the examining committee and any attorney appointed to represent the alleged incapacitated person are entitled to reasonable fees to be determined by the court. Under current law, the fees awarded are to be paid by the guardian from the property of the ward or if the ward is indigent,

⁵ This provision is derived from and similar to s. 733.6175(4), F.S., of the Florida Probate Code.

⁶ Under current law, parents as natural guardians may settle a claim of less than \$15,000 without appointment of a guardian ad litem. Sections 744.301, 744.3025, F.S.

⁷ Section 744.331(3)(a), F.S.

⁸ *Id.*

"by the state."⁹ If the court finds the petition was brought in bad faith, the costs may be assessed against the petitioner.¹⁰

The statute is silent, however, with respect to how the examining committee members are to be compensated in the event the petition is dismissed and the court finds no bad faith in the filing of the petition to determine incapacity. Under such circumstances, no guardian is appointed and no property ever comes into the hands of a guardian or under the authority of the court. Likewise, there is no authority for assessing such fees against the petitioner or against the alleged incapacitated person.

This "gap" in s. 744.331(7), F.S., as to who is responsible for the payment of such fees has been recognized in several reported decisions, all of which have recognized the need for remedy by the Legislature.¹¹

Effect of Proposed Changes

This bill amends s. 744.331(7)(c), F.S., to provide that if the petition is dismissed, the fees of the examining committee are paid upon court order as "expert witness" fees under s. 29.004(6), F.S. This change implements the provisions of s. 29.004(6), F.S., which awards fees to court appointed experts generally, and provides a secure source of funding to insure that the members of the examining committee are reasonably compensated as contemplated by s. 744.331, F.S., without incentive to find incompetency.

B. SECTION DIRECTORY:

Section 1 amends s. 744.108, F.S., regarding guardian's and attorney's fees and expenses.

Section 2 amends s. 744.3025, F.S., regarding claims of minors.

Section 3 amends s. 744.331, F.S., regarding procedures to determine incapacity.

Section 4 provides that the bill applies to all proceedings pending on the effective date

Section 5 provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill appears to create an unknown minimal negative fiscal impact. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

⁹ Section 744.331(7)(b), F.S.

¹⁰ Section 744.331(7)(c), F.S.

¹¹ See, *Ehrlich v. Severinson*, 985 So.2d 639 (Fla. 4th DCA 2008); *Levine v. Levine*, 4 So.3d 730 (Fla. 5th DCA 2009); and *Faulkner v. Faulkner*, 65 So.3d 1167 (Fla. 1st DCA 2011).

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill appears to lower the cost to individuals for maintenance of a guardianship case. In the majority of guardianship cases the cost of presenting expert testimony will be avoided and the situations where expert testimony is used will be minimized.

D. FISCAL COMMENTS:

The Real Property, Probate, and Trust Law Section of the Florida Bar reports that compensation awarded to an examining committee is modest, generally \$600 or less per appointment.

The Office of State Courts Administration (OSCA) reports an anticipated fiscal impact because the bill will require the State Courts System to pay examining committee fees in situations in which it is not currently required by statute to do so (i.e., when the petition is dismissed and there is no "ward," indigent or otherwise). Information from the circuits indicates that some currently pay examining committee fees only when the ward/alleged incapacitated person is indigent. Other circuits report that they also pay the fees in those situations in which the alleged incapacitated person is not indigent and a good faith petition is dismissed (e.g., to ensure that the examining committee members do not go uncompensated for their services). Thus, in some cases circuits are already paying the fees in situations contemplated by the bill.

The feedback from the circuits suggests that these situations arise infrequently. In addition, the bill requires the petitioner to reimburse the state if the court concludes that the petition was filed in bad faith. To the extent such reimbursements are indeed made, some of the fiscal impact will be reduced. OSCA does not expect the fiscal impact from the legislation to be significant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

A search for the word, 'confidential' throughout the whole of ch. 744, F.S., does not produce a definitive duty of confidentiality that would apply directly to the new provision in s. 744.3025(3), F.S, which provides, at lines 81 and 82, "Any settlement of a claim pursuant to this section is subject to the confidentiality provisions of this chapter." If the tied bill, HB 125 passes, this language will be rendered unnecessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to fees and costs incurred in
3 guardianship proceedings; amending s. 744.108, F.S.;
4 updating terminology; providing that fees and costs
5 incurred by an attorney who has rendered services to a
6 ward in compensation proceedings are payable from
7 guardianship assets; providing that expert testimony
8 is not required in proceedings to determine
9 compensation for an attorney or guardian; amending s.
10 744.3025, F.S.; providing that a court may appoint a
11 guardian ad litem to represent a minor if necessary to
12 protect the minor's interest in a settlement;
13 providing that a settlement of a minor's claim is
14 subject to certain confidentiality provisions;
15 amending s. 744.331, F.S.; requiring that the
16 examining committee be paid from state funds as court-
17 appointed expert witnesses if a petition for
18 incapacity is dismissed; requiring that a petitioner
19 reimburse the state for expert witness fees if the
20 court finds the petition to have been filed in bad
21 faith; providing applicability; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsections (5) and (8) of section 744.108,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

27 Florida Statutes, are amended, and subsection (9) is added to
 28 that section, to read:

29 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees
 30 and expenses.—

31 (5) All petitions for guardian ~~guardian's~~ and attorney
 32 ~~attorney's~~ fees and expenses must be accompanied by an itemized
 33 description of the services performed for the fees and expenses
 34 sought to be recovered.

35 (8) When court proceedings are instituted to review or
 36 determine a guardian's or an attorney's fees under subsection
 37 (2), such proceedings are part of the guardianship
 38 administration process and the costs, including costs and
 39 attorney fees for the guardian's attorney, an attorney appointed
 40 under s. 744.331(2), or an attorney who has rendered services to
 41 the ward, shall be determined by the court and paid from the
 42 assets of the guardianship estate unless the court finds the
 43 requested compensation under subsection (2) to be substantially
 44 unreasonable.

45 (9) The court may determine reasonable compensation for
 46 the guardian, the guardian's attorney, a person employed by the
 47 guardian, an attorney appointed under s. 744.331(2), or an
 48 attorney who has rendered services to the ward without receiving
 49 expert testimony. Any person or party may offer expert testimony
 50 after giving notice to interested persons. If expert testimony
 51 is offered, a reasonable expert witness fee shall be awarded by
 52 the court and paid from the assets of the guardianship estate.

53 Section 2. Section 744.3025, Florida Statutes, is amended
 54 to read:

55 744.3025 Claims of minors.—

56 (1)(a) The court may appoint a guardian ad litem to
 57 represent the minor's interest before approving a settlement of
 58 the minor's portion of the claim in any case in which a minor
 59 has a claim for personal injury, property damage, wrongful
 60 death, or other cause of action in which the gross settlement of
 61 the claim exceeds \$15,000 if the court believes a guardian ad
 62 litem is necessary to protect the minor's interest.

63 (b) Except as provided in paragraph (e), the court shall
 64 appoint a guardian ad litem to represent the minor's interest
 65 before approving a settlement of the minor's claim in any case
 66 in which the gross settlement involving a minor equals or
 67 exceeds \$50,000.

68 (c) The appointment of the guardian ad litem must be
 69 without the necessity of bond or notice.

70 (d) The duty of the guardian ad litem is to protect the
 71 minor's interests as described in the Florida Probate Rules.

72 (e) A court need not appoint a guardian ad litem for the
 73 minor if a guardian of the minor has previously been appointed
 74 and that guardian has no potential adverse interest to the
 75 minor. ~~A court may appoint a guardian ad litem if the court~~
 76 ~~believes a guardian ad litem is necessary to protect the~~
 77 ~~interests of the minor.~~

78 (2) Unless waived, the court shall award reasonable fees

79 and costs to the guardian ad litem to be paid out of the gross
 80 proceeds of the settlement.

81 (3) Any settlement of a claim pursuant to this section is
 82 subject to the confidentiality provisions of this chapter.

83 Section 3. Paragraph (c) of subsection (7) of section
 84 744.331, Florida Statutes, is amended to read:

85 744.331 Procedures to determine incapacity.—

86 (7) FEES.—

87 (c) If the petition is dismissed:7

88 1. The fees of the examining committee shall be paid upon
 89 court order as expert witness fees under s. 29.004(6).

90 2. Costs and attorney ~~attorney's~~ fees of the proceeding
 91 may be assessed against the petitioner if the court finds the
 92 petition to have been filed in bad faith. If the court finds bad
 93 faith under this subparagraph, the petitioner shall reimburse
 94 the state courts system for any amounts paid under subparagraph
 95 1.

96 Section 4. The amendments made by this act to ss. 744.108,
 97 744.3025, and 744.331, Florida Statutes, apply to all
 98 proceedings pending on the effective date of this act.

99 Section 5. This act shall take effect upon becoming a law.

**Presentations on
Human Trafficking**

Detective James McBride
Clearwater/Tampa Bay Area Human Trafficking Task Force

Detective James McBride was selected as the lead investigator of the Clearwater/Tampa Bay Area Human Trafficking Task Force in August of 2006 and assigned as the Director of the task force in May of 2011. As the director and lead investigator he is responsible for building relationships with all ethnic communities, non-governmental agencies, faith based organizations and law enforcement agencies within Hillsborough, Pinellas, and Pasco Counties. His duties include the investigation of all forms of human trafficking including; sex trafficking, domestic sex trafficking, labor trafficking, domestic servitude, human smuggling and fraudulent immigration document organizations. He is a task force officer on the FBI led Innocence Lost Task Force which investigates and coordinates services for domestic minor sex trafficking offenses in the Tampa Bay Area.

The Clearwater/Tampa Bay Area Human Trafficking Task Force and Detective McBride assisted the Florida Regional Community Policing Institute and the Department of Justice with the Immersion Learning Program. This program was designed to assist other Human Trafficking Task Forces with investigative techniques and task force management. He assisted in training the Nassau County, New Jersey State, Miami Dade, Homestead, Suffolk County, and Pitt County Human Trafficking Task Forces. He has trained law enforcement in Texas, Tennessee, Florida, and the US Virgin Islands. Detective McBride along with task force officers assisted the Florida Department of Law Enforcement in creating a forty hour Advanced Human Trafficking Investigations course for law enforcement investigators. In addition, he assisted the Minnesota Community Policing Institute with creating an advanced Human Trafficking Task Force Curriculum. Detective James McBride is currently partnering with the Florida Regional Community Policing Institute as the President of the International Association of Human Trafficking Investigators.

Lorita Shirley, MSW
Chief, Eckerd Community Alternatives

Lorita Shirley brings 22 years of child welfare experience with more than 16 years in a leadership role to her current position as the Chief for Eckerd Community Alternatives. She obtained her BSW and MSW degrees from Florida State University and has worked in both the public and private sector.

Ms. Shirley started her career with the Florida Department of Children and Families where she was responsible for overseeing child welfare services. She transitioned to the private sector in 2003 when the State of Florida privatized child welfare services. Currently, Ms. Shirley has more than eleven years' experience serving in top leadership positions with three of Florida's Community-Based Care (CBC) Lead Agencies charged with managing large complex child welfare systems.

As a member of Eckerd's Executive Leadership Team, Ms. Shirley provides oversight of two of the largest systems of care within the State of Florida serving a combined 6,000 children and families on any given day in Pinellas, Pasco, & Hillsborough Counties. With a proven track record of bringing stability and improved performance outcomes to thousands of Florida's vulnerable children and families, Ms. Shirley took the Eckerd Community Alternatives Lead Agency programs from the worst to the best performing child welfare systems in the state. Ms. Shirley's successful results were accomplished through engaging the community, leveraging and maximizing resources, and ensuring transparency and accountability at all levels. Her commitment to improving services to Florida's children and families is based on a premise that the community should be engaged in all aspects of the local child welfare system.

Ms. Shirley serves on the Florida Coalition for Children Board of Directors advocating for legislative changes statewide in the child welfare arena. Her passion for child welfare and her commitment to communities earned her the 2004 Jim Strayer Leadership Award; 2011 Pinellas Community Advocate Award; and 2011 Administrator of the Year Award through the Florida Coalition for Children. Ms. Shirley is married and a devoted wife and mother to three daughters.

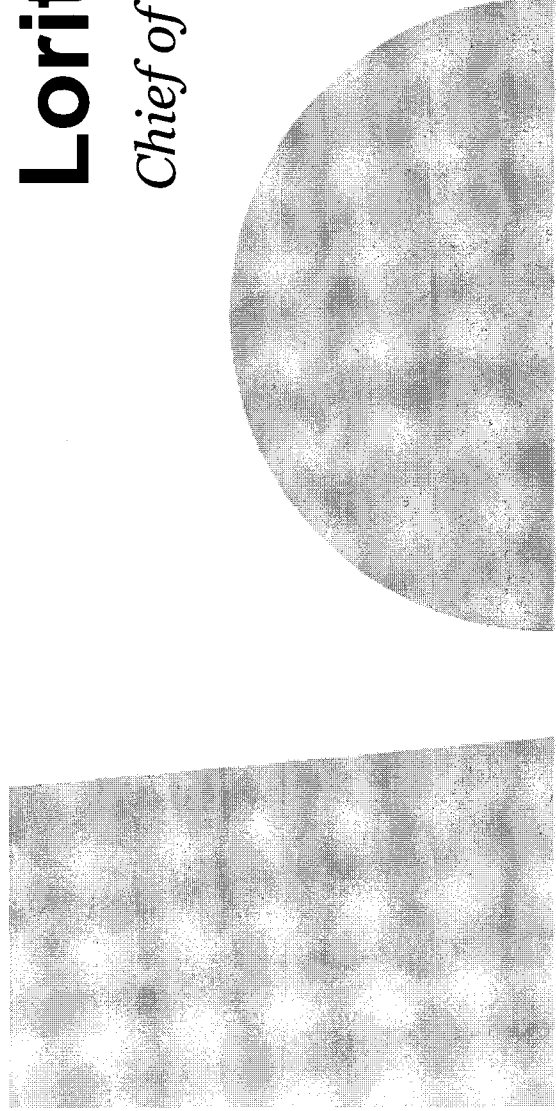
The first name in second chances.SM

Eckerd

Presented by:

Lorita Shirley

Chief of Eckerd Community Alternatives



WHO IS ECKERD?

Eckerd is a national nonprofit organization that has given second chances to more than 150,000 children and families since 1968.

Eckerd is the Community Based Care Lead Agency in Hillsborough, Pasco and Pinellas Counties.

Community Based Care Lead Agencies- Embrace Safe Harbor Legislation

- Florida Safe Harbor Law- s. 409.1678, F.S. (2012)
 - Established a Dependency track instead of Delinquency track for children under the age of 18 (revision to DCF CFOP 175-28)
- Law enforcement has option of referring minors to DCF, instead of detention facilities
- Community Based Care Lead Agencies mandated to develop local Human Trafficking Response Protocols to better address the needs of minor victims of human trafficking



Definitions

- **Florida DCF definition** of human trafficking (CFOP 175-28) **requires that the child protective investigator prove force, fraud, or coercion**
- Federal Law Defines: Sex trafficking is the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act, in which the commercial sex act is **induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age** (22 USC § 7102; 8 CFR § 214.11(a))
- Florida Law Enforcement follows federal law, giving law enforcement the ability to **certify a child as a Human Trafficking Victim even if the child denies the use of force, fraud, or coercion**



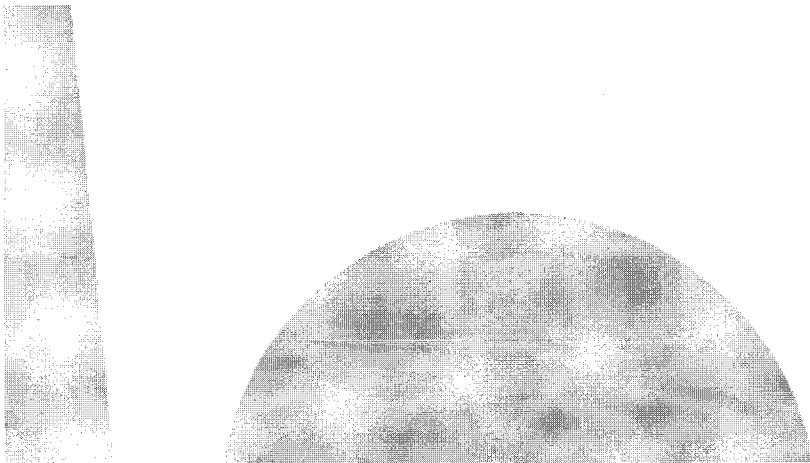
A Snapshot of Florida's Data

- During FFY 12-13, DCF received 935 calls alleging some form of human trafficking. 182 of the calls (19%) resulted in a verified maltreatment
- In Tampa Bay, we received 101 calls
 - Hillsborough County had a total of 58 calls with only 17 (29.3%) resulting in a verified maltreatment
 - Pinellas/Pasco County had a total of 43 calls with only 3 (7%) resulting in a verified maltreatment



Dependency - Is Adjudication Needed?

- The only reason why a child should be **adjudicated** is if the trafficker/pimp is the parent
- If the parent **is not** the trafficker/pimp (*and the child is in need of services*), no adjudication of dependency should be required to address the service needs of the victim





CBCs Ready – But is the System Trained?

▪ **No statewide training curriculum developed** for patrol officers, child protective investigators, and case managers resulting in various interpretations of how to best work with this population:

- Recognizing the signs of victimization
- Understanding denial and breaking the trauma bond
- Preventing run episodes
(Baker Act and other lockdown options)



CBC Services Available

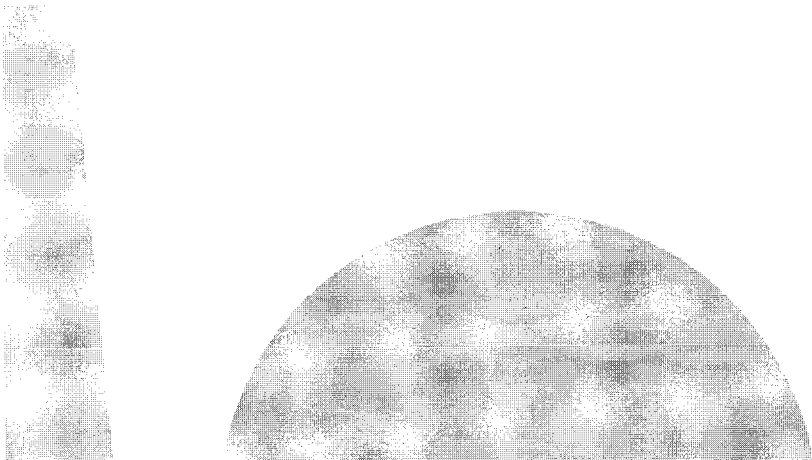
- Established Community Based Human Trafficking Coalitions
- CBC 24-Hour Emergency Response Protocols
 - Intake/assessment
 - Crisis counseling
 - Health/medical
 - Legal support
 - Alcohol and substance abuse services (detox)
 - Placement & intensive recovery services

The first name in service of change™



CBC Services Needed

- Evidence-based mental health interventions throughout Florida
- Intensive specialized treatment programs
- Increased capacity of Medicaid-funded and SAMH-funded services to provide victims of human trafficking

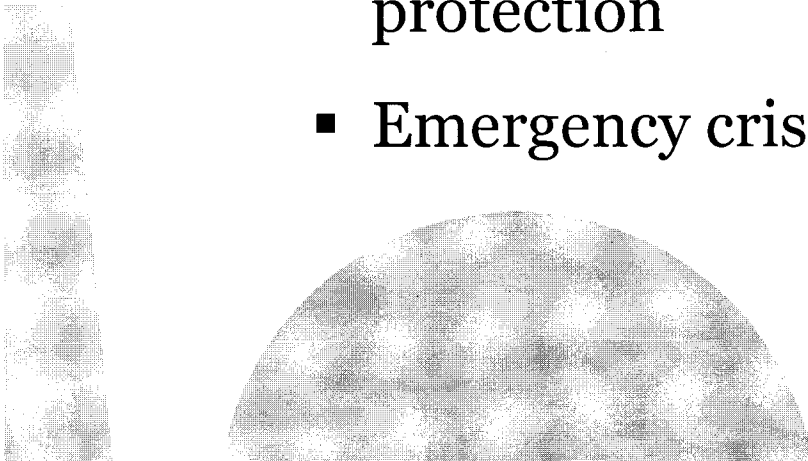


The best name in the industry.



Additional CBC Services Needed...

- 24/7 assessment centers in each judicial circuit
 - Intake/assessment
 - Food/clothing and other essentials
 - Victims can be medically cleared
 - Legal services accessible for orders of protection
 - Emergency crisis counseling onsite



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Additional CBC Services Needed...

- 24/7 assessment centers in each judicial circuit, continued
 - Secured transportation from assessment center to safe house
 - Ability to provide temporary “Safe House” until a long-term program can be identified

- Educational and vocational services for victims – need for specialized as many victims have difficulty in mainstream schools/programs

Eckerd | Fiscal Implications

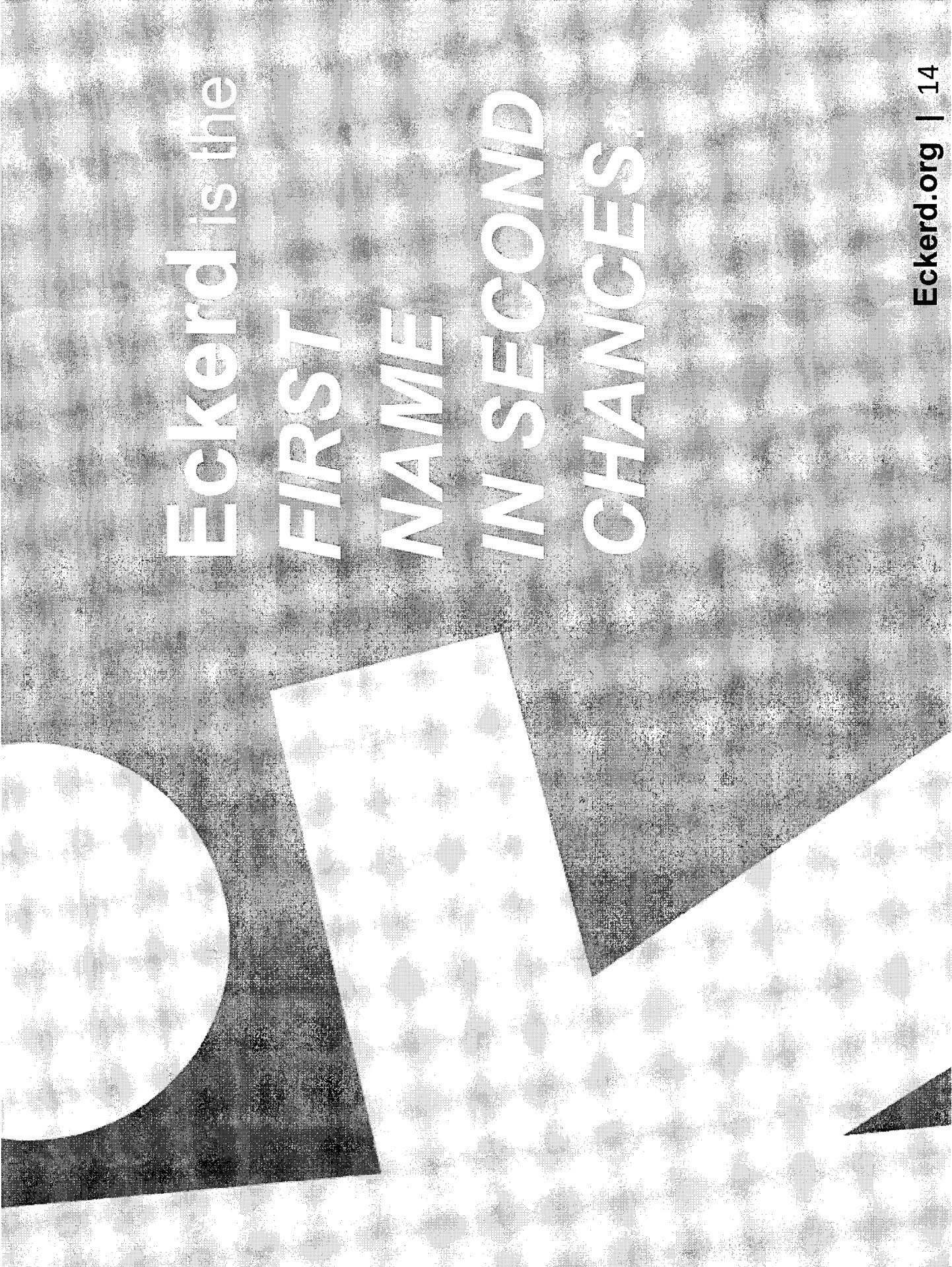
- It costs the child welfare system approximately **\$360 per day** to serve a victim of human trafficking – many of these children are not in the foster care system
- Additional funding was appropriated to build bed and service capacity by the Florida Legislature in FY13:
 - Tampa Bay received \$352,000 to build 12 bed capacity to serve HT Victims
- Specialized programs often lack the funding to provide onsite security services
- Street outreach – availability of funds and resources on prevention in the communities with highest risk



Responding to the Challenge: What's Needed

- Additional training needed for first responders
- Expert evaluation of local plans
- Law enforcement transport to programs – first 24 hours is critical
- Recurring funding needed to address victims of human trafficking not in the formal foster care system





Eckerd is the
**FIRST
NAME
IN SECOND
CHANCES.**

The first name in second chances.SM



Lorita Shirley

Chief of Eckerd Community Alternatives

Eckerd | 100 Starcrest Drive | Clearwater, FL 33765

E: LShirley@eckerd.org | **C:** (727) 631-6241 | **URL:** **Eckerd.org**



Circuit 13 Human Trafficking Protocol Cheat Sheet

<p>Who Do I Contact to Report a Victim of Human Trafficking?</p>	<p>If a child is in imminent danger, dial 9-1-1</p> <p>For all situations involving a Human Trafficking Victim, you must contact the Florida Abuse Hotline at (1-800-96-ABUSE).</p>
<p>Are there any other required notifications?</p>	<p>Yes; for youth involved in foster care:</p> <ul style="list-style-type: none"> ➤ Contact the DCF Missing Child Specialist at (813) 558-5603 or cell (813) 781-1411 ➤ Contact the Eckerd Missing Child Specialist, Robin Latimer, at rlatimer@eckerdcbc-c13.org (813) 347-3161
<p>Who handles a Hillsborough County Case once an abuse report has been generated?</p>	<p>In Circuit 13, the Hillsborough County Sheriff's Department has one Specialized Unit that handles all human trafficking cases: HCSO Unit #303 Supervised by Karen Gonzales, (813) 627-2048 klgonza@hcsso.tampa.fl.us and Deb O'Brien, General Manager (813) 627-2014 dobrien@hcsso.tampa.fl.us</p>
<p>Where can I take a Human Trafficking Victim while waiting for the Hillsborough County Sheriff's Department to Respond?</p>	<p>The Family Justice Center (FJC) can provide a physically safe environment for the victim through a tiered security system (813) 935-2015.</p>
<p>What types of treatment services are available for Human Trafficking Victims?</p>	<p>The Crisis Center of Tampa Bay is available 24 hours/ 7 days of week to provide medical treatment to include a forensic exam. This service is available for youth ages 13 and above (813) 964-1964.</p> <p>If the child is under age 13, the University of South Florida's Child Protection Team will need to be consulted and can be reached at (813) 250-6670.</p>
<p>What other services are available for victims?</p>	<p>Substance Abuse Services through ACTS (813) 931-4669. Trauma Counseling: Crisis Center of Tampa Bay at (813) 964-1964 Protection: The Family Justice Center has staff that are deputized to file Injunctions for Protection for Domestic Violence, Dating Violence, Sexual Violence and Stalking Injunction for Protection (813) 935-2015 Legal Services- Gulf Coast Legal: Adriana Dinis adrianad@gulfcoastlegal.org and Kathlyn Mackovjak kmackovjak@gulfcoastlegal.org</p>
<p>What Placement Resources Are Available?</p>	<p>For Foster Youth, please contact Eckerd's 24hour/7day Placement Unit at: 813-210-4276</p> <p>Other Placement Resources: Wings of Shelter (located in Fort Myers) (239) 240-2980</p> <p>Kristi House (located in Miami-Dade County) (305) 547-6800 Ext. 36 Redefining Refuge's Safe House (located in Hillsborough County) can be reached directly at natasha@redefiningrefuge.org</p>



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I. Glossary of Child Trafficking Terms

Objective: to ensure that children are correctly identified as trafficking victims so that they receive the appropriate protections and referrals to specialized services to which they are entitled under federal and state laws.

Sex Trafficking: the recruitment, harboring, transportation, provision, or obtaining of a person under the age of 18 for the purpose of a commercial sex act, or the recruitment, harboring, transportation, provision or obtaining of a person over 18 years old, using force, threats of force, fraud, or coercion, for the purpose of a commercial sex act. When a minor is trafficked for a commercial sex act, there is no need to prove force, fraud, or coercion.

Domestic Minor Sex Trafficking: occurs when a U.S. citizen who has not attained 18 years of age is engaged in a commercial sex act.

Commercial Sexual Exploitation of Child: the use of any person under the age of 18 for sexual purpose in exchange for cash or in-kind factors; it can occur between a child and a customer, the pimp/trafficker, or others (including family members) who profit from children for these purposes.

Commercial Sexual Exploitation of a Child is Sex Trafficking.

Commercial Sexual Act: any sex act where anything of value is given to or received by any person.

Involuntary Servitude: a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process.

Safe Harbor Act: The bill retains law enforcement discretion whether or not to arrest and prosecute children for the crime of prostitution but requires law enforcement to deliver children picked up and alleged to be dependent and sexually exploited to the DCF for assessment and possible shelter. The legislation allows DCF to place a child alleged to have been sexually exploited in a safe house, if one is available. It creates new sections of law related to safe harbor placements which provides processes and requirements for services in safe houses. The bill increases the civil penalty for "pimping" from \$500 to \$5,000 and directs that \$500 of the civil penalty be used for treatment based drug court programs and the remainder be paid to DCF to fund safe houses and short-term safe houses.

II. Identification and Interview Process

Objective: to build the capacity of law enforcement, child protective investigators, and child welfare agencies/professionals to identify and respond to child exploitation victims.

Interview Techniques (this is a very important section of the response plan because there are concerns that child welfare investigative cases and law enforcement cases are being closed with no indicators due to denial of the allegations by the victim).

In Circuit 13, the Hillsborough County Sheriff's Department has one Specialized Unit that handles all human trafficking cases in Hillsborough:

Unit #303 Supervised by Karen Gonzales, (813) 627-2048 klgonza@hcsso.tampa.fl.us and Deb O'Brien, General Manager (813) 627-2014 dobrien@hcsso.tampa.fl.us



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<p>Possible nationally recognized tools include the <i>Rapid Screening Tool for Child Trafficking</i> and the <i>Comprehensive Screening and Safety Tool for Child Trafficking</i></p>	<p>Specialized Response Team: If you have a child that has been identified as a victim of human trafficking, please make sure their case has been appropriately referred to the Florida abuse hotline (1-800-96-ABUSE) and assigned to the correct CPI unit as notified above. The CPIs assigned to this unit have been provided training on how to successfully interview victims of sexual exploitation and understand the appropriate notifications that will need to be made.</p> <p>C13 can also utilize the Family Justice Center (FJC) Staff and On-Site Partners to enhance the identification of these youth through specific screening questions designed to aid in the identification of human trafficking victims. The FJC can provide a physically safe environment for the victim through a tiered security system within the FJC building, bullet proof glass, walls and a criminal check process before anyone enters beyond their lobby. The FJC can be contacted at: (813) 935-2015. Their hours of operation are Monday through Thursday 8am to 8pm and Friday, 8am to 5pm. Our Hillsborough Point of Contact is Renee Ristow (rristow@fjhc.org). Nikki Daniels, CEO, can also be reached at ndaniels@fjhc.org.</p> <ul style="list-style-type: none"> ➤ Reminder: Child will not self identify as a victim. <p>Rules to Remember During the Interview Process:</p> <ul style="list-style-type: none"> ➤ Use open-ended, non-judgmental questions ➤ Do not immediately identify the client as a victim ➤ Be sensitive about asking too much too soon ➤ Be aware that traffickers often threaten their victims with direct harm if they talk to anyone about the situation ➤ Traffickers will often tell victims that law enforcement, child welfare professionals, or other authority figures are not to be trusted. ➤ Victims may exhibit symptoms of Stockholm syndrome and be emotionally attached to their trafficker ➤ Be aware that the child's caregiver/parent may also be the child's trafficker
<p>III. Human Trafficking Checklist</p> <p>Objective: to provide guidance to law enforcement, CPIs and case managers on how to identify signs of child trafficking.</p>	<ul style="list-style-type: none"> ➤ Chronic runaway behavior ➤ Repeated curfew violations, chronic truancy ➤ Exhibits over-sexualized behavior ➤ Inconsistencies in stories ➤ Demeanor: fearful, anxious, depressed, submissive, tense, nervous ➤ Loyalty or positive feelings towards trafficker ➤ Shows evidence of mental, physical, or sexual abuse ➤ Cannot or will not speak on own behalf ➤ Has heightened sense of fear or distrust of authority ➤ Any mention of a pimp, boyfriend, or "daddy" ➤ Refers to boyfriend using slang such as "daddy" ➤ Excess amount of cash ➤ In possession of hotel keys



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<p>IV. Required Notifications</p> <p>Objective: to help child welfare professionals understand the required notifications when it has been disclosed that a child has been a victim of sexual exploitation.</p>	<p>Immediately:</p> <ul style="list-style-type: none"> ➤ If child is in imminent danger, dial 9-1-1 ➤ Contact the Florida Abuse Hotline 1(800) 96-Abuse (even if the child is already in foster care, a human trafficking report must be taken at the hotline) ➤ Contact DCF Missing Child Specialist (for Suncoast Region dial (813) 558-5603 or cell (813) 781-1411 ➤ For C13, Notify Eckerd's Missing Child Specialist Robin Latimer at rlatimer@eckerdcbc-c13.org (813) 347-3161 ➤ Contact Law Enforcement ➤ Complete an Incident Report ➤ Notify the assigned CBC Lead Agency of the recovery of any child from their area. Please make sure to identify them as a victim of sexual exploitation and notify them whether or not an abuse report has been made.
<p>V. Emergency Treatment, Support and Protection</p> <p>Objectives: Improve and increase the coordination of child-centered services and protections for trafficked children, including coordination between service providers and law enforcement.</p>	<p>Immediately:</p> <ul style="list-style-type: none"> ➤ Seek medical treatment to include a forensic exam, immediately upon realizing that the victim has been sexually exploited. A child can be given preventive medication for sexually transmitted diseases; a prescription for infections and other trauma recovery services. The Crisis Center of Tampa Bay is available 24 hours 7 days of week to provide this service for youth ages 13 and above (Crisis Center of Tampa Bay at (813) 964-1964). If the child is under age 13, the Child Protection Team will need to be consulted and can be reached at (813) 250-6670. The point of contact will be Shannon Martucci at (813) 272-6272, or at youngsg@fljud13.org. The University of South Florida Child Protection Team provides medical, psychological and psychosocial assessments to children who are victims of physical, sexual, and emotional abuse The purpose of these assessments is to assist the Department of Children and Families and law enforcement in their investigation of the alleged abuse and to provide recommendations to minimize the risk of re-abuse. The Team, who is housed at Mary Lee's House at 2806 N. Armenia Avenue in Tampa, is available 24 hours a day, seven days a week. ➤ Once a child has been medically cleared, we need to evaluate the need for Substance Abuse services. The youth may have been exposed to prescription drugs or illegal substances that require immediate follow up and possible detoxification. If this is suspected in C13, please contact: ACTS at (813) 931-4669. ACTS offers a secure, medically supervised substance abuse receiving facility providing inpatient assessment, detoxification, stabilization, short-term (3-5 days) treatment and referral services for adolescents ages 12-17 years old who are actively using drugs and/or alcohol. This program operates 24 hours a day, 7 days a week and accepts voluntary or involuntarily admitted clients. Involuntary clients must meet Marchman Act criteria and can be admitted directly by the parent/guardian, law enforcement, physician's certificate or court order. ➤ Obtain trauma counseling services as soon as the youth has been medically cleared. Treatment Approaches: A number of studies have identified the serious and complex mental health needs of victims of human trafficking. The



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majority of research focuses on significant levels of posttraumatic stress disorder (PTSD). Victims of human trafficking have often "experienced, witnessed, or have been confronted with an event or events that involved actual or threatened death or serious injury or a threat to the physical integrity of self or others" and their response to these events frequently involved "intense fear, helplessness, or horror."¹ Therefore, in planning for services that address the complex needs of this population, serious consideration must be made on individualized and evidence-based interventions that address trauma, psychiatric, and support services. In Circuit 13, you can contact the **Crisis Center of Tampa Bay at (813) 964-1964** to access:

- ✓ Free Counseling 24 hours a day, 365 days a year
- ✓ Trauma Counseling (per experts, we have 72 hours to break the bond that exists between the victim and perpetrator (boyfriend, pimp, or daddy))
- ✓ Forensic Examinations, crisis counseling and advocacy for victims of sexual assault
- ✓ STD/HIV testing and medication

- **Seek Emergency Protection Services for the Victim: The Family Justice Center** offers a comprehensive needs assessment to determine the most appropriate services needed. They can make warm hand offs to partner agencies on-site and assist with safety planning for the victim. **FJC staff are deputized to file Injunctions for Protection for Domestic Violence, Dating Violence, Sexual Violence and Stalking Injunction for Protection.** The FJC will provide victim-based limited advocacy with law enforcement in an attempt to minimize criminal charges against trafficking and with obtaining orders of protection against traffickers; provide linkages to services, ensure the safety and protection of victims and identifying new victims.
- **Shannon Martucci** with **Mary Lee's House at Child Advocacy Center** at (813) 272- 6272, or email at youngsq@fljud13.org.
- **Gulf Coast Legal**, who is one of the Family Justice Center (FJC) on-site partners, does work with youth who are in the dependency system and/or have been involved in trafficking situations (both documented and undocumented). The contact people at Gulf Coast Legal are Adriana Dinis adrianad@gulfcoastlegal.org and Kathlyn Mackovjak kmackovjak@gulfcoastlegal.org
- **Explore Options for Obtaining a Baker Act:** some children will not identify themselves as a victim and will not have the mental capacity to make sound decisions regarding their safety. A Baker Act may be needed to ensure we have the authority to place the child in a safe facility while seeking wraparound support services.
- **Notify the Local Jail's VINE Department (Victim Information and Notification Everyday);** caregivers/victims can register their telephone number(s) or email address(es) for automated notification of an inmate's transfer, escape, death, out-to-court or release status by calling 1-877-VINE-4-FL (1-877-846-3435) or register at www.vinelink.com



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VI. Placement Resources:

Objective: to ensure victims of human trafficking are provided a safe environment in which to receive ongoing trauma recovery services, legal protection, access to appropriate social services, victim compensation services, etc...

A 2009 Health and Human Services report indicated that minor victims of domestic sex trafficking have difficulty navigating relationships and, therefore, need — and are more likely to benefit from — a smaller, more intimate setting.

Another study conducted by the Beverly LaHaye Institute demonstrated that a Residential Treatment Program for Sexually Exploited Adolescent Girls could have promising outcomes. However, they recognized that in order to improve retention rates in the residential program, they had to limit admissions to young women that could acknowledge having been sexually exploited and were committed to transform their lives

**** It was reported that there is only one identified Safe House in Florida for minor victims of human trafficking. This facility, Wings of Shelter, is located in Fort Myers and has the capacity to serve six females. Wings of Shelter can be contacted directly at (239) 240-2980**

Wings of Shelter Int'l, Inc. is an organization dedicated to Intervention of Human Trafficking and Child Slavery.

Mission to:

RESCUE – RESTORE – EDUCATE – PREVENT victims of Human Trafficking and Child Sexual Slavery.

The Rescue Program is to work conjointly with Law Enforcement Officers, and Investigators to educate them in the details of Human Trafficking and offer a place where victims can be taken to be kept Safe.

The Education Program – offers free Human Trafficking Intervention/Investigation training by foremost experts in the US to Law Enforcement and/also to Victims Services Organizations –

The Prevention Program offers education brought into the Schools (Middle and High School) to offer age appropriate information on Human Trafficking/Child Slavery to PREVENT children from being forced defrauded or coerced into Child Trafficking.

Wings of Shelter is on the local, SW Florida Task Force/Coalition for Intervention of Human Trafficking and Slavery.

There is another facility “**Kristi House**” that has plans to renovate a facility that will provide short-term safe housing for victims of sexual exploitation. The goal is to open the short-term safe house on January 1, 2013. Kristi House provides a healing environment for all child victims of sexual abuse and their families, regardless of income, through prevention, treatment and coordination of services with our community partners.

Vision Kristi House strives to end the epidemic of child sexual abuse in Miami-Dade County by healing those who have been victims and breaking the cycle of abuse for future generations.

Values Kristi House is dedicated to respecting, protecting, and healing the children and families that pass through its doors.



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	<p>Contact Kristi House Trudy Novicki Executive Director Kristi House, Inc. - Main Office 1265 N.W. 12th Ave. Miami, FL 33136 Phone: (305) 547-6800 Ext. 36 Fax: (305) 547-6837 TNovicki@kristihouse.org</p> <p>One Residential Provider in Florida, Children's Home Society, is exploring alternatives to help stabilize sexual exploitation victims in their programs and deter "pimps" from coming onto their property. Once such intervention is to hire a security officer during high removal times (Friday evenings through Sundays).</p> <p>Redefining Refuge's Safe House is a local provider looking to open a Safe House for 5 girls no later than May 30th. This Safe House will accept any girl identified as a victim of Human Trafficking even if the victim has a history of recruiting other girls. For more information about this future resource, please contact Natasha Nascimento [natasha@redefiningrefuge.org]</p> <p>If you are a provider agency interested in partnering with the local CBC to explore Safe House opportunities in your area, please contact the CBC Lead Agency Directly. For the Tampa Bay Area, providers can contact:</p> <p>Hillsborough County: Lorita Shirley, Executive Director, ECA-H Pinellas/Pasco Counties: Judith Warren, Executive Director, ECA</p> <p>The Florida Coalition for Human Trafficking has offered assistance in helping to define what providers can do if they are interested in converting an existing program or opening up a new Safe House for victims of human trafficking.</p>
<p>VII. After Care Support Services</p> <p>Objective: to ensure victims of human trafficking are placed on the road to recovery and have ongoing aftercare support services</p>	<ul style="list-style-type: none"> ➤ Make sure victims have an assigned mentor or child advocate ➤ Link the victim to empowerment services- this will provide a safe and therapeutic atmosphere for victims to interact with each other and begin the process of recovery ➤ Make sure the victim is linked to ongoing trauma recovery services. Agencies like the Crisis Center of Tampa Bay provide services for up to 2 years. ➤ Link recruiters to Youth sex offender services. This intervention is also available through the Crisis Center of Tampa Bay (813) 964-1964 ➤ Make sure the victim is linked to Victims of Crime (VOCA) Emergency Funds- this can provide the victim with financial assistance and compensation.



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<p>VIII. Education and Prevention Services</p> <p>Objective: to reverse the trend of human trafficking in our area</p>	<p>The Florida Coalition for Human Trafficking offers free training on human trafficking. They help communities form their own task forces, coalitions and community partnerships. Assistance is offered at no cost directly to agencies and community groups interested in learning from other programs. Their presentation can be from 20-60 minutes and their trainings are from 1/2 day to a full day.</p> <p>Programs are tailored to the specific audience. FCAHT will also continue to provide your agency with technical assistance at no cost. Their training video library includes trainings, documentaries and human trafficking movies from many countries around the world.</p> <p>FCAHT's trainers have been working with human trafficking victims since the 1990's and have been recognized nationally and internationally. To schedule training, please call (727) 442-3064. Training is Free. Transportation, Hotel and meals provided by requesting agency.</p> <p>Through the long standing Family Justice Center (FJC) training academy, FJC staff can assist in the provision of training to other professionals around the issue of human trafficking and related issues as creating awareness with law enforcement, partners and community organizations, and immigrant communities about human trafficking and available resources through our already existing DV outreach efforts. For additional information regarding training opportunities through the Family Justice Center, please contact Renee Ristow at (813) 935-2015 or ristow@fjhc.org</p>
<p>Other Information</p>	<p>There are two new alerts in JJIS related to Human Trafficking; Face sheet will display Endangered Person. Data entry of these alerts is currently limited to a pilot project in C17 Broward County only.</p> <p>Human Trafficking: of a child means the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.</p> <p>Commercial Sexual Exploitation of a Child (CSEC): means a commercial sexual activity, such as prostitution, sexually explicit performances or the production of pornography was committed or attempted upon a youth under the age of 18. Commercial sexual activity involves sexual abuse and remuneration in cash or in kind to the victim or a third person. Florida Statutes do not require that commercial sexual activity upon a minor be a result of force, fraud or coercion.</p> <p>The alerts:</p> <p>Possible CSEC Victim - is a person that has indicators of having been a victim of commercial sexual activity. To be used pending verification by an authorized provider or designated staff, or upon refusal to consent to additional assessment. To be used when the psycho-social provider indicates the youth is a suspected victim Face sheet will display Endangered Person. Information related to this alert will remain confidential and is not shared with any outside parties.</p> <p>Verified CSEC Victim - is a person that has been assessed using a department approved assessment tool and voluntarily disclosed that they are a victim of commercial sexual activity. This is the alert to be used following identification to ensure provision of services and will remain open in JJIS. An authorized provider or designated staff will make this determination. Face sheet will display Endangered Person. Information related to this alert will remain confidential and is not shared with any outside parties.</p>

This first name in second chances.™

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