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# **Criminal & Civil Justice Policy Council**

**Monday, March 1, 2010**

**4:15 PM**

**404 HOB**

**Larry Cretul  
Speaker**

**William Snyder  
Chair**

# **Council Meeting Notice**

## **HOUSE OF REPRESENTATIVES**

### **Criminal & Civil Justice Policy Council**

**Start Date and Time:** Monday, March 01, 2010 04:30 pm

**End Date and Time:** Monday, March 01, 2010 06:00 pm

**Location:** 404 HOB

**Duration:** 1.50 hrs

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

CS/HB 25 Temporary and Concurrent Custody of a Child by Health Care Services Policy Committee, Glorioso

CS/HB 79 Excuse from Jury Service by Civil Justice & Courts Policy Committee, Sands

HB 851 Florida Legal Resource Center by Grady

HB 895 Juvenile Justice Standards and Training Commission by Weinstein

**NOTICE FINALIZED on 02/22/2010 16:06 by Ingram.Michele**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 25 Temporary and Concurrent Custody of a Child
SPONSOR(S): Health Care Services Policy Committee, Glorioso and others
TIED BILLS: None IDEN./SIM. BILLS: SB 334

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Civil Justice & Courts Policy Committee, Health Care Services Policy Committee, and Criminal & Civil Justice Policy Council.

SUMMARY ANALYSIS

The bill authorizes a court to award concurrent custody of a minor child to an extended family member. An order of concurrent custody does not affect a parent's or parents' ability to obtain physical custody of the child at any time.

In order to bring proceedings for concurrent custody under this bill, a person must:

- Be an extended family member who has signed, notarized consent of the child's legal parents or an extended family member who is caring full time for the child in the role of a substitute parent and with whom the child is presently living;
Currently have physical custody of the child;
Have had physical custody of the child for at least 10 days within any 30-day period in the last 12 months; and
Not have signed documentation from a parent which allows the petitioner to obtain necessary care for the child that an order for concurrent custody would provide.

A judge may award concurrent custody if it is in the best interest of the child, unless the parents object. If a parent objects in writing, then the court may not grant the petition. The petitioner or either or both parents may move to terminate an order granting concurrent custody at any time, and an order of concurrent custody must be terminated if either parent objects to the order.

The court may also award child support to the extended family member if the parent receives notice and there is evidence of the parent's ability to pay. In addition, the court may direct all or part of an existing child support obligation to be paid to the extended family member who is granted concurrent custody of the child.

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

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

### FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Kinship Care

The Child Welfare League of America (CWLA)<sup>1</sup> defines kinship care as “the full time care, nurturing and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who has a kinship bond with a child.”<sup>2</sup> The CWLA notes that “one of the most recent stunning changes in the child welfare system has been the major growth in the number of children in state custody who are living with their relatives.”<sup>3</sup>

In the United States, more than six million children -- approximately 1 in 12 -- are living in households headed by grandparents or other relatives.<sup>4</sup> In many of these homes, grandparents and other relatives are taking on the primary responsibility for the child's needs, without either of the child's parents present in the home.<sup>5</sup> The increase in recent years in the number of children living with relatives can be attributed to many factors, including:

- Increased reporting of abuse and neglect;
- Change in drug usage and addiction related to the spread of crack cocaine and other drugs;
- Increased levels of poverty;
- More children affected by HIV/AIDS;
- More parents struggling with physical and mental health problems;
- Family violence and parental incarceration; and
- Decline in the availability of traditional foster homes.<sup>6</sup>

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<sup>1</sup> The Child Welfare League of America, founded in 1920, “provides direct support to agencies that serve children and families, improving the quality of the services they provide to more than nine million children every year.” Child Welfare League of America, About CWLA: Fact Sheet, <http://www.cwla.org/whowhat/more.htm>. Last accessed October 6, 2009.

<sup>2</sup> Child Welfare League of America, Kinship Care: Fact Sheet, <http://www.cwla.org/programs/kinship/factsheet.htm>. Last accessed October 6, 2009.

<sup>3</sup> *Id.*  
<sup>4</sup> American Ass'n of Retired Persons, State Fact Sheets for Grandparents and Relatives Raising Children (Oct. 2007), [http://www.grandfactsheets.org/state\\_fact\\_sheets.cfm](http://www.grandfactsheets.org/state_fact_sheets.cfm). Last accessed October 6, 2009.

<sup>5</sup> *Id.*  
<sup>6</sup> Child Welfare League of America, *supra* note 2.

In Florida, approximately 258,952 children live in grandparent-headed households, which accounts for 7.1 percent of all the children in the state.<sup>7</sup> There are another 86,152 children living in households headed by other relatives, accounting for 2.4 percent of all the children in the state.<sup>8</sup> Of the children living in households headed by grandparents or other relatives, 151,492 are living there without either parent present.<sup>9</sup> Although many children living with relatives are doing so pursuant to a court order after being adjudicated dependent pursuant to ch. 39, F.S.,<sup>10</sup> far more are living with relatives in informal arrangements, with no court involvement, often because their parents are incarcerated or addicted to drugs.<sup>11</sup>

The University of South Florida's School of Social Work established the Florida Kinship Center in response to the growing needs of children living in kinship care homes.<sup>12</sup> The Center provides statewide and local programs to kinship caregivers throughout Florida. The programs include<sup>13</sup>:

- The Warmline, which provides emotional support, information, and referral for relative caregivers throughout Florida;
- The Legal Hotline, which provides education, information and referral to volunteer lawyers and legal aid for caregivers facing legal challenges;
- The Kinship Partners Program, which provides support groups and training to 12 counties in Florida;
- The Kin As Teachers Program, which provides support to relative caregivers raising children from ages birth to kindergarten; and
- The Kinship Care Connection, which provides school-based support such as mentors, one-on-one academic services, and intensive therapeutic interventions.

Section 39.5085, F.S., establishes the Relative Caregiver Program through which relatives who care for dependent children are eligible for financial assistance within available funding limits.<sup>14</sup> Chapter 39, F.S., however, does not otherwise explicitly require that relatives<sup>15</sup> be involved in or informed of child protective investigations or dependency proceedings, unless they are legal custodians of the subject child or children.<sup>16</sup> However, s. 39.502(1), F.S., and s. 39.502(19), F.S., were amended in 2009 to provide notification of dependency proceedings and hearings when requested in writing by relatives.<sup>17</sup> Florida law provides several means by which a relative may be granted some measure of control over a child (see discussion that follows).

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<sup>7</sup> American Ass'n of Retired Persons, GrandFacts, Florida (Nov. 2007), <http://www.grandfactsheets.org/doc/Florida%2007%20New%20Template.pdf>. Last accessed October 6, 2009.

<sup>8</sup> *Id.*

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

<sup>10</sup> In December 2008 in Florida, there were 8,406 children adjudicated dependent and in out-of-home care, who were placed with relatives. Julie Mayo, DCF Staff Analysis and Economic Impact House Bill Number 381 (January 21, 2009).

<sup>11</sup> See James P. Gleeson, Kinship Care Research and Literature: Lessons Learned and Directions for Future Research, KINSHIP REPORTER VOL. 1, NO. 2 (Summer 2007), available at

<http://www.cwla.org/programs/kinship/kinshipsummer2007.pdf>. Last accessed October, 2009.

<sup>12</sup> See <http://www.flkin.org/index.asp>. Last accessed October 21, 2009.

<sup>13</sup> *Kinnectivity*, Summer 2009 available at <http://www.flkin.org/News14241770.asp>. Last accessed October 21, 2009.

<sup>14</sup> The average Relative Caregiver payment is \$263 per month per child; the average foster care board rate is \$461 per month per child. DCF, DCF Quick Facts (February 6, 2009).

<sup>15</sup> Pursuant to s. 39.01(64), F.S., "relative" means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by the whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

<sup>16</sup> Section 39.502(17), F.S., requires reasonable notice of dependency proceedings to all "participants." Section 39.01(50), F.S., defines a "participant" for purposes of a shelter, dependency, or termination of parental rights proceeding as "any person who is not a party but who should receive notice of hearings involving the child, including the actual custodian of the child, the foster parents or the legal custodian of the child, identified prospective parents, and any other person whose participation may be in the best interest of the child." A relative will meet this definition only if he or she is the current or potential placement for the child.

<sup>17</sup> Section 8, 2009-43, L.O.F.

## Temporary Custody of Minor Children by Extended Family

Chapter 751, F.S., establishes a process by which a child's extended family member<sup>18</sup> may petition a court for temporary custody of the child. An award of temporary custody allows an extended family member with physical custody of a child to consent to:

- Reasonable medical and dental treatment (including nonemergency surgery and psychiatric care);
- Obtain medical, educational and other records;
- Make decisions about a child's education; and
- Do other things necessary for the child's care.<sup>19</sup>

Temporary custody of a child may be awarded to a relative with or without the consent of the child's parents.<sup>20</sup> If the child's parents do not object, the court will award temporary custody to the petitioning relative when it is in the best interest of the child to do so.<sup>21</sup> If the parents do object, the court may enter a temporary custody order only after finding by clear and convincing evidence that the parents are unfit and have abused, neglected, or abandoned the child.<sup>22</sup> At any time, a parent may petition the court to terminate a temporary custody order, and the court will terminate the order upon a finding that the parent is fit or upon the consent of the parties.<sup>23</sup>

### Consent to Medical Care of a Minor

Section 743.0645, F.S., authorizes the following individuals to consent to the medical care or treatment of a minor if, after a reasonable attempt, a person who has the power to consent (e.g., a parent) cannot be contacted by the treatment provider:

- A person who possesses a power of attorney to provide medical consent for the minor;<sup>24</sup>
- A stepparent;
- A grandparent of the minor;
- An adult brother or sister of the minor; or
- An adult aunt or uncle of the minor.

"Medical care and treatment" includes ordinary and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing, and well-child care, but does not include surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures for which a separate court order, power of attorney, or informed consent as provided by law is required.

### Guardianship of a Minor

Section 744.3021, F.S., allows a parent, brother, sister, next of kin or other interested person to petition a court for the appointment of a guardian for a minor, without the need for adjudication of incapacity. Once appointed, the guardian has the authority of a plenary guardian.<sup>25</sup>

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<sup>18</sup> An extended family member is defined in s. 751.011, F.S., as a relative within the third degree by blood or marriage to the parent, or the stepparent of a child if the stepparent is currently married to the parent of the child.

<sup>19</sup> Section 751.01(3), F.S.

<sup>20</sup> Section 751.05, F.S.

<sup>21</sup> Section 751.05(2), F.S.

<sup>22</sup> Section 751.05(3), F.S.

<sup>23</sup> Section 751.05(6), F.S.

<sup>24</sup> A power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual executing the power of attorney.

<sup>25</sup> Pursuant to s. 744.102(9)(b), F.S., a plenary guardian is "a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property."

A child who has been adjudicated dependent pursuant to ch. 39, F.S., may be placed by court order in a permanent guardianship<sup>26</sup> or in a permanent placement with a relative.<sup>27</sup> In both circumstances the court is required to provide the caregiver with a separate order establishing the caregiver's authority to care for the child.

### Power of Attorney

Section 709.08(1), F.S., defines a durable power of attorney to be "a written power of attorney by which a principal designates another as the principal's attorney in fact." Pursuant to a durable power of attorney, the attorney in fact "has full authority to perform, without prior court approval, every act specifically enumerated in the durable power of attorney."<sup>28</sup> If authority is specifically granted, the attorney in fact may make health care decisions on behalf of the principal.<sup>29</sup> A durable power of attorney survives the principal's incapacity.

There is no specific provision in Florida law for a power of attorney that allows someone other than a parent or legal custodian to care for a minor child, although nothing in the law precludes the execution of such a document. Some states have passed legislation that specifically addresses the use of a power of attorney to allow a parent to delegate temporary caregiving authority to a relative.<sup>30</sup>

### **Effect of Bill**

This bill amends ch. 751, F.S., to authorize a court to award concurrent custody of a minor child to an extended family member.<sup>31</sup> This bill defines concurrent custody to mean that an eligible extended family member is awarded custodial rights to care for a child concurrently with the child's parent or parents. This bill provides that in order to bring proceedings for concurrent custody, a person must:

- Be an extended family member who has signed, notarized consent of the child's legal parents or be an extended family member who is caring full time for the child in the role of a substitute parent and with whom the child is presently living;
- Currently have physical custody of the child;
- Have had physical custody of the child for at least 10 days within any 30-day period in the last 12 months; and
- Not have signed documentation from a parent which allows the petitioner to obtain necessary care for the child that an order for concurrent custody would provide.

### Petition for Concurrent Custody

A petition for concurrent custody must provide in part the following:

- The names and addresses of persons with whom the child has lived in the past five years;
- The time periods during the last 12 months when the child resided with the petitioner;
- The type of document, if any, provided by the parent or parents to the petitioner to act on behalf of the child;
- The services or actions that the petitioner is not able to attain or perform without an order of custody; and
- Whether each parent has consented in writing to the entry of an order of concurrent custody.

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<sup>26</sup> Section 39.6221, F.S.

<sup>27</sup> Section 39.6231, F.S.

<sup>28</sup> Section 709.08(7)(a), F.S.

<sup>29</sup> Section 709.08(7)(c), F.S.

<sup>30</sup> See, e.g., Ariz. Rev. Stat. s. 14-5104 (2009); Cal. Fam. Code s. 6550 (2009); Tenn. Code Ann. s. 34-6-301, et. seq. (2008).

<sup>31</sup> An extended family member is defined as a person who is a relative within the third degree by blood or marriage or the stepparent of the child if still married to the child's parent. Section 751.011(2), F.S.



Notice and an opportunity to be heard must be given to the parents by personal or constructive service of process.

#### Order for Concurrent Custody

This bill provides that a court may award concurrent custody if it is in the best interest of the child, unless the parents object. If a parent objects in writing, then the court may not grant the petition. If a parent objects, then the petitioner may change their petition to one for temporary custody and set the matter for a separate hearing. Separate notice must be given for the new hearing in this case. If the petition is not converted into a petition for temporary custody, then the petition for concurrent custody must be dismissed without prejudice.

An order of concurrent custody does not affect a parent's or parents' ability to obtain physical custody of the child at any time. The petitioner or either or both parents may move to terminate the order granting concurrent custody. The order must be terminated if either parent objects to the order.

#### Child Support

This bill also provides that the court may provide an order for child support, pursuant to the guidelines in ch. 61, F.S., if the parent receives notice and there is evidence of the parent's ability to pay. In addition, the court may direct all or part of an existing child support obligation to be paid to the extended family member who is granted concurrent custody of the child. If any modification is made in the child support, the order shall be copied and placed in the related family court files.

The petitioner or either or both parents may move to modify the child support provision. The support order may be modified if the parties consent and the modification is in the best interest of the child.

#### B. SECTION DIRECTORY:

Section 1 amends s. 751.01, F.S., relating to the temporary custody of a minor child by extended family.

Section 2 amends s. 751.011, F.S., relating to definitions.

Section 3 amends s. 751.02, F.S., relating to determination of temporary custody proceedings.

Section 4 amends s. 751.03, F.S., relating to a petition for temporary or concurrent custody.

Section 5 amends s. 751.04, F.S., relating to notice and opportunity to be heard for temporary or concurrent custody.

Section 6 amends s. 751.05, F.S., relating to an order granting temporary or concurrent custody.

Section 7 amends s. 49.011, F.S., relating to service of process for temporary custody of a minor.

Section 8 provides an effective date of July 1, 2010.

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

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

##### 1. Revenues:

None

2. Expenditures:

This bill appears to have a minimal indeterminate negative fiscal impact. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

To the extent that individuals under this bill will be able to petition for concurrent custody, this bill may increase the judicial workload according to the Office of the State Courts Administrator.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill may require the creation of a petition and final order for concurrent custody. According to the Office of the State Courts Administrator, the creation of these forms cannot be completed by the effective date of this bill.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On January 12, 2010, two amendments were adopted by the Health Care Services Policy Committee.

- The first amendment changed the definition of "concurrent custody" so that it applies to extended family members rather than all individuals.
- The second amendment clarified how the parents of a child and the court may terminate the order granting concurrent custody. The amendment also clarified that any modification made by the court

with the parties consent to the child support order shall occur under the child support guidelines of ch. 61, F.S. The amendment also requires that a copy of any such modification be placed in the related family court files.

1                   A bill to be entitled  
2           An act relating to temporary and concurrent custody of a  
3           child; revising ch. 751, F.S., relating to petitions and  
4           court orders awarding the temporary custody of a child to  
5           an extended family member, to also provide for concurrent  
6           custody with the parents of the child; amending s. 751.01,  
7           F.S.; conforming provisions to changes made by the act;  
8           amending s. 751.011, F.S.; revising definitions; defining  
9           the term "concurrent custody"; amending s. 751.02, F.S.;  
10          providing requirements for concurrent custody; amending s.  
11          751.03, F.S.; revising the petition for concurrent custody  
12          to require additional information; amending s. 751.04,  
13          F.S.; conforming provisions to changes made by the act;  
14          amending s. 751.05, F.S.; providing that if a parent  
15          objects to a petition for concurrent custody, the court  
16          may not grant the petition and must give the petitioner  
17          the option of converting the petition to one for temporary  
18          custody; providing for dismissal of the petition;  
19          providing that an order granting concurrent custody does  
20          not affect the ability of the parents to obtain the  
21          physical custody of the child at any time; providing for  
22          the court to terminate an order for concurrent custody if  
23          either or both parents object to the order; providing for  
24          filing for temporary custody if an order for concurrent  
25          custody has been terminated; providing for the court to  
26          modify an existing child support order; amending s.  
27          49.011, F.S.; conforming provisions to changes made by the  
28          act; providing an effective date.

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

Section 1. Section 751.01, Florida Statutes, is amended to read:

751.01 Purpose of act.—The purposes of this chapter ~~ss.~~ ~~751.01-751.05~~ are to:

(1) Recognize that many minor children in this state live with and are well cared for by members of their extended families. The parents of these children have often provided for their care by placing them temporarily with another family member who is better able to care for them. Because of the care being provided the children by their extended families, they are not dependent children.

(2) Provide for the welfare of a minor child who is living with extended family members. At present, such family members are unable to give complete care to the child in their custody because they lack a legal document that explains and defines their relationship to the child, and they are unable effectively to consent to the care of the child by third parties.

(3) Provide temporary or concurrent custody of a minor child to a family member having physical custody of the minor child to enable the custodian to:

(a) Consent to all necessary and reasonable medical and dental care for the child, including nonemergency surgery and psychiatric care. ~~+~~

(b) Secure copies of the child's records, held by third parties, that are necessary for ~~to~~ the care of the child,

57 including, but not limited to:

- 58 1. Medical, dental, and psychiatric records.~~†~~
- 59 2. Birth certificates and other records.~~†~~ ~~and~~
- 60 3. Educational records.~~†~~

61 (c) Enroll the child in school and grant or withhold  
 62 consent for a child to be tested or placed in special school  
 63 programs, including exceptional education.~~†~~ ~~and~~

64 (d) Do all other things necessary for the care of the  
 65 child.

66 Section 2. Section 751.011, Florida Statutes, is amended  
 67 to read:

68 751.011 Definitions.—As used in this chapter ~~ss. 751.01-~~  
 69 ~~751.05~~, the term:

70 (1) "Concurrent custody" means that an eligible extended  
 71 family member is awarded custodial rights to care for a child  
 72 concurrently with the child's parent or parents.

73 (2) "Extended family member" means a ~~is any~~ person who is:

74 (a) ~~(1)~~ A relative of a minor child within the third degree  
 75 by blood or marriage to the parent; or

76 (b) ~~(2)~~ The stepparent of a minor child if the stepparent  
 77 is currently married to the parent of the child and is not a  
 78 party in a pending dissolution, separate maintenance, domestic  
 79 violence, or other civil or criminal proceeding in any court of  
 80 competent jurisdiction involving one or both of the child's  
 81 parents as an adverse party.

82 Section 3. Section 751.02, Florida Statutes, is amended to  
 83 read:

84 751.02 ~~Determination of~~ Temporary or concurrent custody

85 proceedings; jurisdiction.-

86 (1) The following individuals may bring proceedings in the  
 87 circuit court to determine the temporary or concurrent custody  
 88 of a minor child:

89 (a)~~(1)~~ Any extended family member who has the signed,  
 90 notarized consent of the child's legal parents; or

91 (b)~~(2)~~ Any extended family member who is caring full time  
 92 for the child in the role of a substitute parent and with whom  
 93 the child is presently living.

94 (2) In addition to the requirements of subsection (1), an  
 95 individual seeking concurrent custody must:

96 (a) Currently have physical custody of the child and have  
 97 had physical custody of the child for at least 10 days in any  
 98 30-day period within the last 12 months; and

99 (b) Not have signed, written documentation from a parent  
 100 which is sufficient to enable the custodian to do all of the  
 101 things necessary to care for the child which are available to  
 102 custodians who have an order issued under s. 751.05.

103 Section 4. Section 751.03, Florida Statutes, is amended to  
 104 read:

105 751.03 Petition for temporary or concurrent custody;  
 106 contents.-Each petition for temporary or concurrent custody of a  
 107 minor child must be verified by the petitioner, who must be an  
 108 extended family member, and must contain statements, to the best  
 109 of the petitioner's knowledge and belief, providing ~~showing~~:

110 (1) The name, date of birth, and current address of the  
 111 child.†

112 (2) The names and current addresses of the child's

113 | parents.~~+~~

114 |       (3) The names and current addresses of the persons with  
115 | whom the child has lived during the past 5 years.~~+~~

116 |       (4) The places where the child has lived during the past 5  
117 | years.~~+~~

118 |       (5) Information concerning any custody proceeding in this  
119 | or any other state with respect to the child.~~+~~

120 |       (6) The residence and post office address of the  
121 | petitioner.~~+~~

122 |       (7) The petitioner's relationship to the child.~~+~~

123 |       (8) If concurrent custody is being requested:

124 |       (a) The time periods during the last 12 months that the  
125 | child resided with the petitioner;

126 |       (b) The type of document, if any, provided by the parent  
127 | or parents to enable the petitioner to act on behalf of the  
128 | child;

129 |       (c) The services or actions that the petitioner is unable  
130 | to obtain or undertake without an order of custody; and

131 |       (d) Whether each parent has consented in writing to the  
132 | entry of an order of concurrent custody.

133 |

134 | A copy of the written consent and any documents provided by the  
135 | parent to assist the petitioner in obtaining services must be  
136 | attached to the petition.

137 |       ~~(9)~~ (8) If temporary custody is being requested, the  
138 | consent of the child's parents, or the specific acts or  
139 | omissions of the parents which demonstrate that the parents have  
140 | abused, abandoned, or neglected the child as defined in chapter



141 | 39.~~7~~  
 142 |        (10)~~(9)~~ Any temporary or permanent orders for child  
 143 | support, the court entering the order, and the case number.~~7~~  
 144 |        (11)~~(10)~~ Any temporary or permanent order for protection  
 145 | entered on behalf of or against either parent, the petitioner,  
 146 | or the child; the court entering the order; and the case  
 147 | number.~~7~~  
 148 |        (12)~~(11)~~ That it is in the best interest of the child for  
 149 | the petitioner to have custody of the child.~~7~~ ~~and~~  
 150 |        (13)~~(12)~~ A statement of the period of time the petitioner  
 151 | is requesting temporary custody, including a statement of the  
 152 | reasons supporting that request.  
 153 |  
 154 |        ~~Only an extended family member may file a petition under~~  
 155 | ~~this chapter.~~  
 156 |        Section 5. Section 751.04, Florida Statutes, is amended to  
 157 | read:  
 158 |        751.04 Notice and opportunity to be heard.—Before a decree  
 159 | is made under this chapter ~~ss. 751.01-751.05~~, reasonable notice  
 160 | and opportunity to be heard must be given to the parents of the  
 161 | minor child by service of process, either personal or  
 162 | constructive.  
 163 |        Section 6. Section 751.05, Florida Statutes, is amended to  
 164 | read:  
 165 |        751.05 Order granting temporary or concurrent custody.—  
 166 |        (1) At the hearing on the petition for temporary or  
 167 | concurrent custody, the court must hear the evidence concerning  
 168 | a minor child's need for care by the petitioner, all other

169 matters required to be set forth in the petition, and the  
 170 objections or other testimony of the child's parents, if  
 171 present.

172 (2) Unless the minor child's parents object, the court  
 173 shall award ~~the~~ temporary or concurrent custody of the child to  
 174 the petitioner if ~~when~~ it is in the best interest of the child  
 175 ~~to do so~~.

176 (3) If one of the minor child's parents objects to:

177 (a) The petition for concurrent custody, in writing, the  
 178 court may not grant the petition even if the other parent  
 179 consents, in writing, to the entry of the order. The court shall  
 180 give the petitioner the option of converting the petition to a  
 181 petition for temporary custody. If the petitioner so elects, the  
 182 court shall set the matter for further hearing, provide notice  
 183 to the parent or parents, and proceed pursuant to paragraph (b).  
 184 If the petition is not converted into a petition for temporary  
 185 custody, it shall be dismissed without prejudice.

186 (b) The petition for temporary custody ~~granting of~~  
 187 ~~temporary custody to the petitioner~~, the court shall grant the  
 188 petition only upon a finding, by clear and convincing evidence,  
 189 that the child's parent or parents are unfit to provide for the  
 190 care and control of the child. In determining that a parent is  
 191 unfit, the court must find that the parent has abused,  
 192 abandoned, or neglected the child, as defined in chapter 39.

193 (4) The order granting:

194 (a) Concurrent custody of the minor child may not  
 195 eliminate or diminish the custodial rights of the child's parent  
 196 or parents. The order must expressly state that the grant of

197 custody does not affect the ability of the child's parent or  
 198 parents to obtain physical custody of the child at any time.

199 (b) Temporary custody of the minor child to the petitioner  
 200 may also grant visitation rights to the child's parent or  
 201 parents, if it is in the best interest of the child ~~to do so~~.

202 (5) ~~(a)~~ The order granting temporary or concurrent custody  
 203 of the minor child to the petitioner:

204 (a) May not include an order for the support of the child  
 205 unless the parent has received personal or substituted service  
 206 of process, the petition requests an order for the support of  
 207 the child, and there is evidence of the parent's ability to pay  
 208 the support ordered.

209 ~~(b) The order granting temporary custody~~ May redirect all  
 210 or part of an existing child support obligation to be paid to  
 211 the extended family member who is granted temporary or  
 212 concurrent custody of the child. If the court redirects an  
 213 existing child support obligation, the order granting temporary  
 214 or concurrent custody must include, if possible, the  
 215 determination of arrearages owed to the obligee and the person  
 216 awarded temporary or concurrent custody and must order payment  
 217 of the arrearages. The clerk of the circuit court in which the  
 218 ~~temporary custody~~ order is entered shall transmit a certified  
 219 copy ~~thereof~~ to the court originally entering the child support  
 220 order. The temporary or concurrent custody order shall be  
 221 recorded and filed in the original action in which child support  
 222 was determined and become a part thereof. A copy of the  
 223 temporary or concurrent custody order shall also be filed with  
 224 the depository that serves as the official recordkeeper for

225 support payments due under the support order. The depository  
 226 must ~~shall~~ maintain separate accounts and separate account  
 227 numbers for individual obligees.

228 (6) At any time, either or both of the child's parents may  
 229 petition the court to modify or terminate the order granting  
 230 temporary custody. The court shall terminate the order upon a  
 231 finding that the parent is a fit parent, or by consent of the  
 232 parties. The court may modify an order granting temporary  
 233 custody if the parties consent or if modification is in the best  
 234 interest of the child.

235 (7) At any time, the petitioner or either or both of the  
 236 child's parents may move the court to terminate the order  
 237 granting concurrent custody. The court shall terminate the order  
 238 upon a finding that either or both of the child's parents object  
 239 to the order. The fact that an order for concurrent custody has  
 240 been terminated does not preclude any person who is otherwise  
 241 eligible to petition for temporary custody from filing such  
 242 petition.

243 (8) At any time, the petitioner or either or both of the  
 244 child's parents may move the court to modify the existing child  
 245 support order pursuant to chapter 61. The court may modify an  
 246 existing order granting child support if the parties consent and  
 247 if modification is in the best interest of the child. Any order  
 248 modifying child support in a concurrent custody proceeding shall  
 249 be copied and placed in the related family court files.

250 Section 7. Subsection (14) of section 49.011, Florida  
 251 Statutes, is amended to read:

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252           49.011 Service of process by publication; cases in which  
253 allowed.—Service of process by publication may be made in any  
254 court on any party identified in s. 49.021 in any action or  
255 proceeding:

256           (14) For temporary custody of a minor child, under chapter  
257 751 ~~ss. 751.01-751.05~~.

258           Section 8. This act shall take effect July 1, 2010.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 79 Excuse from Jury Service
SPONSOR(S): Civil Justice & Courts Policy Committee; Sands
TIED BILLS: None IDEN./SIM. BILLS: SB 86

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, 11 Y, 1 N, As CS, DeZego, De La Paz. Row 2: Criminal & Civil Justice Policy Council, De La Paz, Havlicak RH.

SUMMARY ANALYSIS

Breast milk is commonly held to be the best source of infant nutrition and has been found to have multiple health benefits for the mother as well as the child. Forty-three states, including Florida, have laws that allow women to breastfeed in any public or private location. Additionally, twelve states specifically provide for breastfeeding mothers to be either excused or postponed from serving on a jury.

Currently, Florida law provides that expecting mothers as well as any parent who is not employed full time and who has custody of a child under six years of age must be excused from jury service upon that person's request. Therefore, a mother who is breastfeeding and does not work or works part time may be excused from jury service under current law. However, a breastfeeding mother who works full time may not be excused from jury service.

This bill provides that a mother who is breastfeeding a child under two years of age must be excused from jury service upon her request.

In addition, Florida law provides that a presiding judge may use his or her discretion to excuse a practicing attorney or a practicing physician from jury service. This bill adds practicing psychologists to the list of persons a presiding judge is authorized to excuse from jury service upon his or her discretion.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

### FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Breastfeeding

Breast milk is commonly held to be the best source of infant nutrition, according to the Surgeon General, and numerous benefits have been shown for both the infant as well as the mother when breastfeeding occurs.<sup>1</sup> Breastfeeding is associated with lower rates of sudden infant death syndrome, childhood obesity, type 2 diabetes, and leukemia. The maternal benefits have been identified to include a reduced risk for type 2 diabetes, breast and ovarian cancers.<sup>2</sup>

Many health organizations, including the American Academy of Pediatrics, the American Academy of Family Physicians, and the American Public Health Association, officially recommend that most infants breastfeed for twelve months and exclusively for the first six months of life. The World Health Organization recommends that woman breastfeed a child up to two years of age.<sup>3</sup> An infant generally breastfeeds every two hours during the first few weeks of life.<sup>4</sup> By two months of age, an infant usually breastfeeds every four hours.<sup>5</sup>

##### Breastfeeding Laws

Forty-three states, including Florida, have laws that specifically allow women to breastfeed in any public or private location.<sup>6</sup> In addition, twenty-eight states, including Florida, exempt breastfeeding from public indecency laws, and twenty-four states have laws relating to breastfeeding in the workplace.<sup>7</sup>

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<sup>1</sup> Rear Admiral Steven K. Galson, M.D., M.P.H., *Surgeon General's Perspectives: The Status of Breastfeeding Today*, *Public Health Reports* (May-June 2009), at [www.publichealthreports.org/userfiles/124\\_3/356-358.pdf](http://www.publichealthreports.org/userfiles/124_3/356-358.pdf).

<sup>2</sup> *Id.* See Ip S, Chung M, Raman G, Chew P, Magula N, DeVine D, et al. *Breastfeeding and maternal and infant health outcomes in developed countries*, Rockville (MD): Agency for Healthcare Research and Quality (2007), at [www.ahrq.gov/downloads/pub/evidence/pdf/brfout/brfout.pdf](http://www.ahrq.gov/downloads/pub/evidence/pdf/brfout/brfout.pdf).

<sup>3</sup> See <http://www.who.int/topics/breastfeeding/en/>. Last accessed on October 14, 2009.

<sup>4</sup> See <http://life.familyeducation.com/infant/breastfeeding/50450.html>. Last accessed on October 14, 2009.

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

<sup>6</sup> See <http://www.ncsl.org/IssuesResearch/Health/BreastfeedingStateLaws/tabid/14389/Default.aspx>. Last accessed October 7, 2009. See s. 383.015, F.S.

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



Currently, twelve states have laws that specifically allow a breastfeeding mother to either postpone or be excused from jury service.<sup>8</sup> Other states, considered "family friendly" jury duty states, have laws that excuse or postpone jury duty for family caregivers.<sup>9</sup> While breastfeeding mothers in these states may meet the requirements to be excused from jury service, working mothers who breastfeed often do not. Florida is one of these states.

Florida provides that a person may be excused from jury service upon request if the person is an expectant mother or a parent (male or female) who is not employed full time and who has custody of a child under 6 years of age.<sup>10</sup> A breastfeeding mother who is not employed full time and has custody of a child is exempted from jury service under this statute. However, a breastfeeding mother who works full time, either inside or outside of the home, is not exempted.

While Florida law currently allows a woman to breastfeed in any private or public place<sup>11</sup>, there are no laws that require court houses to provide specific accommodations for a breastfeeding mother. Therefore, a breastfeeding mother may have difficulty finding a place to either breastfeed or express milk when serving jury service.

### Psychologists

Florida law defines the practice of psychology as the "observations, description, evaluation, interpretation, and modification of human behavior, by the use of scientific and applied psychological principles, methods, and procedures, for the purpose of describing, preventing, alleviating, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal behavioral health and mental or psychological health." To become a licensed psychologist in Florida, a person must have a doctoral degree in psychology or the equivalent, pass the psychological licensure exam, obtain at least two years or 4,000 hours of experience, and be licensed by the Board of Psychology.<sup>12</sup>

### Jury Service

The United States Constitution as well as the Florida Constitution guarantee the right of trial by jury to a defendant in criminal cases and parties in certain types of lawsuits.<sup>13</sup> According to the Supreme Court, a jury's purpose is to "guard against the exercise of arbitrary power -- to make available the commonsense judgment of the community as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of the judge."<sup>14</sup> Jury service is both a "privilege and a responsibility of citizenship.... which affords an opportunity for citizens with a variety of life experiences and backgrounds to actively participate in the justice system."<sup>15</sup> In order to ensure this protection and make sure that a variety of backgrounds are represented, the selection of a jury must be from a representative cross section of the community.<sup>16</sup>

Historically, certain groups were excluded from service on a jury in Florida based on race or gender. Under the 1838 Constitution, only free white males could serve as jurors.<sup>17</sup> However, in 1908 Florida Justice James B. Whitfield wrote an opinion outlawing the blanket exclusion of African-American men

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<sup>8</sup> See <http://www.ncsl.org/IssuesResearch/Health/BreastfeedingLaws/tabid/14389/Default.aspx>. See Weimer, Douglas, *Breastfeeding and Jury Duty: State Laws, Court Rules, and Related Issues*, CRS Report for Congress, January 24, 2007, at [maloney.house.gov/documents/.../20050517\\_CRS\\_Jury Duty.pdf](http://maloney.house.gov/documents/.../20050517_CRS_Jury%20Duty.pdf). These states include: California, Illinois, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Montana, Nebraska, Oklahoma, Oregon and Virginia.

<sup>9</sup> *Id.* These states include in part the following: Alaska, Florida, Georgia, Illinois, New Jersey, South Carolina, Tennessee, Texas, Virginia, and Wyoming.

<sup>10</sup> Section 40.013(4), F.S.

<sup>11</sup> Section 383.015, F.S.

<sup>12</sup> Section 490.005, F. S. The Board of Psychology is located within the Department of Health.

<sup>13</sup> U.S. Const. amend. VI; Fla. Const. Art. I, §§ 16, 22.

<sup>14</sup> *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975).

<sup>15</sup> See [http://www.flcourts.org/gen\\_public/jury/lawday\\_pressrelease.shtml](http://www.flcourts.org/gen_public/jury/lawday_pressrelease.shtml). Last accessed October 16, 2009. See *Thiel v. Southern Pac. Co.*, 328 U.S. 217 (1946).

<sup>16</sup> *Id.*

<sup>17</sup> See [http://www.flcourts.org/gen\\_public/jury/lawday\\_pressrelease.shtml](http://www.flcourts.org/gen_public/jury/lawday_pressrelease.shtml). Last accessed October 16, 2009.

on Florida juries.<sup>18</sup> Florida women were subject to an absolute exclusion from jury service until 1949 after which they still had to contact the clerk of court to be included on the potential juror lists. However, in 1967 the legislature changed the law to include women on the lists, allowing women an automatic exemption if they were pregnant or had small children.<sup>19</sup>

States may, for certain compelling reasons, exclude some persons from jury service.<sup>20</sup> Currently, Florida provides that the following persons are excluded or excused from service on a jury:<sup>21</sup>

- A person who is under prosecution for any crime or has been convicted of a felony, unless his or her civil rights were restored;
- The Governor, Lieutenant Governor, Cabinet member, or Clerk of the Court;
- A full-time federal, state or local law enforcement officer;
- An interested person in any issue to be tried;
- An expectant mother upon request;
- Any parent that is not employed full time and has custody of a child under 6 years of age upon request;
- A person who reported as a perspective juror in his or her county within one year before being considered to serve again;
- A person 70 years or older upon request;
- A person responsible for the care of a person with a mental illness or physical or mental incapacity upon request.

In addition, a judge may use his or her discretion to excuse a practicing attorney, physician or a person who is physically infirm from jury service. A person may also be excused upon a showing of hardship, extreme inconvenience or public necessity.<sup>22</sup>

### **Effect of the Bill**

This bill provides that any mother who is breastfeeding a child under two years of age must be excused from jury service upon her request. In addition, this bill provides that a presiding judge may use his or her discretion to excuse a practicing psychologist from jury service.

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

Section 1 amends s. 40.013, F.S., relating to persons disqualified or excused from jury service.

Section 2 provides an effective date of July 1, 2010.

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

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

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

None

#### **2. Expenditures:**

None

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

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

<sup>19</sup> *Id.*

<sup>20</sup> Taylor v. Louisiana, 419 U.S. 522, 534 (1975).

<sup>21</sup> Section 40.013, F.S.

<sup>22</sup> Section 40.013(6), (7), F.S.

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

This bill may cause a minimal negative impact on the judicial workload, according to the Office of the State Courts Administrator.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

"Breastfeeding" is not defined in Florida law. According to Webster's dictionary, breastfeeding means nursing a baby at the breast.<sup>23</sup> However, The Supplemental Nutrition Program for Woman, Infants, and Children defines a breastfeeding woman as one who feeds her infant breast milk on the average of once a day.<sup>24</sup> Therefore, it is unclear if this bill applies to women who express their breast milk exclusively or only to women who nurse their children directly from the breast.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On November 3, 2009, the Civil Justice & Courts Policy Committee adopted an amendment to the bill. The amendment provides that a presiding judge may, in his or her discretion, excuse a practicing psychologist from jury service. This analysis is drafted to the bill as amended.

<sup>23</sup> Webster's Encyclopedia Unabridged Dictionary, pg. 258 (1996).

<sup>24</sup> See [www.nal.usda.gov/wicworks/Learning\\_Center/FP/Protocols.pdf](http://www.nal.usda.gov/wicworks/Learning_Center/FP/Protocols.pdf). Last accessed October 16, 2009.

1                                   A bill to be entitled  
 2           An act relating to excuse from jury service; amending s.  
 3           40.013, F.S.; expanding parental eligibility to be excused  
 4           from jury service; including practicing psychologists in  
 5           the list of persons a judge is authorized to excuse from  
 6           jury service; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Subsections (4) and (5) of section 40.013,  
 11   Florida Statutes, are amended to read:

12           40.013   Persons disqualified or excused from jury  
 13   service.--

14           (4)   Any expectant mother, any mother who is breastfeeding  
 15   a child under 2 years of age, and any parent who is not employed  
 16   full time and who has custody of a child under 6 years of age,  
 17   upon request, shall be excused from jury service.

18           (5)   A presiding judge may, in his or her discretion,  
 19   excuse a practicing attorney, a practicing physician, a  
 20   practicing psychologist, or a person who is physically infirm  
 21   from jury service, except that no person shall be excused from  
 22   service on a civil trial jury solely on the basis that the  
 23   person is deaf or hearing impaired, if that person wishes to  
 24   serve, unless the presiding judge makes a finding that  
 25   consideration of the evidence to be presented requires auditory  
 26   discrimination or that the timely progression of the trial will  
 27   be considerably affected thereby. However, nothing in this

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28 subsection shall affect a litigant's right to exercise a  
29 peremptory challenge.

30       Section 2. This act shall take effect July 1, 2010.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 851

Florida Legal Resource Center

SPONSOR(S): Grady

TIED BILLS:

IDEN./SIM. BILLS: SB 2236

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Criminal & Civil Justice Policy Council		Mato <i>RAM</i>	Havlicak <i>RH</i>
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

This bill repeals an obsolete statute, s. 16.58, F.S., relating to the creating and duties of the Florida Legal Resource Center.

The Florida Legal Resource Center was created in 1993 within the Department of Legal Affairs (DLA), to facilitate interagency legal information sharing and communications, and for establishing and maintaining a statewide legal research bank. This Legal Resource Center was never widely used due to problems with technology compatibility between agencies and the growth of the Internet making this information widely available through agency websites.

The bill appears to have no fiscal impact.

The bill takes effect July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation:

In 1993, Chapter 93-161, created s. 16.58, F.S. This created, within the Department of Legal Affairs (DLA), the Florida Legal Resource Center (Center) for facilitating interagency legal information sharing and communications, and for establishing and maintaining a statewide legal research bank. The statute also requires that DLA adopt a procedure for state agencies, special districts, universities, community colleges and junior colleges to submit legal information to include memoranda, briefs, and opinions, for deposit into the research bank and that all resources of the Center be made equally available to various governmental entities. The statute further requires that on or before January 1 of each year, DLA must prepare and transmit to the Governor and Legislature a report of Center activities for the preceding fiscal year.

Early attempts to gather this information were unsuccessful due to reluctance and technology incompatibility. As a result, the Center was disbanded by the DLA and a report has not been provided to the Governor and the Legislature since 1996.

The growth of the Internet has made s. 16.58 F.S. obsolete since agencies can now access research materials through agency websites. For example, the Attorney General's opinions can be found on the Attorney General's website and reports by the Florida Department of Law Enforcement can be found on it's website.<sup>1</sup>

The Auditor General, in a 2008 report, recommended that the Legislature consider repealing this section.<sup>2</sup>

##### Effect of Proposed Changes:

The bill repeals s. 16.58 F.S.

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<sup>1</sup> Attorney General Opinions available at: <http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/dd177569f8fb0f1a85256cc6007b70ad!OpenDocument>; Florida Department of Law Enforcement available at: <http://www.fdle.state.fl.us/Content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx>.

<sup>2</sup> Auditor General Report number 2008-021 available at: [www.myflorida.com/audgen/pages/pdf\\_files/2008-021.pdf](http://www.myflorida.com/audgen/pages/pdf_files/2008-021.pdf)



**B. SECTION DIRECTORY:**

Section 1 – repeals s. 16.58, F.S., relating to the Florida Legal Resource Center.

Section 2 – provides an effective date of July 1, 2010.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to 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.

3. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

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A bill to be entitled  
An act relating to the Florida Legal Resource Center;  
repealing s. 16.58, F.S., relating to the creation and  
duties of the Florida Legal Resource Center; providing an  
effective date.

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

Section 1. Section 16.58, Florida Statutes, is repealed.  
Section 2. This act shall take effect July 1, 2010.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 895  
SPONSOR(S): Weinstein  
TIED BILLS:

Juvenile Justice Standards and Training Commission

IDEN./SIM. BILLS: SB 1864

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal & Civil Justice Policy Council		Mato <i>PM</i>	Havlicak <i>RN</i>
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill removes references to the Juvenile Justice Standards and Training Commission, which sunsetted in 2001, and provides that the Department of Juvenile Justice is responsible for staff development and training.

Juvenile Justice Standards and Training Commission (the Commission) was created to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff. The Commission was created under the Department of Juvenile Justice (the Department). The purpose of the Legislature in creating the Commission was to foster better staff morale and reduce mistreatment and aggressive and abusive behavior in delinquency programs.

Since the Commission sunsetted in 2001, the Department of Juvenile Justice has assumed all of the duties of the Commission.

The bill amends other statutes to eliminate references to the Juvenile Justice Standards and Training Commission.

The bill appears to have no fiscal impact.

The bill takes effect on July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation:

Section 985.66, F.S., created a Juvenile Justice Standards and Training Commission (the Commission) to provide a systematic approach to staff development and training for judges, state attorneys, public defenders, law enforcement officers, school district personnel, and juvenile justice program staff. The Commission was created under the Department of Juvenile Justice (the Department). The statute laid out specific requirements for the composition of the members of the Commission and its responsibilities.

The Commission sunsetted on June 30, 2001, and was not reenacted. The Department has since taken over all of the duties and responsibilities of the Commission and continued to operate the training programs.

##### Effect of the bill:

The bill amends s. 985.66, F.S. to eliminate the Juvenile Justice Standards and Training Commission and give the Commission's responsibility for staff training to the Department of Juvenile Justice. It removes the details about the composition of the Commission and references to the Commission, but otherwise leaves the same powers and duties to the Department.

The bill amends s. 985.48, F.S. to eliminate references to the Juvenile Justice Standards and Training Commission and its duties to establish criteria for training all contract and department staff to effectively manage and provide services and treatment to juvenile sexual offenders.

#### B. SECTION DIRECTORY:

Section 1 – amends s. 985.66, F.S., relating to juvenile justice training academies; Juvenile Justice Standards and Training Commission; Juvenile Justice Training Trust Fund.

Section 2 – amends s. 985.48, F.S., relating to juvenile sexual offender commitment programs; sexual abuse intervention networks.

Section 3 – Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to 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.

3. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

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

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**



1                                   A bill to be entitled  
 2           An act relating to the Juvenile Justice Standards and  
 3           Training Commission; amending s. 985.66, F.S.; eliminating  
 4           the Juvenile Justice Standards and Training Commission;  
 5           providing that the Department of Juvenile Justice rather  
 6           than the commission is responsible for staff development  
 7           and training; amending s. 985.48, F.S.; conforming a  
 8           provision to the termination of the Juvenile Justice  
 9           Standards and Training Commission; providing an effective  
 10          date.

11  
 12   Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. Section 985.66, Florida Statutes, is amended to  
 15          read:

16           985.66 Juvenile justice training academies; staff  
 17          development and training ~~Juvenile Justice Standards and Training~~  
 18          ~~Commission~~; Juvenile Justice Training Trust Fund.—

19           (1) LEGISLATIVE PURPOSE.—In order to enable the state to  
 20          provide a systematic approach to staff development and training  
 21          for judges, state attorneys, public defenders, law enforcement  
 22          officers, school district personnel, and juvenile justice  
 23          program staff that will meet the needs of such persons in their  
 24          discharge of duties while at the same time meeting the  
 25          requirements for the American Correction Association  
 26          accreditation by the Commission on Accreditation for  
 27          Corrections, it is the purpose of the Legislature to require the  
 28          department to establish, maintain, and oversee the operation of

29 juvenile justice training academies in the state. The purpose of  
 30 the Legislature in establishing staff development and training  
 31 programs is to foster better staff morale and reduce  
 32 mistreatment and aggressive and abusive behavior in delinquency  
 33 programs; to positively impact the recidivism of children in the  
 34 juvenile justice system; and to afford greater protection of the  
 35 public through an improved level of services delivered by a  
 36 professionally trained juvenile justice program staff to  
 37 children who are alleged to be or who have been found to be  
 38 delinquent.

39 (2) STAFF DEVELOPMENT AND TRAINING ~~JUVENILE JUSTICE~~  
 40 ~~STANDARDS AND TRAINING COMMISSION.~~-

41 ~~(a) There is created under the Department of Juvenile~~  
 42 ~~Justice the Juvenile Justice Standards and Training Commission,~~  
 43 ~~hereinafter referred to as the commission. The 17-member~~  
 44 ~~commission shall consist of the Attorney General or designee,~~  
 45 ~~the Commissioner of Education or designee, a member of the~~  
 46 ~~juvenile court judiciary to be appointed by the Chief Justice of~~  
 47 ~~the Supreme Court, and 14 members to be appointed by the~~  
 48 ~~Secretary of Juvenile Justice as follows:~~

- 49 1. ~~Seven members shall be juvenile justice professionals:~~  
 50 ~~a superintendent or a direct care staff member from an~~  
 51 ~~institution; a director from a contracted community-based~~  
 52 ~~program; a superintendent and a direct care staff member from a~~  
 53 ~~regional detention center or facility; a juvenile probation~~  
 54 ~~officer supervisor and a juvenile probation officer; and a~~  
 55 ~~director of a day treatment or conditional release program. No~~  
 56 ~~fewer than three of these members shall be contract providers.~~

57 ~~2. Two members shall be representatives of local law~~  
 58 ~~enforcement agencies.~~

59 ~~3. One member shall be an educator from the state's~~  
 60 ~~university and community college program of criminology,~~  
 61 ~~criminal justice administration, social work, psychology,~~  
 62 ~~sociology, or other field of study pertinent to the training of~~  
 63 ~~juvenile justice program staff.~~

64 ~~4. One member shall be a member of the public.~~

65 ~~5. One member shall be a state attorney, or assistant~~  
 66 ~~state attorney, who has juvenile court experience.~~

67 ~~6. One member shall be a public defender, or assistant~~  
 68 ~~public defender, who has juvenile court experience.~~

69 ~~7. One member shall be a representative of the business~~  
 70 ~~community.~~

71  
 72 ~~All appointed members shall be appointed to serve terms of 2~~  
 73 ~~years.~~

74 ~~(b) The composition of the commission shall be broadly~~  
 75 ~~reflective of the public and shall include minorities and women.~~  
 76 ~~The term "minorities" as used in this paragraph means a member~~  
 77 ~~of a socially or economically disadvantaged group that includes~~  
 78 ~~blacks, Hispanics, and American Indians.~~

79 ~~(c) The Department of Juvenile Justice shall provide the~~  
 80 ~~commission with staff necessary to assist the commission in the~~  
 81 ~~performance of its duties.~~

82 ~~(d) The commission shall annually elect its chairperson~~  
 83 ~~and other officers. The commission shall hold at least four~~  
 84 ~~regular meetings each year at the call of the chairperson or~~

85 ~~upon the written request of three members of the commission. A~~  
 86 ~~majority of the members of the commission constitutes a quorum.~~  
 87 ~~Members of the commission shall serve without compensation but~~  
 88 ~~are entitled to be reimbursed for per diem and travel expenses~~  
 89 ~~as provided by s. 112.061 and these expenses shall be paid from~~  
 90 ~~the Juvenile Justice Training Trust Fund.~~

91 ~~(e) The department powers, duties, and functions of the~~  
 92 ~~commission shall be to:~~

93 ~~(a)1-~~ Designate the location of the training academies;  
 94 develop, implement, maintain, and update the curriculum to be  
 95 used in the training of juvenile justice program staff;  
 96 establish timeframes for participation in and completion of  
 97 training by juvenile justice program staff; develop, implement,  
 98 maintain, and update job-related examinations; develop,  
 99 implement, and update the types and frequencies of evaluations  
 100 of the training academies; approve, modify, or disapprove the  
 101 budget for the training academies, and the contractor to be  
 102 selected to organize and operate the training academies and to  
 103 provide the training curriculum.

104 ~~(b)2-~~ Establish uniform minimum job-related training  
 105 courses and examinations for juvenile justice program staff.

106 ~~(c)3-~~ Consult and cooperate with the state or any  
 107 political subdivision; any private entity or contractor; and  
 108 with private and public universities, colleges, community  
 109 colleges, and other educational institutions concerning the  
 110 development of juvenile justice training and programs or courses  
 111 of instruction, including, but not limited to, education and  
 112 training in the areas of juvenile justice.

113            (d)4. Enter into ~~With the approval of the department, make~~  
 114 ~~and enter into such~~ contracts and agreements with other  
 115 agencies, organizations, associations, corporations,  
 116 individuals, or federal agencies as ~~the commission determines~~  
 117 ~~are~~ necessary in the execution of the its powers of the  
 118 department or the performance of its duties.

119            ~~5. Make recommendations to the Department of Juvenile~~  
 120 ~~Justice concerning any matter within the purview of this~~  
 121 ~~section.~~

122            (3) JUVENILE JUSTICE TRAINING PROGRAM.—The department  
 123 ~~commission~~ shall establish a certifiable program for juvenile  
 124 justice training pursuant to this section, and all department  
 125 program staff and providers who deliver direct care services  
 126 pursuant to contract with the department shall be required to  
 127 participate in and successfully complete the department-approved  
 128 ~~commission-approved~~ program of training pertinent to their areas  
 129 of responsibility. Judges, state attorneys, and public  
 130 defenders, law enforcement officers, and school district  
 131 personnel may participate in such training program. For the  
 132 juvenile justice program staff, the department ~~commission~~ shall,  
 133 based on a job-task analysis:

134            (a) Design, implement, maintain, evaluate, and revise a  
 135 basic training program, including a competency-based  
 136 examination, for the purpose of providing minimum employment  
 137 training qualifications for all juvenile justice personnel. All  
 138 program staff of the department and providers who deliver  
 139 direct-care services who are hired after October 1, 1999, must  
 140 meet the following minimum requirements:

- 141           1. Be at least 19 years of age.
- 142           2. Be a high school graduate or its equivalent as  
 143 determined by the department ~~commission~~.
- 144           3. Not have been convicted of any felony or a misdemeanor  
 145 involving perjury or a false statement, or have received a  
 146 dishonorable discharge from any of the Armed Forces of the  
 147 United States. Any person who, after September 30, 1999, pleads  
 148 guilty or nolo contendere to or is found guilty of any felony or  
 149 a misdemeanor involving perjury or false statement is not  
 150 eligible for employment, notwithstanding suspension of sentence  
 151 or withholding of adjudication. Notwithstanding this  
 152 subparagraph, any person who pled nolo contendere to a  
 153 misdemeanor involving a false statement before October 1, 1999,  
 154 and who has had such record of that plea sealed or expunged is  
 155 not ineligible for employment for that reason.
- 156           4. Abide by all the provisions of s. 985.644(1) regarding  
 157 fingerprinting and background investigations and other screening  
 158 requirements for personnel.
- 159           5. Execute and submit to the department an affidavit-of-  
 160 application form, adopted by the department, attesting to his or  
 161 her compliance with subparagraphs 1.-4. The affidavit must be  
 162 executed under oath and constitutes an official statement under  
 163 s. 837.06. The affidavit must include conspicuous language that  
 164 the intentional false execution of the affidavit constitutes a  
 165 misdemeanor of the second degree. The employing agency shall  
 166 retain the affidavit.
- 167           (b) Design, implement, maintain, evaluate, and revise an  
 168 advanced training program, including a competency-based

169 examination for each training course, which is intended to  
 170 enhance knowledge, skills, and abilities related to job  
 171 performance.

172 (c) Design, implement, maintain, evaluate, and revise a  
 173 career development training program, including a competency-  
 174 based examination for each training course. Career development  
 175 courses are intended to prepare personnel for promotion.

176 (d) The department ~~commission~~ is encouraged to design,  
 177 implement, maintain, evaluate, and revise juvenile justice  
 178 training courses, or to enter into contracts for such training  
 179 courses, that are intended to provide for the safety and well-  
 180 being of both citizens and juvenile offenders.

181 (4) JUVENILE JUSTICE TRAINING TRUST FUND.—

182 (a) There is created within the State Treasury a Juvenile  
 183 Justice Training Trust Fund to be used by the department ~~of~~  
 184 ~~Juvenile Justice~~ for the purpose of funding the development and  
 185 updating of a job-task analysis of juvenile justice personnel;  
 186 the development, implementation, and updating of job-related  
 187 training courses and examinations; and the cost of ~~commission-~~  
 188 ~~approved~~ juvenile justice training courses; ~~and reimbursement~~  
 189 ~~for expenses as provided in s. 112.061 for members of the~~  
 190 ~~commission and staff.~~

191 (b) One dollar from every noncriminal traffic infraction  
 192 collected pursuant to ss. 318.14(10)(b) and 318.18 shall be  
 193 deposited into the Juvenile Justice Training Trust Fund.

194 (c) In addition to the funds generated by paragraph (b),  
 195 the trust fund may receive funds from any other public or  
 196 private source.

197 (d) Funds that are not expended by the end of the budget  
 198 cycle or through a supplemental budget approved by the  
 199 department shall revert to the trust fund.

200 (5) ESTABLISHMENT OF JUVENILE JUSTICE TRAINING ACADEMIES.—  
 201 The number, location, and establishment of juvenile justice  
 202 training academies shall be determined by the department  
 203 ~~commission~~.

204 (6) SCHOLARSHIPS AND STIPENDS.—

205 (a) By rule, the department ~~commission~~ shall establish  
 206 criteria to award scholarships or stipends to qualified juvenile  
 207 justice personnel who are residents of the state who want to  
 208 pursue a bachelor's or associate in arts degree in juvenile  
 209 justice or a related field. The department shall handle the  
 210 administration of the scholarship or stipend. The Department of  
 211 Education shall handle the notes issued for the payment of the  
 212 scholarships or stipends. All scholarship and stipend awards  
 213 shall be paid from the Juvenile Justice Training Trust Fund upon  
 214 vouchers approved by the Department of Education and properly  
 215 certified by the Chief Financial Officer. Prior to the award of  
 216 a scholarship or stipend, the juvenile justice employee must  
 217 agree in writing to practice her or his profession in juvenile  
 218 justice or a related field for 1 month for each month of grant  
 219 or to repay the full amount of the scholarship or stipend  
 220 together with interest at the rate of 5 percent per annum over a  
 221 period not to exceed 10 years. Repayment shall be made payable  
 222 to the state for deposit into the Juvenile Justice Training  
 223 Trust Fund.

224 (b) The department ~~commission~~ may establish the



225 scholarship program by rule ~~and implement the program on or~~  
 226 ~~after July 1, 1996.~~

227 (7) ADOPTION OF RULES.—The department ~~commission~~ shall  
 228 adopt rules as necessary to carry out the provisions of this  
 229 section.

230 (8) PARTICIPATION OF CERTAIN PROGRAMS IN THE STATE RISK  
 231 MANAGEMENT TRUST FUND.—Pursuant to s. 284.30, the Division of  
 232 Risk Management of the Department of Financial Services is  
 233 authorized to insure a private agency, individual, or  
 234 corporation operating a state-owned training school under a  
 235 contract to carry out the purposes and responsibilities of any  
 236 program of the department. The coverage authorized herein shall  
 237 be under the same general terms and conditions as the department  
 238 is insured for its responsibilities under chapter 284.

239 ~~(9) The Juvenile Justice Standards and Training Commission~~  
 240 ~~is terminated on June 30, 2001, and such termination shall be~~  
 241 ~~reviewed by the Legislature prior to that date.~~

242 Section 2. Subsections (9) through (14) of section 985.48,  
 243 Florida Statutes, are renumbered as subsections (8) through  
 244 (13), respectively, and present subsection (8) of that section  
 245 is amended to read:

246 985.48 Juvenile sexual offender commitment programs;  
 247 sexual abuse intervention networks.—

248 ~~(8) The Juvenile Justice Standards and Training Commission~~  
 249 ~~shall establish criteria for training all contract and~~  
 250 ~~department staff or provide a special training program for~~  
 251 ~~contract and department staff to effectively manage and provide~~

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252 | ~~services and treatment to a juvenile sexual offender in a~~  
253 | ~~juvenile sexual offender program.~~  
254 |       Section 3. This act shall take effect July 1, 2010.