

The Constitution Revision Commission
COMMITTEE MEETING EXPANDED AGENDA

DECLARATION OF RIGHTS
Commissioner Carlton, Chair
Commissioner Stemberger, Vice Chair

MEETING DATE: Friday, January 19, 2018
TIME: 8:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building, Tallahassee, Florida

MEMBERS: Commissioner Carlton, Chair; Commissioner Stemberger, Vice Chair; Commissioners Donalds, Gainey, Johnson, Joyner, and Lester

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
1	P 96 Cerio	DECLARATION OF RIGHTS, Rights of accused and of victims; Section 16 of Article I of the State Constitution to revise and establish additional rights of victims of crime. DR 01/19/2018 Favorable	Favorable Yeas 6 Nays 1
2	P 64 Rouson	DECLARATION OF RIGHTS, Right of privacy; Section 23 of Article I of the State Constitution to specify that the right of privacy may not be construed to limit a grandparent's right to seek visitation of his or her grandchildren under certain circumstances. DR 12/12/2017 Temporarily Postponed DR 01/19/2018 Unfavorable JU	Unfavorable Yeas 0 Nays 7
3	P 73 Coxe	DECLARATION OF RIGHTS, Prosecution for crime; offenses committed by children; Section 15 of Article I of the State Constitution to require circuit court review before a state attorney may pursue prosecution of a child as an adult in criminal court. DR 01/19/2018 Temporarily Postponed EX	Temporarily Postponed
4	P 88 Heuchan	DECLARATION OF RIGHTS, creates new section; a new section in Article I of the State Constitution to establish certain rights for residents of assisted living facilities and nursing home facilities in this state. DR 01/19/2018 Fav/CS	Fav/CS Yeas 5 Nays 2

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 96

Relating to: DECLARATION OF RIGHTS, Rights of accused and of victims

Introducer(s): Commissioner Cerio and others

Article/Section affected:

Date: January 18, 2018

	REFERENCE	ACTION
1.	<u>DR</u>	<u>Pre-meeting</u>

I. SUMMARY:

Article I, Section 16(b) of the Florida Constitution establishes the right of victims of crime, or their lawful representatives, including the next of kin of homicide victims, to be informed, to be present, and to be heard at all crucial states of criminal proceedings. These rights are subordinate to the constitutional rights of the accused to the extent that they would interfere with such rights. The Florida Legislature has also supplemented the rights provided to crime victims under Article I, Section 16(b) by general law.

This proposal expands the constitutional rights of crime victims in the criminal justice and juvenile justice systems, and the categories of persons entitled to such rights. The rights granted to crime victims by the proposal must be “protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents,” thus the proposal appears to make constitutional crime victim rights equal, rather than subordinate, to the constitutional rights of the accused.

The constitutional crime victim rights established by the proposal duplicate many current statutory crime victim rights, while creating several additional rights, including:

- The right to be reasonably protected from the accused or persons acting on the accused’s behalf;
- The right to right to refuse an interview, deposition, or other discovery request by the defense or anyone acting on the defendant’s behalf; and
- The right to demand that all state-level appeals of the criminal case be completed within a specified period of time.

This proposal is similar to a victim’s rights proposal adopted in several other states known as “Marsy’s Law.”

If approved by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

History of Crime Victims' Rights

At the birth of this Republic, victims were central participants in the criminal justice process. The first colonists imported the English common law tradition of private prosecutions in criminal matters, which gave the victim of a felony the right to initiate a criminal case against the offender. The aggrieved citizen served the dual role of witness and prosecutor, and could directly inform juries in court of the details and impact of crime.¹ As a result, at the time of the adoption and ratification of the Constitution and Bill of Rights, the framers of the Constitution probably saw little need for separate "victims' rights," because victims could act in their own interests.

Over time, public prosecutors gradually displaced the system of private prosecutions, as crime came to be seen as a wrong against all of public society, not only the victim. Crime victims were replaced by the state in their role as complainant in criminal cases. Instead, the primary role of crime victims transitioned to the reporting of crime to police for investigation and serving as witnesses if called in a criminal trial. In many ways, crime victims themselves benefited from these changes. They had the aid of public law enforcement, which was more skilled than the average victim in investigating the crime, and the aid of public prosecutors, who were more skilled than the average victim in pleading their case in court. No longer would the wealth of the violated party be a significant determinant as to whether justice was done.²

However, in the evolution of the nation's justice system, crime victims reported feeling increasing alienation. As a result, a movement began more than 30 years ago to re-create an independent participatory role for crime victims in criminal justice proceedings.³ The movement was based, in part, on the 1973 United States Supreme Court decision in *Linda R.S. v. Richard D.*, 410 U.S. 614 (1972). In *Linda R.S.*, the Supreme Court considered whether an unmarried woman could seek to enjoin the prosecutors' office from discriminately applying a statute criminalizing the non-payment of child support by refusing to prosecute fathers of children born to unmarried women.⁴ In dicta, the Court acknowledged the then-prevailing view that a crime victim cannot compel a criminal prosecution because "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another."⁵

In 1982, President Ronald Reagan convened the Presidential Task Force on Victims of Crime. After hearings held around the country and careful consideration of the issue, the Task Force concluded that the only way to fully protect crime victims' rights was by adding such rights to the

¹ John H. Langbein, *The Origins of Public Prosecution at Common Law*, The American Journal of Legal History, Vol. XVII, pg. 317, (1973), available at https://law.yale.edu/system/files/documents/pdf/Faculty/Langbein_Origins_of_Public_Prosecution_at_Common_Law.pdf (last visited Jan. 18, 2018).

² 106TH CONGRESS, *Senate Report 106-254 – Crime Victims' Rights Constitutional Amendment*, Apr. 4, 2000, available at <https://www.congress.gov/congressional-report/106th-congress/senate-report/254/1> (last visited Jan. 18, 2018).

³ NATIONAL CRIME VICTIM LAW INSTITUTE, *History of Victims' Rights*, available at https://law.lclark.edu/centers/national_crime_victim_law_institute/about_ncvli/history_of_victims_rights/ (last visited Jan. 18, 2018).

⁴ *Id.*

⁵ *Linda RS v. Richard D.*, 410 US 614, 619 (1973).

Constitution.⁶ The President's task force explained the need for a constitutional amendment in these terms:⁷

In applying and interpreting the vital guarantees that protect all citizens, the criminal justice system has lost an essential balance. It should be clearly understood that this Task Force wishes in no way to vitiate the safeguards that shelter anyone accused of crime; but it must be urged with equal vigor that the system has deprived the innocent, the honest, and the helpless of its protection.

The guiding principle that provides the focus for constitutional liberties is that government must be restrained from trampling the rights of the individual citizen. The victims of crime have been transformed into a group oppressively burdened by a system designed to protect them. This oppression must be redressed. To that end it is the recommendation of this Task Force that the sixth amendment to the Constitution be augmented.

Following that recommendation, proponents of crime victims' rights decided to seek constitutional protection in the States initially before undertaking an effort to obtain a Federal constitutional amendment.⁸ The 'states-first' approach drew the support of many victim advocates. Adopting state amendments for victim rights would make good use of the 'great laboratory of the states.'⁹ A total of 33 states,¹⁰ in widely different versions, have amended their state constitution to address crime victims' rights, and the remaining states have passed crime victims' rights legislation.¹¹

Crime Victim Rights Pursuant to the Florida Constitution

On January 3, 1989, the State of Florida became the first state in the nation to amend its constitution to include the rights of crime victims. Article I, Section 16(b) of the Florida Constitution provides, in relevant part:

Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

⁶ *Supra* note 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See Ala. Const. amend. 557; Alaska Const. art. I, Sec. 24; Ariz. Const. art. II, Sec. 2.1; Cal. Const. art. I, Sec. Sec. 12, 28; Colo. Const. art. II, Sec. 16a; Conn. Const. art. I, Sec. 8(b); Fla. Const. art. I, Sec. 16(b); Idaho Const. Art. I, Sec. 22; Ill. Const. art. I, Sec. 8.1; Ind. Const. art. I, Sec. 13(b); Kan. Const. art. 15, Sec. 15; La. Const. art. 1, Sec. 25; Md. Decl. of Rights art. 47; Mich. Const. art. I, Sec. 24; Miss. Const. art. 3, Sec. 26A; Mo. Const. art. I, Sec. 32; Neb. Const. art. I, Sec. 28; Nev. Const. art. I, Sec. 8; N.J. Const. art. I, Sec. 22; New Mex. Const. art. 2, Sec. 24; N.C. Const. art. I, Sec. 37; Ohio Const. art. I, Sec. 10a; Okla. Const. art. II, Sec. 34; R.I. Const. art. I, Sec. 23; S.C. Const. art. I, S 24; Tenn. Const. art. 1, Sec. 35; Tex. Const. art. 1, Sec. 30; Utah Const. art. I, Sec. 28; Va. Const. art. I, Sec. 8-A; Wash. Const. art. 2, Sec. 33; Wis. Const. art. I, Sec. 9m. These amendments passed with overwhelming popular support.

¹¹ *Supra* note 3.

Crime Victim Rights Pursuant to Florida Law

The Florida Legislature has supplemented the rights provided to crime victims¹² under the Florida Constitution. Chapter 960, F.S., commonly referred to as the “Victim Rights Act,” relates generally to the treatment of victims and witnesses in the criminal justice and juvenile justice system. Multiple agencies, including the Department of Legal Affairs, state attorneys, correctional agencies, the State Courts Administrator, the Department of Law Enforcement, and every sheriff’s department, police department, or other law enforcement agency are required to develop and implement guidelines in compliance with the Victims’ Rights Act. Information about the victim services provided by these agencies can generally be found on their website.¹³

A victim, or the State Attorney’s Office with the consent of the victim, has standing to assert any of the legal rights provided under the constitution or by general law. The rights guaranteed to crime victims in the criminal justice and juvenile justice system under ch. 960, F.S., include:

- The right to receive information on available crisis intervention services and local community services to include counseling, shelter, legal assistance, or other types of help, depending on the particular circumstances.
- The right to receive information regarding the role of the victim in the criminal or juvenile process, including what the victim may expect from the system as well as what the system may expect from the victim.
- The right of a victim or witness with autism or an autism spectrum disorder or his or her parent or guardian to request a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional is present at all interviews of the individual. The defendant must reimburse the victim for all expenses related to the attendance of the professional at the interview, in addition to other restitution or penalties provided by law, upon conviction of the offense of which the individual is a victim.
- The right to receive information regarding the stages of the criminal or juvenile justice process and the manner in which information about such stages may be obtained.
- The right to be informed, present, and heard when relevant, at all crucial stages of a criminal or juvenile proceeding, to the extent the right does not interfere with the constitutional rights of the accused.
- The right, if incarcerated, to be informed and submit written statements at all crucial stages of the criminal and juvenile proceedings.

¹² Victim services also include the victim’s parent or guardian if the victim is a minor, the lawful representative of the victim or the victim’s parent or guardian if the victim is a minor, and the next of kin of a homicide victim. s. 960.001(7), F.S.

¹³ See, e.g., Florida Attorney General Webpage - <http://myfloridalegal.com/pages.nsf/Main/E14E8F70D7DFE31F8525749C005012E4> (last visited Jan. 18, 2018); Office of the State Attorney of the 15th Judicial Circuit - <http://www.sa15.state.fl.us/stateattorney/VictimWitness/indexRights.htm> (last visited Jan. 18, 2018); University of Florida Police Department - <http://www.police.ufl.edu/victim-services/florida-state-statute-960crime-victim-bill-of-rights/> (last visited Jan. 18, 2018).

- The right to a prompt and timely disposition of the case as long as it does not interfere with the constitutional rights of the accused.
- The right to be notified of the arrest and release of the offender, including release to community control and/or work release. When an arrest is made in a reported case, the victim, witnesses, relatives of minor victims and witnesses and relatives of homicide victims, where those persons have provided current addresses and telephone numbers, must be notified.
- The right to receive information on the steps available to law enforcement and the State Attorney's Office to protect the victim from intimidation and/or harassment.
- The right of the victim of domestic violence to be informed of the address confidentiality program administered through the Attorney General's Office.¹⁴
- The right of each victim or witness who has been scheduled to attend a criminal or juvenile justice proceeding to be notified as soon as possible by the agency or person scheduling his/her appearance of any change in scheduling which will affect the victim's appearance.
- The right to receive advance notification of judicial and post judicial proceedings relating to the case.¹⁵
- The right to not be excluded from any portion of any hearing, trial or proceeding pertaining to the offense based solely upon the fact that such person is subpoenaed to testify, unless the court determines otherwise.
- The right, if the victim of a felony involving physical or emotional injury or trauma, or in a case in which the victim is a minor child or in a homicide, to be consulted by the State Attorney in order to obtain the views of the victim or family about the disposition of any criminal or juvenile case brought about as a result of such crime.
- The right to review certain portions of a pre-sentence investigation report for adult and youthful offenders prior to the sentencing of the accused.
- The right to a prompt return of property unless there is a compelling law enforcement need to retain it.
- The right to request that the State Attorney or law enforcement agency help explain to employers and creditors that the victim may face additional burdens by taking time off from work to assist law enforcement and undergo serious financial strain either because of the crime or by cooperating with authorities.

¹⁴ Pursuant to ss. 741.401 - 741.465, F.S., the Address Confidentiality Program (ACP) provides a substitute mailing address for relocated victims of domestic violence, with the Office of the Attorney General serving as legal agent for receipt of mail and service of process.

¹⁵ Includes proceedings and hearings related to arrest, release, and prosecution or petition for delinquency.

- The right to submit an oral or written impact statement to the court, pursuant to s. 921.143 F.S., prior to sentencing of the offender.
- The right to receive reasonable consideration and assistance from employees of the State Attorney's Office, Sheriff's Office, or Police Department.
- The right to be notified when the offender escapes from custody.
- The right of the victim to request that a victim advocate be permitted to attend and be present during any deposition.
- The right of the victim of a sexual offense to have the courtroom cleared, with certain exceptions during his or her testimony, regardless of the victim's age or mental capacity.
- The right to request, in certain circumstances that the offender be required to attend a different school than the victim or siblings of the victim.
- The right of the victim who is not incarcerated to not be required to attend discovery depositions in any correctional facility.
- The right that any information gained pursuant to ch. 960, F.S., regarding any case handled in juvenile court, may not be revealed to any outside party, except as reasonably necessary in pursuit of legal remedies.
- The right to know in certain cases and at the earliest possible opportunity, if the person charged with an offense has tested positive for human immunodeficiency virus (HIV) infection. In such cases, upon request of the victim or the victim's legal guardian, or the parent or legal guardian of the victim if the victim is a minor, the court shall order such person to undergo HIV testing.
- The right of a victim or the victim's legal guardian, or the parent or legal guardian of a victim, if the victim is a minor, to request that a person who is charged with any offense enumerated in section 775.0877(1)(a)-(n)¹⁶, Florida Statutes, that involves the transmission of body fluids from one person to another, undergo hepatitis and HIV testing.
- The right to request, for specific crimes, that the victim's home and work telephone numbers, home and work addresses, and personal assets not be disclosed to anyone.
- The right of a victim of a sexual offense to request the presence of a victim advocate during the forensic medical examination.

¹⁶ Such offenses include sexual battery, incest, lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age, assault, aggravated assault, battery, aggravated battery, child abuse, aggravated child abuse, abuse of an elderly person or disabled adult, aggravated abuse of an elderly person or disabled adult, sexual performance by person less than 18 years of age, prostitution, donation of blood or plasma or organs, and human trafficking.

- No law enforcement officer, prosecuting attorney, or government official shall ask or require a victim of a sexual offense to submit to a polygraph examination or other truth-telling device as a condition of the investigation.

Crimes Compensation Trust Fund

The Florida Attorney General's Office administers a trust fund that provides financial assistance to victims of crime and are experiencing hardship. In some cases, crime victims may be eligible for compensation. Victim compensation assists with treatment expenses (i.e. medical, prescriptions eyeglasses, dentures, prosthetic devices); funeral expenses; professional mental health and grief counseling; loss wages or support; disability assistance because of the crime; domestic violence, sexual battery or human trafficking relocation.

B. EFFECT OF PROPOSED CHANGES:

The proposal expands the constitutional rights of crime victims in the criminal justice and juvenile justice systems to:

- Preserve and protect the right of crime victims to achieve justice;
- Ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims; and
- Ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents (proposal repeals subordination of crime victim rights to rights of criminal defendants when such rights are in conflict).

The proposal defines a "victim" entitled to the rights enumerated below as a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. Such persons include a victim's lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim unless the interest of such individual would be in actual or potential conflict with the interests of the victim.

Information regarding the constitutional rights of crime victims, as established by the proposal, must be made available to the general public and provided to all crime victims in the form of a card.

It should be noted that many of the constitutional rights established by the proposal currently exist under Florida law.

Crime Victim Rights

The proposal provides that crime victims are entitled to the following rights which vest at the time of victimization:

- The right to due process and to be treated with fairness and respect for the victim's dignity;
- The right to be free from intimidation, harassment, and abuse;
- The right to be reasonably protected from the accused and any person acting on the accused's behalf;

- The right to have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pre-trial release conditions that protect the safety and welfare of the victim and the victim's family;
- The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim;
- The right to privacy, which includes the right to refuse an interview, deposition, or other discovery request by the defense or anyone acting on the defendant's behalf, and to set reasonable conditions on the conduct of any such interaction to which the victim consents;
- The right to the prompt return of the victim's property when no longer needed as evidence in the case;
- The right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct. All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government;
- The right to proceedings free from unreasonable delay, and to prompt and final conclusion of the case and any related post-judgment proceedings;
 - The state attorney may file a good faith demand for a speedy trial and the trial court must hold a hearing within five days to schedule a trial within fifteen days unless the trial judge enters an order with written findings of fact justifying a trial date more than fifteen days after the hearing.
 - All state-level appeals and collateral appeals on any judgment must be complete within two years from the date of appeal in non-capital cases and five years in capital cases. Each year, the chief judge of any district court of appeal or the chief justice of the Florida Supreme Court must report to the Speaker of the House of Representatives and the President of the Senate all cases where the court was unable to comply with the time requirements and the circumstances causing the delay.
- The right to be informed of the constitutional rights of crime victims and of the right to seek legal advice with respect to such rights.

The proposal establishes the following additional constitutional rights of crime victims which vest only upon the victim's request (the proposal does not specify to whom a request must be made or if an independent request must be made to invoke each right):

- The right to reasonable, accurate, and timely notice of, and to be present at, all public proceedings involving the criminal conduct, even if the victim will be a witness at the proceeding, notwithstanding a rule to the contrary;
- The right to reasonable accurate and timely notice of any release or escape of the defendant or delinquent, and any proceeding during which a right of the victim is implicated;
- The right to confer with the state attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case;
- The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any pre-sentence investigation or compiling any pre-sentence investigation report, and to have the

- information provided considered in any sentencing recommendations submitted to the court;
- The right to receive a copy of any pre-sentence report, and any other report or record relevant to the exercise of a victim's right, except for portions that are confidential;
 - The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, and the release or escape of the offender from custody;
 - The right to be informed of all post-conviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision, and to be notified of any release decision. The parole or release authority must extend the right to be heard to any person harmed by the offender (appears to apply to persons other than victims of crime, or of the crime at issue); and
 - The right to be informed of clemency and expungement procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made, and to be notified of such decision in advance of the release of the offender.

The proposal provides that a reasonable attempt by the appropriate agency to notify the victim and convey the victim's views to the court in any first appearance proceeding is sufficient to comply with certain specified rights of the victim applicable to such proceedings.

Enforcement of Crime Victim Rights

The victim, the victim's attorney, the victim's lawful representative, or the office of the state attorney upon request of the victim, may assert and seek enforcement of the constitutional rights afforded to crime victims by the proposal and any other rights afforded to crime victim by other laws, in any trial or appellate court, or before any other authority with jurisdiction over the criminal matter. The court or other authority with jurisdiction must act promptly on a request to enforce such rights and afford a remedy by due course of law for the violation of any right. The reasons for any decision regarding the disposition of a victim's right must be clearly stated on the record.

Implementation of Crime Victim Rights

The provisions of the proposal are self-executing and do not require implementing legislation; except that the Legislature may adopt legislation to implement the time requirements and reporting requirements for the completion of judicial appeals.

Effective Date and Applicability

If approved by the voters, the proposal will take effect on January 8, 2019.¹⁷ The proposal is silent with regard to retroactivity or applicability to pending cases in the criminal or juvenile justice system.

¹⁷ See Article XI, Sec. 5(e) of the Florida Constitution ("Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.")

C. FISCAL IMPACT:

The fiscal impact on state and local government is indeterminate.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.

By Commissioner Cerio

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A proposal to amend

Section 16 of Article I of the State Constitution to
revise and establish additional rights of victims of
crime.

Be It Proposed by the Constitution Revision Commission of
Florida:

Section 16 of Article I of the State Constitution is
amended to read:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 16. Rights of accused and of victims.—

(a) In all criminal prosecutions the accused shall, upon
demand, be informed of the nature and cause of the accusation,
and shall be furnished a copy of the charges, and shall have the
right to have compulsory process for witnesses, to confront at
trial adverse witnesses, to be heard in person, by counsel or
both, and to have a speedy and public trial by impartial jury in
the county where the crime was committed. If the county is not
known, the indictment or information may charge venue in two or
more counties conjunctively and proof that the crime was
committed in that area shall be sufficient; but before pleading
the accused may elect in which of those counties the trial will
take place. Venue for prosecution of crimes committed beyond the
boundaries of the state shall be fixed by law.

(b) To preserve and protect the right of crime victims to
achieve justice, to ensure a meaningful role throughout the
criminal and juvenile justice systems for crime victims, and to
ensure that crime victims' rights and interests are respected
and protected by law in a manner no less vigorous than
protections afforded to criminal defendants and juvenile

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delinquents, every victim is entitled to the following rights,
beginning at the time of his or her victimization:

(1) The right to due process and to be treated with
fairness and respect for the victim's dignity.

(2) The right to be free from intimidation, harassment, and
abuse.

(3) The right to be reasonably protected from the accused
and any person acting on behalf of the accused.

(4) The right to have the safety and welfare of the victim
and the victim's family considered when setting bail, including
setting pre-trial release conditions that protect the safety and
welfare of the victim and the victim's family.

(5) The right to prevent the disclosure of information or
records that could be used to locate or harass the victim or the
victim's family, or which could disclose confidential or
privileged information of the victim.

(6) The right to privacy, which includes the right to
refuse an interview, deposition, or other discovery request by
the defense or anyone acting on behalf of the defendant and to
set reasonable conditions on the conduct of any such interaction
to which the victim consents.

(7) A victim shall have the following specific rights upon
request:

a. The right to reasonable, accurate, and timely notice of,
and to be present at, all public proceedings involving the
criminal conduct, including, but not limited to, trial, plea,
sentencing, or adjudication, even if the victim will be a
witness at the proceeding, notwithstanding any rule to the
contrary. A victim shall also be provided reasonable, accurate,

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and timely notice of any release or escape of the defendant or delinquent, and any proceeding during which a right of the victim is implicated.

b. The right to be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated.

c. The right to confer with the state attorney concerning any plea agreements, participation in pre-trial diversion programs, release, restitution, sentencing, or any other disposition of the case.

d. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any pre-sentence investigation or compiling any pre-sentence investigation report, and to have any such information considered in any sentencing recommendations submitted to the court.

e. The right to receive a copy of any pre-sentence report, and any other report or record relevant to the exercise of a victim's right, except for such portions made confidential or exempt by law.

f. The right to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the convicted offender, any scheduled release date of the offender, and the release of or the escape of the offender from custody.

g. The right to be informed of all post-conviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to

Page 3 of 6

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be considered before any release decision is made, and to be notified of any release decision regarding the offender. The parole or early release authority shall extend the right to be heard to any person harmed by the offender.

h. The right to be informed of clemency and expungement procedures, to provide information to the governor, the court, any clemency board, and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made; and to be notified of such decision in advance of any release of the offender.

(8) The rights of the victim, as provided in subparagraph (7)a., subparagraph (7)b., or subparagraph (7)c., that apply to any first appearance proceeding are satisfied by a reasonable attempt by the appropriate agency to notify the victim and convey the victim's views to the court.

(9) The right to the prompt return of the victim's property when no longer needed as evidence in the case.

(10) The right to full and timely restitution in every case and from each convicted offender for all losses suffered, both directly and indirectly, by the victim as a result of the criminal conduct. All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government.

(11) The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings.

a. The state attorney may file a good faith demand for a speedy trial and the trial court shall hold a hearing within

Page 4 of 6

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five days to schedule a trial within fifteen days unless the trial judge enters an order with written findings of fact justifying a trial date more than fifteen days after the hearing.

b. All state-level appeals and collateral attacks on any judgment must be complete within two years from the date of appeal in non-capital cases and five years in capital cases. Each year, the chief judge of any district court of appeal or the chief justice of the supreme court shall report on a case-by-case basis to the speaker of the house of representatives and the president of the senate all cases where the court was unable to comply with this subparagraph and the circumstances causing the delay. The legislature may adopt legislation to implement this subparagraph.

(12) The right to be informed of these rights, and to be informed that victims can seek the advice of an attorney with respect to their rights. This information shall be made available to the general public and provided to all crime victims in the form of a card.

(c) The victim, the retained attorney of the victim, a lawful representative of the victim, or the office of the state attorney upon request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding

Page 5 of 6

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

ceriot-00117-17

201796__

the disposition of a victim's right shall be clearly stated on the record.

(d) The granting of these rights enumerated in this section to victims may not be construed to deny or impair any other rights possessed by victims. The provisions of this section apply throughout criminal and juvenile justice processes are self-executing and do not require implementing legislation.

(e) As used in this section, a "victim" is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term "victim" shall include their lawful representative, the parent or guardian of a minor, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim. The term "victim" does not include the accused. The terms "crime" and "criminal" include delinquent acts and conduct ~~victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.~~

Page 6 of 6

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

January 17, 2018

DELIVERED VIA EMAIL

Florida Constitution Revision Commission
The Capitol
400 S. Monroe Street
Tallahassee, FL 32399

Re: Vote No on Proposal 96, Amending Art. 1, Section 16

Dear Chair Carlton and Declaration of Rights Committee Commissioners:

On behalf of more than 130,000 members and supporters state-wide, the American Civil Liberties Union (ACLU) of Florida submits this testimony in opposition to Proposal 96.



4343 W. Flagler St.
Miami, FL
(786) 363-2700
acluf.org

Kirk Bailey
Political Director

Kara Gross
Legislative Counsel

We are concerned that this well-intended Proposal 96 (also referred to throughout as “Marsy’s Law”) would expand and constitutionally enshrine victims’ rights in a way that would prejudice defendants’ constitutional rights, detrimentally effect prosecutions, and impede public safety, while simultaneously doing very little to advance the goal of making victims whole.

It is an understatement to say that victims of crime are often revictimized in our current criminal justice system that focuses almost exclusively on punishment of perpetrators and pays very little attention to the experience of victims and making victims whole. Nowhere is this more apparent than in context of sexual violence against women and girls, where society too often distrusts the victim’s account of abuse or blames the victim for the abuse (by judging whether her clothing was provocative, her decision to walk home at night alone, her alcohol intake, etc.).

However, Proposal 96 is not the answer to these concerns. It fails to meaningfully address the experience of victims, and will result in diluting the due process protections of the accused and thwarting the discovery process. Consequently, innocent individuals may be wrongfully convicted because they were not able to adequately prepare their defense, and when an innocent individual is wrongfully convicted, a perpetrator remains at-large. Thus, the victim as well as the public will be at greater risk of harm, should this proposal be adopted.

Florida’s constitution currently has strong victims’ rights protections in place and ensures that such rights do not interfere with the rights of the accused. The current constitution respects victims’ rights, while protecting the accused from unwarranted deprivations of liberty. This proposal – expanding victims’ rights at the expense of the rights of the accused – upends critical criminal justice system procedures and protections. The ACLU of Florida is concerned that this will result in less accuracy and less evidence in prosecutions, and more innocent people being locked up, and perpetrators remaining at-large.



Existing Protections for Victims

The majority of the enumerated protections in Proposal 96 already exist in Florida's current constitution, statutes, rules, and caselaw. The proposed provisions that are additional are either unconstitutional, unworkable, or detrimental to defendants' constitutional rights. Additionally, there will be significant increased resource burdens on the State Attorney offices and law enforcement to comply with the provisions in Proposal 96, and if adopted, it will strain already scarce financial resources of our criminal justice system as a whole, including prosecutor, defense, law enforcement, and court budgets.

Article 1, Section 16 of Florida's constitution, entitled the "Rights of Accused and Victims" currently explicitly provides for victims' rights. Specifically, it provides crime victims with "the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, *to the extent that these rights do not interfere with the constitutional rights of the accused.*"

Proposal 96 is troubling because it deletes the requirement ensuring that nothing "interfere with the constitutional rights of the accused." The constitutional rights of the accused should not be interfered with or subjugated. Individuals who are accused of crimes are faced with state-imposed deprivations of their liberties through prison and confinement, and in the State of Florida, even death. For this reason, it is imperative that victims' rights, which are already explicitly protected by our current constitution and state statutes and rules, do not interfere with the constitutional rights of the accused. Proposal 96 deletes this requirement and, if adopted, would be appropriately challenged by defendants who have been prejudiced by the provision, which would be subject to years of litigation – all because, essentially, this provision prejudices the constitutional rights of the accused.

In addition to Florida's explicit constitutional protections for victims, Florida statutes and rules also contain numerous protections for victims, including but not limited to: Chapter 960, Florida Statutes, Victim Assistance (compensation, restitution, victims services, notification, education, speedy trial rights); Chapter 921, Sentencing (victim appearance/hearing at sentencing; victim impact statements at capital sentences); Chapter 944, State Correctional System (victim notification of inmate offender release); Chapter 92 (containing specific evidentiary and confidentiality protections for victims).

Moreover, Florida rules provide additional protections, including but not limited to requiring courts to consider the probability of harm when determining pretrial release (Rule 3.131, Fla. R. Crim. P.). Proposal 96 duplicates the many already existing protections in Florida and thus is unnecessary at best.

Moreover, the numerous articulated rights in Proposal 96 are more appropriately found in statutes and rules that govern procedure. The Constitution should be the doctrine preserved and reserved for governing principles of fundamental rights, and not overtaken by particulars. For example, the Constitution should not be

bogged down and diluted with specific articulations of procedures such as discovery, investigation reports, pre-trial participation, and specifications of the card format that rights should be printed on and provided to victims. The CRC is invested with the great power to make changes to our state's governing doctrine. Regardless of the CRCs position concerning the substance of Marsy's law, Florida's Constitution is not the place for a 1200+ word proposed amendment. Marsy's law is an example of a legislative proposal masquerading as a constitutional amendment. Such legislation is not the type of constitutional change that should be envisioned and put forth by this body.¹

Proposal 96 Threatens Due Process Rights of the Accused, Is Overly Broad and Unworkable in Practice, and Does Little to Compensate Victims and Make Them Whole



The proposal contains several victims' rights provisions that raise constitutional concerns and/or are overly broad and unworkable in practice, including, but not limited to:

- the right to refuse an interview, deposition, or other discovery request by the defense or anyone acting on behalf of the defendant (Subsection (b)(6))
- the right to a speedy trial within 15 days and that all appeals and collateral attacks be completed within two years of appeal. (Subsection (11)(a) and (b)).

These specific rights are an expansion of Florida's current statutes and rules, and raise serious constitutional concerns. Allowing victims to refuse depositions and block information requests is an unconstitutional assault on defendants' due process and confrontation rights guaranteed by the U.S. Constitution.

Proposal 96 threatens these guarantees by giving victims the state constitutional right to "refuse an interview, deposition, or other discovery request of the defense." This conflicts with the federal Constitution's confrontation clause, which requires that defendants be able to confront their accusers in court and obtain relevant statements and evidence about their cases. Moreover, allowing victims to refuse interviews and depositions might actually increase the number of

¹ To illustrate, Proposal 96's sheer length and numerous sections and subsections outlining and duplicating existing victim rights (12 sections, containing 13 subsections, thus over 20 enumerated rights) is at odds with the very nature of Article I, Declaration of Rights, of Florida's Constitution. The entirety of Article I, Declaration of Rights, consisting of twenty-seven sections, is just 2550 words. Proposal 96 amends just one section, Section 16, and the proposal alone is approximately 1200 words, thus this proposal alone adds over 50% more text to the entire Article I of the Constitution.



public hearings at which victims will be required to testify. Many defendants decide to go to trial or to accept a plea deal based on the victim's testimony at a deposition. Depositions provide great insight for all parties and not having depositions will likely result in more defendants going to trial, thus requiring significant state – and especially prosecutorial – resources to be used for trial preparation and the trial itself.

As stated above, the federal Constitution guarantees due process of law to criminal defendants because the state is invested with the authority to deprive individual citizens of their liberties and freedom through confinement and other state imposed penalties. Before the state can deprive someone of their liberties they must be afforded due process of law and other constitutional safeguards to ensure that restrictions on those liberties are not being mistakenly imposed. These constitutional guarantees are necessary to ensure that the state is not depriving innocent individuals of their freedom.

In contrast, victims need to feel safe and be supported emotionally and financially. Proposal 96 does not meaningfully address these goals. If the CRC truly wants to help victims of crime, it should keep the existing Constitutional protections for victims as is, and instead add a provision that the state shall assign to the victim an independent victim advocate/counselor specifically trained in the area of victimization (grief counseling, sexual violence counseling, child abuse, etc.) to support them emotionally and guide them through the criminal justice process, and that such counselor will be compensated by the state, and that the state shall compensate the victim for losses suffered as a result of the criminal conduct (including pain and suffering).

The restitution provision in Section 10 of Proposal 96 does little to truly compensate victims. Victims suffer the moment they are victimized, but convictions can take years, and more often than not the convicted offender does not have adequate resources to compensate victims for their loss. Moreover, any funds that are collected will be redirected away from the Crime Victims Trust Fund, thus defeating the very purpose of helping victims. Additionally, funds will be redirected away from the State Attorney Revenue Trust Fund, the Indigent Criminal Defense Trust Fund, and others, resulting in significant reductions to State Attorney and Public Defender budgets.

As a society, we have determined that crimes are committed against the state, and for that reason, the state prosecutes defendants and penalizes wrongdoers for their criminal conduct. Our criminal justice system is founded on the notion that individuals harmed should not personally seek retribution against those who harmed them (that is the purpose of the civil justice system), but that the state should intervene and mete out justice. Similarly, the state should be responsible for compensating victims and ensuring that victims are made whole. Unlike Proposal 96, requiring the State to provide counseling and support to victims and compensating victims for their loss will help to make victims whole, while not conflicting with and undermining the fundamental rights of the accused as guaranteed by the Florida and U. S. Constitutions.



In addition, the proposal's 15-day speedy trial provision and 2-year appeals completion timeframes are unrealistic. This provision goes further than the other state constitutions that have adopted victim's rights provisions, as the other state constitutions do not appear to contain speedy trial time-frames. Moreover, Florida law already allows for a right to a speedy trial that is clearly laid out in Florida Statute 960.0015, entitled "Victim's right to a speedy trial; speedy trial demand by the state attorney." Requiring the defendant to go to trial within 15 days of demand threatens defendant's due process rights. Additionally, the 2-year appeals completion requirement is also unrealistic given the complexities of the appeals process, and goes further than similar amendments adopted in other states. This provision certainly will result in additional litigation over missed deadlines.

Finally, there are only a select handful of other states that have amended their constitutions to add Marsy's Law protections, and those states have not adopted provisions as broad and sweeping as Proposal 96. Proposal 96 would compel law enforcement, judges, prosecutors, and defense attorneys/defendants to take certain actions as seen fit by the victim, and would give victims standing to bring suit to address violations. Accordingly, it would clog our overburdened criminal justice system, and have immense fiscal and legal consequences. The requirements of the amendment will be costly and time-consuming to implement. They will also create added competition for Florida's scarce judicial resources. Additional funding will be needed for judges, prosecutors, law enforcement, public defenders, and court personnel.

Conclusion:

Survivors and victims of crime are often not treated with the respect and dignity to which they are entitled, but Marsy's Law is not the answer. Updating and expanding services for victims and survivors of crime takes real investment. Proposal 96 does not meaningfully provide the emotional and financial support that victims need. Ultimately, the ACLU of Florida believes that Marsy's Law falls short in meaningfully extending enhanced protections for victims and survivors of crime, and it does so by undermining some of the most fundamental constitutional rights afforded to those the state accuses of a crime.

Thank you for your consideration of the above and we look forward to working with you as this process moves forward. Please do not hesitate to contact me at kbailey@aclufl.org (786) 363-2713 or kgross@aclufl.org (786) 363-4436, if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink that reads "Kirk Bailey".

Kirk Bailey
Political Director

A handwritten signature in black ink that reads "Kara Gross".

Kara Gross
Legislative Counsel



BRAD KING, STATE ATTORNEY
Fifth Judicial Circuit of Florida
Serving Marion, Lake, Citrus, Sumter, Hernando Counties

Chairperson Lisa Carlton
Declaration of Rights Committee
Florida Constitution Revision Commission
The Capitol
400 S. Monroe Street
Tallahassee, FL 32399

Chair Carlson,

By way of introduction, I am the State Attorney of the Fifth Judicial Circuit of Florida. I have been the elected State Attorney for 28 years and have been a prosecutor for 36 years. I apologize for not appearing before the Committee in person, however, given additional responsibilities that I have undertaken in prosecuting capital cases in the 9th Circuit, I find that my time is fairly limited to my primary duties of prosecution.

I have been asked by supporters of P96 by Cerio to express to the Constitutional Revision Commission my thoughts regarding the placement of victim's rights in Florida's Constitution. I will first admit to you that I have not kept closely abreast on the differing versions of this matter, as I have simply found myself without the time to devote to the process.

As a long serving State Attorney, I was asked if I was concerned that the constitutional process of prohibiting depositions of victims would lead to a return of the old preliminary hearings process before a judge as that process existed before our more modern discovery process. Apparently, the thought or argument is that years ago a "deal" was struck that if depositions were allowed in our discovery process, then there would be no need for preliminary hearings. The argument then suggests that if depositions of victims are constitutionally prohibited, then preliminary hearings would be somehow reinstituted. I cannot see that occurring.

The criminal court system as a whole has changed dramatically from the 1970's when these changes to the discovery process were made. We now have audio and video recorded statements of most all victims, as well as other witnesses, which can serve to inform the defense as to the facts in any case. There have also been great advances in the collection and processing of physical evidence and in the recording of many criminal events by private video equipment.

The system itself has evolved in how cases are handled and processed that would nearly preclude the reversion of the system to the old preliminary hearing process. The court system could not currently accommodate a return to the slow and expensive process of having a judge hear and determine probable cause to proceed in every criminal case.

I believe that the rights of victims should be a part of the constitution of our state. It is after all the document that sets forth those most compelling of rights bestowed on our citizens, it is time that we recognize that the rights of victims should not be subordinated to the criminals.

Sincerely,

Brad King
Brad King

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

11/19/18
Meeting Date

916
Proposal Number (if applicable)

*Topic Marsy's Law

Amendment Barcode (if applicable)

*Name Lauren Book

Address 2022 Senate Office Bldg

Phone 305-3361326

Tallahassee Fla 32301
City State Zip

Email _____

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☒ Yes ☐ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18
Meeting Date

Proposal Number (if applicable)

*Topic

Marsy's Law

Amendment Barcode (if applicable)

*Name

Pat Tutthill

Address

1005 E. 7th Ave.

Phone

858 585 6041

Street

Jacksonville

FL

32303

Email

tutthillfoundation@gmail.com

City

State

Zip

*Speaking:

☒

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☐

Yes

☒

No

If yes, who? _____

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/17/18
Meeting Date

96
Proposal Number (if applicable)

*Topic Victim's Rights

Amendment Barcode (if applicable)

*Name Amy Mercer

Address PO Box 14038

Phone 850-219-3631

Tallahassee FL 32317
City State Zip

Email amercer@fpca.com

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☐ No

If yes, who? Florida Police Chiefs Association

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

P 96

Proposal Number (if applicable)

*Topic Rights of Accused + Victims

Amendment Barcode (if applicable)

*Name KARA GROSS

Address 4343 W. FLAGLER ST, SUITE 400

Phone 786-363-4436

Street

MIAMI, FL 33134

City

State

Zip

Email KGROSS@ACLUFL.ORG

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? AMERICAN CIVIL LIBERTIES UNION OF FLORIDA

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

04/19/2018

Meeting Date

Proposal Number (if applicable)

*Topic Marcy's Law

Amendment Barcode (if applicable)

*Name Michael J Liles

Address 94 East 59th Street

Phone 904-655-3733

Jacksonville, FL 32208
City State Zip

Email mjliles@justicecoalition.org

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☐ No

If yes, who? Victims of Violent Crime

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/19/18

Meeting Date

96

Proposal Number (if applicable)

*Topic

96

Amendment Barcode (if applicable)

*Name

HON. STACY A. SCOTT

Address

151 SW 2nd Ave

Phone

352 338 7386

Street

Gainesville

FL

32601

Email

City

State

Zip

*Speaking:

☐

For

☒

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

FLORIDA Public Defender Association

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☒

Yes

☐

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-19-18

Meeting Date

96

Proposal Number (if applicable)

*Topic

Victims Rights

Amendment Barcode (if applicable)

*Name

Hecky Barlow

Address

PO Box 1528

Phone

850 385 5080

Street

Tallahassee

FL

32302

Email

hecky@facdl.org

City

State

Zip

*Speaking:

☐

For

☒

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Florida Assoc. of Criminal Defense Lawyers

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/19/18

Meeting Date

96

Proposal Number (if applicable)

*Topic

Margy's Law

Amendment Barcode (if applicable)

*Name

Ronald Book

Address

104 W. Jefferson St

Phone

850-2243427

Street

TLH

Fla

32301

Email

ronaldbookAA.com

City

State

Zip

*Speaking:

☒

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Lauren's Kids Foundation

Are you a registered lobbyist?

☒

Yes

☐

No

Are you an elected official or judge?

☐

Yes

☒

No

(would like to be last
or close to last)

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

96

Proposal Number (if applicable)

*Topic

Proposal 96

Amendment Barcode (if applicable)

*Name

Paul Cassell

Address

University of Utah College of Law

Phone

Street

Salt Lake City UT

84112

Email

City

State

Zip

*Speaking:



For



Against



Information Only

Waive Speaking:



In Support



Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?



Yes



No

If yes, who?

Are you a registered lobbyist?



Yes



No

Are you an elected official or judge?



Yes



No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

P916

Proposal Number (if applicable)

*Topic Victim's Rights

Amendment Barcode (if applicable)

*Name Scott McCoy

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

City

FL

State

32302

Zip

Email scott.mccoy@splcenter

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Southern Poverty Law Center

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

94

Meeting Date

Proposal Number (if applicable)

*Topic

Victims Rights

Amendment Barcode (if applicable)

*Name

Wansley Walters, former Secretary for Dept Juv Justice

Address

121 N Monroe St #4

Phone

305 333-1449

Street

Tallahassee

FL

32301

Email

WansleyW@gmail.com

City

State

Zip

*Speaking:

☐

For

☐

Against

☐

Information Only

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☐

Yes

☒

No

If yes, who?

Are you a registered lobbyist?

☐

Yes

☒

No

Not to

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

96

Proposal Number (if applicable)

*Topic

Mary's Law

Amendment Barcode (if applicable)

*Name

Bill Herrle

Address

110 E Jefferson St.

Phone

850 681 0416

Street

Tallahassee FL 32301

Email

bill.herrle@ntf.org

City

State

Zip

*Speaking:

☒

For

☐

Against

☐

Information Only

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☐

Yes

☒

No

If yes, who?

Are you a registered lobbyist?

☒

Yes

☐

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

COMMITTEE: Declaration of Rights
ITEM: P 96
FINAL ACTION: Favorable
MEETING DATE: Friday, January 19, 2018
TIME: 8:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building, Tallahassee, Florida

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 64

Relating to: DECLARATION OF RIGHTS, Right of privacy

Introducer(s): Commissioner Rouson

Article/Section affected: Article I, Section 23 – Right of privacy.

Date: December 11, 2017

	REFERENCE	ACTION
1.	DR	Pre-meeting
2.	JU	

I. SUMMARY:

Article I, Section 23 of the Florida Constitution, Florida’s Privacy Clause, protects the fundamental right of fit parents to direct the care, custody, and control of their children free from unreasonable governmental interference. Any law that infringes this right is subject to the highest level of judicial scrutiny and must serve a compelling state interest through the least intrusive means.

The Florida Supreme Court has held that Grandparent visitation statutes, which authorize a court to order visitation with a grandchild over parental objection when in the “best interests of the child,” fail to demonstrate a compelling state interest unless the state acts to prevent demonstrable harm to the child. As a result, grandparents may petition for visitation with a grandchild under very limited circumstances in Florida.

This proposal amends Article I, Section 23, Florida’s Privacy Clause, to provide that the right of privacy may not be construed to limit the right of grandparents to seek visitation with their grandchildren if there is a compelling state interest relating to the best interests of the child. The proposal appears to abrogate the current requirement that demonstrable harm to the child be shown to demonstrate a compelling state interest. Thus, the proposal may increase the circumstances under which a court may order grandparent visitation with a grandchild over the objection of parents.

If approved by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

American jurisprudence has a long history of preserving a fit parents' power over the care, custody, and control of their children. Pursuant to this power parents may raise their children as they see fit, free from unreasonable government interference. Judicial affirmation of such broad parental rights is rooted in the desire to preserve parental autonomy and the presumption that fit parents will act in their child's best interest.¹

However, the evolving structure of the American family has created a friction between these well-established parental rights and the interests of extended family members who maintain, or desire to maintain, a significant relationship with a child over the objection of the child's parents. Nowhere has this emerging conflict been demonstrated more clearly than in the legal landscape of grandparent-grandchild visitation rights. Grandparent visitation rights, established by state statutes in all 50 states, have been challenged on the grounds that they interfere with a parent's constitutional rights. The result of such challenges had led to varied decisions around the country regarding the constitutionality of such statutes and ongoing controversy between supporters of parental rights and advocates for grandparents.²

Development of Grandparent Visitation Rights

The development on nonparent visitation statutes, which allow grandparents to petition courts for the right to visit their grandchildren, begin in the late 1960s.³ Before the passage of these statutes, grandparents – like all other nonparents – had no right to sue for court-ordered visitation with children.⁴ The common law rule against visitation by nonparents sought to preserve parental autonomy, as a value in and of itself, as a means of protecting children and to serve broader social goals:⁵

- Courts historically expressed reluctance to undermine parents' authority by overruling their decisions regarding visitation and by introducing outsiders into the nuclear family.
- Courts presumed that fit parents act in the child's best interests and recognized that conflicts regarding visitation are a source of potential harm to the children involved.
- Common law tradition understood parental authority as the very foundation of social order. Courts generally relied on ties of nature to resolve family disagreements rather than imposing coercive court orders.

The enactment of grandparent visitation statutes responded primarily to two trends: demographic changes in family composition and an increase in the number of older Americans and the concurrent growth of the senior lobby.⁶ Grandparent visitation resonated with the public as well,

¹ *Grandparent Visitation Rights: Interim Report 2009-120*, THE FLORIDA SENATE COMMITTEE ON JUDICIARY (October 2008), available at http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-120ju.pdf.

² Sarah Elizabeth Culley, *Troxel v. Granville and its Effect on the Future of Grandparent Visitation Statutes*; *Legislative Reform*, JOURNAL OF LEGISLATION, Vol. 27:1, at 238, available at <http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1151&context=jleg>.

³ Fla. S. Comm. On Judiciary, SB 368 (2015) Staff Analysis 2 (Mar. 25, 2015), available at <http://flsenate.gov/Session/Bill/2015/368/Analyses/2015s0368.pre.cf.PDF>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

who responded to sentimental images of grandparents in the popular media and the conclusions of social scientists who focused on the importance of intergenerational family ties. During the 1990s, many Americans also focused on drug abuse problems of parents, significant poverty levels, and increasing numbers of out-of-wedlock children. Americans began to look less to traditional social institutions, such as churches, and more toward the legal system as a way to solve family disputes.⁷

By the early 1990s, all states had enacted grandparent visitation laws that expanded grandparents' visitation rights. Today, the statutes generally delineate who may petition the court and under what circumstances and then require the court to determine if visitation is in the child's "best interests."⁸ These statutes have led to a number of constitutional concerns.

Grandparent Visitation Rights under the U.S. Constitution

The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law."⁹ The U.S. Supreme Court has consistently held that the "liberty" protected by the due process clause includes a parents interest in the nurture, upbringing, companionship, care, and custody of their children.¹⁰ In fact, this interest is "perhaps the oldest of the fundamental liberty interests recognized" by the Court.¹¹ Thus, the Court has held that:

So long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.

Under this clear precedent, the U.S. Supreme Court considered the constitutionality of Washington's nonparental visitation statute in *Troxel v. Granville*, 530 U.S. 57 (2000). The Washington nonparental visitation statute permitted any person to petition a court for visitation rights with a minor child at any time, and authorized a court to grant such visitation rights whenever "visitation may be in the best interests of the child."¹² Pursuant to the statute, paternal grandparents

⁷ *Id.* at 3.

⁸ Although there is no standard definition of "best interests of the child," the term generally refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child. "Best interests" determinations are generally made by considering a number of factors related to the child's circumstances and the parent or caregiver's circumstances and capacity to parent, with the child's ultimate safety and well-being the paramount concern. See U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, *Determining the Best Interests of the Child*, available at https://www.childwelfare.gov/pubPDFs/best_interest.pdf.

⁹ U.S. CONST. amend. XIV

¹⁰ See e.g., *Meyer v. Nebraska*, 262 U.S. 390 (1923) (holding that the liberty protected by the Due Process Clause includes the rights of parents to establish a home and bring up children and to control the education of their own); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (holding that the liberty of parents and guardians includes the right to direct the upbringing and education of children under their control); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (stating that "the history and culture of Western Civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); *Quillon v. Walcott*, 434 U.S. 246 (1978) (stating that the court has recognized on numerous occasions that the relationship between parent and child is constitutionally protected).

¹¹ *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

¹² *Id.* at 60.

petitioned to expand visitation rights with their deceased son's children after the children's biological mother (who had remarried) reduced visitation from every weekend to once a month.

In holding that the statute unconstitutionally infringed on the mother's fundamental parental rights as applied, the Court noted that the statute was "breathtakingly broad" and subjected any decision by a parent concerning visitation of their children to state-court review:¹³

The Washington Statute places the best-interest determination solely in the hands of the judge. Should the judge disagree with the parent's estimation of the child's best interests, the judge's view necessarily prevails. Thus, in practical effect, in the State of Washington a court can disregard and overturn any decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge's determination of the child's best interests.¹⁴

The Court determined that no consideration had been given to the mother's decision regarding visitation nor was there any allegation she was an unfit parent. Further, the court noted that no weight had been given to the fact the mother had assented to some visitation.¹⁵ The Court explained that the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a "better" decision could be made.¹⁶

However, the court explicitly refrained from deciding whether the Due Process Clause requires *all* nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation, stating:

Because much state-court adjudication in this context occurs on a case-by-case basis, we would be hesitant to hold that specific nonparental visitation statutes violate the Due Process Clause as a *per se* matter.¹⁷

Post-*Troxel*, debate continues in state courts regarding grandparent visitation due, in part, to the lack of clear guidance from the U.S. Supreme Court. Florida, however, has consistently construed its Constitution to require a showing of harm or potential harm to the child as a condition of granting grandparent visitation over parental objection. This standard has proved fatal to most grandparent visitation statutes enacted in the state.

¹³ *Id.* at 67.

¹⁴ *Id.*

¹⁵ *Id.* at 71.

¹⁶ *Id.* at 72.

¹⁷ *Id.* at 73-74.

Grandparent Visitation Rights under the Florida Constitution

Development of Grandparent Visitation Rights in Florida

Prior to 1978, Florida law afforded grandparents no avenue through which to seek visitation of their grandchildren if the child's parents opposed the visitation.¹⁸ That year, the Florida legislature amended s. 61.13, F.S.,¹⁹ to allow a court to award grandparent visitation as part of a dissolution of marriage proceeding, as well s. 68.08, F.S., in circumstances involving the death or desertion of a parent.²⁰ However, in practice, the change did not produce the intended effect because Florida courts ruled that grandparents, for the most part, did not have standing to petition for visitation because they were not parties to the divorce proceeding.²¹ Essentially grandparents had to interject themselves into the divorce proceedings in order to petition for visitation.²²

Grandparent visitation rights expanded significantly in Florida in 1984 when the Florida Legislature enacted stand-alone visitation relief for grandparents, ch. 752, F.S., entitled "Grandparental Visitation Rights." Chapter 752, F.S., gave grandparents standing to petition the court for visitation in certain situations. At its broadest, s. 752.01(1), F.S., required visitation to be granted when the court determined it to be in the "best interests of the child" and one of the following situations existed:

- One or both of the child's parents were deceased;
- The parents were divorced;
- One parent had deserted the child;
- The child was born out of wedlock; or
- One or both parents, who were still married, had prohibited the formation of a relationship between the child and the grandparent(s).²³

In 1993, the Florida Legislature further amended ch. 61, F.S., adding a provision that awarded reasonable grandparent visitation in a dissolution of marriage proceeding if the court found that the visitation would be in the child's best interest.

In the ensuing years, the Florida Supreme Court has struck down all the grandparent visitation provisions in ch. 61, F.S., and almost all the provisions in ch. 752, F.S., as unconstitutional under Article I, Section 23 of the Florida Constitution, the Right of Privacy.²⁴

Grandparent Visitation Statutes and Article I, Section 23-Right of Privacy

In *Beagle v. Beagle*, 678 So. 2d 1271 (Fla. 1996), the Court held s. 752.01(1)(e), F.S., which authorized grandparent visitation over the objection of a child's intact family if visitation was in

¹⁸ See *Parker v. Gates*, 103 So. 126 (Fla. 1925).

¹⁹ Chapter 61, F.S., governs dissolution of marriage and parental responsibility for minor children.

²⁰ Ch. 78-5, Laws of Fla.

²¹ See e.g. *Shuler v. Shuler*, 371 So. 2d 588 (Fla. 1st DCA 1979).

²² *Supra* note 1, at 2.

²³ See ch. 93-279, Laws of Fla. (s. 752.01, F.S. (1993)). Subsequent amendments by the Legislature removed most of these criteria.

²⁴ See *Beagle v. Beagle*, 678 So. 2d 1271 (Fla. 1996)(striking down visitation where married parents prohibited formation of relationship); *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998)(striking down visitation where one parent deceased); *Saul v. Brunetti*, 753 So. 2d 26 (Fla. 2000)(striking down visitation where child born out of wedlock); *Richardson v. Richardson*, 766 So. 2d 1036 (Fla. 2000)(striking down custodial rights of grandparents in custody or dissolution of marriage proceedings); *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004)(striking down request of grandparental visitation in paternity suit).

the “best interests of the child”, facially unconstitutional under Article I, Section 23 of the Florida Constitution.

The Court recognized the fundamental liberty interest of parents in determining the care and upbringing of their children free from the heavy hand of government paternalism, and declared that such fundamental interest is specifically protected by Article I, Section 23 of the Florida Constitution.²⁵ The Court announced the standard of review applicable when deciding whether a state’s intrusion into a citizen’s private life is constitutional:

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least restrictive means.²⁶

The Court found that the imposition by the state of grandparental visitation rights implicates a parent’s privacy rights under Article I, Section 23 of the Florida Constitution. Based upon Article I, Section 23, the Court held that the State may not intrude upon a parent’s fundamental right to raise their children except in cases where child is threatened with harm, and any best interest test without such requirement does not demonstrate a compelling state interest.²⁷

Two years later, in *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998), the Court struck down s. 752.01(1)(a), which permitted visitation when one or both parents were deceased, on the same grounds. The Court explained the inherent problem with utilizing a best interest analysis as the basis for government interference in the private lives of a family, rather than requiring a showing of demonstrable harm to the child:

It permits the State to substitute its own views regarding how a child should be raised for those of the parent. It involves the judiciary in second-guessing parental decisions. It allows a court to impose "its own notion of the children's best interests over the shared opinion of these parents, stripping them of their right to control in parenting decisions."²⁸

The Court acknowledged that there may be many beneficial relationships for a child, but firmly held that it is not for the government to decide with whom the child builds those relationships.²⁹ In fact, the court found it “irrelevant to the constitutional analysis that it might in many instances be ‘better’ or ‘desirable’ for a child to maintain contact with a grandparent.”³⁰ The unassailable proposition, according to the Court, is that “otherwise fit parents ... who have neither abused,

²⁵ *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996).

²⁶ *Id.* at 1276.

²⁷ *Id.*

²⁸ *Von Eiff v. Azicri*, 720 So. 2d 510, 516 (Fla. 1998)

²⁹ *Id.*

³⁰ *Id.*

neglected, or abandoned their child, have a reasonable expectation that the state will not interfere with their decision to exclude or limit the grandparents' visitation.”³¹

The Court has also struck down two provisions in ch. 61, F.S., which granted grandparents custodial rights in custody or dissolution of marriage proceedings, on the same grounds.³² In *Richardson v. Richardson*, 766 So. 2d 1036 (Fla. 2000), the Court recognized that when a custody dispute is between two fit parents, it is proper to use the best interests of the child standard. However, when the dispute is between a fit parent and a third party, there must be a showing of detrimental harm to the child in order for custody to be denied to the parent.³³ The Court held that s. 61.13(7), F.S., “is unconstitutional on its face because it equates grandparents with natural parents and permits courts to determine custody disputes utilizing solely the “best interest of the child” standard without first determining detriment to the child.”³⁴ The Court found this statutory provision to be even more intrusive on a parent’s right to raise his or her child than the grandparent visitation statute in ch. 752, F.S.³⁵

Nevertheless, Grandparents have been successful in enforcing visitation orders established in other states.³⁶ The Florida Supreme Court recently held that the Full Faith and Credit Clause of the United States Constitution requires enforcement of another state’s judgment ordering grandparent visitation with minor children despite the fact that a similar order by a Florida court would be may be prohibited under Article I, Section 23.³⁷

Current Florida Grandparent Visitation Rights

The Florida Supreme Court’s vigilant protection of childrearing autonomy under Article I, Section 23 of the Florida Constitution still provides avenues for grandparent visitation under Florida law. Primarily, in accordance with *Ledoux-Nottingham v. Downs*³⁸, Florida courts will enforce another state’s judgment ordering grandparent visitation with minor children despite the fact entry of a similar judgment by a Florida Court under the same circumstances may be prohibited by the Florida Constitution.³⁹

Additionally, in 2015, the Florida Legislature substantially revised ch. 752, F.S., relating to grandparent visitation. The revision repealed grandparent visitation provisions declared unconstitutional by the Florida Supreme Court and crafted a new limited Florida grandparent visitation statute within the framework provided by the controlling case law.⁴⁰

Currently, under s. 752.011, F.S., a grandparent⁴¹ may petition a Florida court for visitation with a minor grandchild if:

³¹ *Id.* at 515.

³² See *Richardson v. Richardson*, 766 So. 2d 1036 (Fla. 2000); *Sullivan v. Sapp* 866 So. 2d 28 (Fla. 2004).

³³ *Richardson v. Richardson*, 766 So. 2d 1036, 1039 (Fla. 2000).

³⁴ *Id.* at 1043.

³⁵ *Id.* at 1040.

³⁶ See *Ledoux-Nottingham v. Downs*, 210 So. 3d 1217 (Fla. 2017).

³⁷ *Id.* at 1223.

³⁸ 210 So. 3d 1217 (Fla. 2017).

³⁹ *Id.* at 1223.

⁴⁰ Ch. 2015-134, Laws of Fla.

⁴¹ The term “grandparent” includes great-grandparents. s. 752.001(1), F.S.

- Both parents of the child are deceased, missing,⁴² or in a persistent vegetative state⁴³; or
- One parent of the child is deceased, missing, or in a persistent vegetative state and the other parent has been convicted of a felony offense of violence evincing behavior that poses a substantial threat of harm to the minor child's health or welfare.

The grandparent must make a preliminary showing that the remaining parent is unfit or that there has been significant harm to the child; and if made, the court must direct the family to mediation and move toward a final hearing.⁴⁴ The court may award a grandparent reasonable visitation with a minor grandchild if the court finds by clear and convincing evidence that a parent is unfit or that there is significant harm to the child, that visitation is in the best interest of the minor child, and that the visitation will not materially harm the parent-child relationship.⁴⁵

In assessing the "best interests of the child", the court must consider the totality of the circumstances affecting the mental and emotional well-being of the minor child, including:⁴⁶

- The love affection, and other emotional ties existing between the minor child and the grandparent;
- The length and quality of the previous relationship between the child and the grandparent;
- Whether the grandparent established ongoing personal contact with the child prior to the death, vegetative state, or disappearance of the parent;
- The reasons cited by the surviving parent to end contact or visitation;
- Whether there has been significant and demonstrable mental or emotional harm to the minor child as a result of the disruption in the family unit, whether the child derived support and stability from the grandparent, and whether the continuation of such support and stability is likely to prevent further harm;
- The existence or threat to the child of mental injury;
- The present mental, physical, and emotional health of the child and the grandparent;
- The recommendations of the child's guardian ad litem, if one is appointed;
- The results of any psychological evaluation of the child;
- The preference of the child;
- A written testamentary statement by the deceased parent regarding visitation with the grandparent (absence of such a statement is not evidence of an objection to grandparent visitation); and
- Such other factors as the court considers necessary in making its determination.

⁴² "Missing" means having whereabouts which are unknown for a period of at least 90 days and not being able to be located after a diligent search and inquiry. Such search and inquiry for a missing person must include, at a minimum, inquiries of all relatives of the person who can reasonably be identified by the petitioner, inquiries of hospitals in the areas where the person last resided, inquiries of the person's recent employers, inquiries of state and federal agencies likely to have information about the person, inquiries of appropriate utility and postal providers, a thorough search of at least one electronic database specifically designed for locating persons, and inquiries of appropriate law enforcement agencies. s. 752.001(2), F.S.

⁴³ "Persistent vegetative state" means a permanent and irreversible condition of unconsciousness in which there is the absence of voluntary action or cognitive behavior of any kind; and an inability to communicate or interact purposefully with the environment. s. 765.101(15), F.S.

⁴⁴ s. 752.011, (1)-(2), F.S.

⁴⁵ s. 752.011(3), F.S.

⁴⁶ s. 752.011(4), F.S.

In determining material harm to the parent-child relationship, the court must consider the totality of the circumstances affecting the parent-child relationship, including:⁴⁷

- Whether there have been previous disputes between the grandparent and the parent over childrearing or other matters related to the care and upbringing of the child;
- Whether visitation would interfere with or compromise parental authority;
- Whether visitation can be arranged in a manner that does not detract from the parent-child relationship, including the quantity of time available for enjoyment of the parent-child relationship, and any other consideration related to disruption of the schedule and routines of the parent and the minor child;
- Whether visitation is being sought for the primary purpose of continuing or establishing a relationship with the child with the intent that the child benefit from the relationship;
- Whether the requested visitation would expose the child to conduct, moral standards, experiences, or other factors that are inconsistent with influences provided by the parent;
- The nature of the relationship between the parent and the grandparent;
- The reasons that the parent made the decision to end contact or visitation between the child and the grandparent which was previously allowed by the parent;
- The psychological toll of visitation disputes on the child; and
- Such other factors as the court considers necessary in making its determination.

An order granting grandparent visitation may be modified if a substantial change of circumstances has occurred and the modification is in the best interest of the child.⁴⁸ A stepparent or close relative who adopts the minor child may also petition the court to terminate an order granting visitation that was in place before the adoption.⁴⁹ The court may terminate the order unless the grandparent shows that the criteria authorizing visitation continue to be satisfied.⁵⁰

A grandparent may only file an action for visitation once in a two-year period, unless a real, substantial, and unanticipated change of circumstances has occurred relating to the mental or emotional harm caused by the parental decision to deny visitation between the minor and grandparent.⁵¹

Florida appellate courts have not yet considered the constitutionality of this new limited grandparent visitation statute.⁵² Thus it is currently a valid mechanism to award grandparent visitation.

B. EFFECT OF PROPOSED CHANGES:

This proposal amends Article I, Section 23, Florida's Privacy Clause, to provide that the right of privacy may not be construed to limit the right of grandparents to seek visitation with their grandchildren if there is a compelling state interest relating to the best interests of the child. The proposal appears to abrogate the current requirement that demonstrable harm to the child be shown

⁴⁷ s. 752.011(5), F.S.

⁴⁸ s. 752.011(8), F.S.

⁴⁹ s. 752.071, F.S.

⁵⁰ *Id.*

⁵¹ s. 752.011(9), F.S.

⁵² See *Ledoux-Nottingham v. Downs*, 210 So. 3d 1217, FN 3 (Fla. 2017) (stating "We have not considered the constitutionality of the current limited grandparent visitation provision, section 752.011, Florida Statutes (2015)).

to demonstrate a compelling state interest. Thus, the proposal may increase the circumstances under which a court may order grandparent visitation with a grandchild over the objection of parents.

If approved by the voters, the proposal will take effect on January 8, 2019.⁵³

C. FISCAL IMPACT:

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

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

It is unclear if the proposal is intended to relate to the “right to seek visitation”, which implicates procedural rights, or the “right to visitation” which would implicate substantive rights.

D. Related Issues:

None.

⁵³ See Article XI, Sec. 5(e) of the Florida Constitution (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

By Commissioner Rouson

rousond-00050-17

201764__

A proposal to amend

Section 23 of Article I of the State Constitution to specify that the right of privacy may not be construed to limit a grandparent's right to seek visitation of his or her grandchildren under certain circumstances.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 23 of Article I of the State Constitution is amended to read:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 23. Right of privacy.—Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law. This section shall not be construed to limit a grandparent's right to seek visitation of his or her grandchildren when a compelling state interest exists relating to the best interest of the child.

January 17, 2018

DELIVERED VIA EMAIL

Florida Constitution Revision Commission
The Capitol
400 S. Monroe Street
Tallahassee, FL 32399

Re: Vote No on Proposal 64, Amending Art. 1, Section 23

Dear Chair Carlton and Declaration of Rights Committee Commissioners:

On behalf of more than 130,000 members and supporters state-wide, the American Civil Liberties Union (ACLU) of Florida submits this testimony urging the Constitution Revision Commission to Vote No on Proposal 64, which attempts to make exceptions to Florida's Right of Privacy for grandparent visitation rights.



4343 W. Flagler St.
Miami, FL
(786) 363-2700
acluf.org

Kirk Bailey
Political Director

We oppose this proposal because it seeks to carve out an exception allowing for government intrusion into an aspect of a person's private life. We oppose any limitations on our Constitutional right to privacy. It is a dangerous and slippery slope to expand government intrusion into our privacy rights, particularly to enshrine such carve-outs into our Constitution, regardless of whether the intent is to help well-meaning and loving grandparents, or others.

Right of Privacy – Article I, Section 23

We urge the Commission to reject Proposal 64, which seeks to add the underlined sentence to our privacy clause:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law. This section shall not be construed to limit a grandparent's right to seek visitation of his or her grandchildren when a compelling state interest exists relating to the best interest of the child.

Art. I, Section 23, Florida Constitution, as amended by Proposal 64.

Background

Florida's Constitution currently broadly protects Floridians from government intrusion into all aspects of a person's "private life." With respect to parental rights, Florida courts have held that Florida's Privacy Clause protects the fundamental right of fit parents to direct the care, custody, and control of their



children free from unreasonable government interference, and that any law that infringes on this right is subject to the highest level of judicial scrutiny.¹

The Florida Supreme Court held that various grandparent visitation statutes were unconstitutional when they interfered with the paramount privacy rights of parents. Specifically, the Florida Supreme Court held that a grandparent visitation statute, which authorized a court to order grandparent visitation over parental objections when “in the best interests of the child,” unconstitutionally failed to demonstrate a compelling state interest. The Court reasoned that in order to demonstrate a compelling state interest to override parental objections, the state must show that it is acting to prevent “demonstrable harm to the child.”² Proposal 64 seeks to abrogate the current requirement that “demonstrable harm to the child be shown,” and instead allow for a lesser “best interest standard,” which will increase the circumstances upon which government can intrude into a parent’s private life. Moreover, lowering the standard from “demonstrable harm” to “best interests” would open the floodgates to litigation.

Proposal 64 Allows for Expanded Government Intrusion into our Private Lives and Raises Equal Protection Concerns

Proposal 64 will have the effect of increasing the circumstances under which a court may constitutionally order grandparent visitation over the objection of parents.³ Accordingly, Proposal 64 increases the circumstances upon which government may interfere with a person’s private life, and for this reason, the ACLU of Florida opposes Proposal 64.

The ACLU of Florida strongly believes that making carve outs to our privacy clause will result in chipping away at our privacy protections. In addition, it raises equal protection concerns regarding differential treatment for certain classes of persons – grandparents, and not for other similarly situated caregivers, like aunts, uncles, boyfriends, best friends, godparents.

Conclusion

Given our current climate of threats to the full spectrum of our privacy rights, Floridians need our broad and independent constitutional privacy protections now more than ever. In order to preserve Florida’s broad fundamental privacy protections for all Floridians, we urge you to Vote No on Proposal 64.

¹ Constitution Revision Commission, Declaration of Rights Committee Proposal Analysis (Dec. 11, 2017), at 1.

² *Id.*

³ *Id.*

Please do not hesitate to contact me at (786) 363-2713 or kbailey@aclufl.org if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink that reads "Kirk Bailey". The signature is written in a cursive, slightly slanted style.

Kirk Bailey
Political Director



CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

Meeting Date

Proposal Number (if applicable)

*Topic

Grandparent Right

Amendment Barcode (if applicable)

*Name

Sparky "Barbara" Spurlock

Address

10 Hamlet Cir

Phone (858) 212-8444

Street

Ormond Beach 71 32174

Email

City

State

Zip

*Speaking:

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For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

AGA

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

Murder/Suicide

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18
(Meeting Date)

64
Proposal Number (if applicable)

*Topic Right of Privacy

Amendment Barcode (if applicable)

*Name James Karl

Address 125 SW 11th Ave
Street

Phone 239 898 5255

Marco Island FL 34955
City State Zip

Email jkarl@johson.com

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? AGA International

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/2018
Meeting Date

CRC Am. 64
Proposal Number (if applicable)

*Topic CRC Am. 64

Amendment Barcode (if applicable)

*Name Philip Wartenberg

Address 202 S. Rome Ave #100

Phone 813.223.5351

Tampa FL 33606
City State Zip

Email pwartenberg@usn.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☐ No

If yes, who? Florida Bar Family Law Section

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

P 64

Proposal Number (if applicable)

*Topic AMENDING RIGHT OF PRIVACY

Amendment Barcode (if applicable)

*Name KARA GROSS

Address 4343 W. FLAGLER ST, SUITE 400

Phone 786-363-4436

Street

MIAMI, FL 33134

Email KGROSS@ACLUFL.ORG

City

State

Zip

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? ACLU OF FLORIDA

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

JAN 19, 2018

Meeting Date

64

Proposal Number (if applicable)

*Topic

Grandparental Rights #64

Amendment Barcode (if applicable)

*Name

Sharon Oliver

Address

2347 Off Shore Ct.

Phone

904-551-8530

Street

Fernandina Beach, FL 32034

Email

sharon-oliver@proton.net

City

State

Zip

*Speaking:

☒ For

☐ Against

☐ Information Only

Waive Speaking:

☐ In Support

☐ Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☐ Yes

☒ No

If yes, who?

Are you a registered lobbyist?

☐ Yes

☒ No

Are you an elected official or judge?

☐ Yes

☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

Meeting Date _____

Proposal Number (if applicable) _____

*Topic GRAND Parents Right

Amendment Barcode (if applicable) _____

*Name DAVID STERLING

Address 2115 JACKSON BLUFF RD

Phone 850.556.0905

Street

TH

City

FL

State

Zip

Email _____

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Becky GRIFFIN a grandparent

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18
Meeting Date

64
Proposal Number (if applicable)

*Topic #64 ACA (Crabpotter Visitation)

*Name MARGARET WRIGHT

Amendment Barcode (if applicable)

Address 500 Brookwood
Street

Phone 334-821-8859

Auburn, AL 36830
City State Zip

Email _____

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

COMMITTEE: Declaration of Rights
ITEM: P 64
FINAL ACTION: Unfavorable
MEETING DATE: Friday, January 19, 2018
TIME: 8:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building, Tallahassee, Florida

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 73

Relating to: DECLARATION OF RIGHTS, Prosecution for crime; offenses committed by children

Introducer(s): Commissioner Cox

Article/Section affected: Article I, Section 15.

Date: January 18, 2018

	REFERENCE	ACTION
1.	DR	Pre-meeting
2.	EX	

I. SUMMARY:

Article I, Section 15(b) of the Florida Constitution authorizes the Florida Legislature to charge violations of law committed by juveniles as an act of delinquency rather than a crime. Pursuant to this power, the Florida Legislature has established a system of juvenile justice wherein juveniles charged with a crime may be adjudicated delinquent and receive criminal sanctions in the juvenile justice system rather than as an adult.

However, a juvenile has the right to be treated as a juvenile delinquent only to the extent provided by the Legislature, and the Florida Legislature has authorized the prosecution of juveniles in adult court for certain law violations. There are several mechanisms by which juveniles may be transferred from the juvenile justice system for adult prosecution including:

- Voluntary Waiver (does not require court approval if waiver is voluntary);
- Grand Jury Indictment (does not require court approval);
- Judicial Waiver (requires court approval);
- Direct File by a State Attorney (Discretionary or Mandatory)(does not require court approval);

The proposal requires state attorneys to petition the circuit court for approval if he or she decides to pursue prosecution of a child as an adult in a criminal court rather than in juvenile court. The court must consider the differences between children and adults in determining whether to approve the transfer request. In essence, the proposal requires a judicial waiver process for all transfers from juvenile court to adult court, abrogating transfer by direct file, voluntary waiver, and grand jury indictment.

If approved by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019. The proposal is silent with regard to retroactivity or applicability to pending cases.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

At common law, juvenile criminal offenders were treated the same as adult criminal offenders. In the late 19th and early 20th centuries, recognizing that children were different from adults in terms of criminal culpability and needs, every state moved to establish a separate system of justice, commonly known today as juvenile justice systems. Juvenile justice systems treat crimes committed by juveniles as delinquent acts with the goal of diverting youth from potentially harsher punishments in criminal courts and encouraging rehabilitation based on the juvenile's individual needs.

Article I, Section 15(b) of the Florida Constitution authorizes the Legislature to establish a system of juvenile justice in Florida wherein children,¹ as defined by the Legislature, may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Pursuant to this power, the Legislature has established a comprehensive juvenile justice system governed by the provisions of ch. 985, F.S. However, a juvenile charged in the juvenile justice system has a constitutional right to be tried in an appropriate court as an adult if a demand is made prior to an adjudicatory hearing in the juvenile court.

Of greatest constitutional import, as noted in *State v. Cain*, 381 So.2d 1361 (Fla. 1980), a juvenile has the right to be treated as a juvenile delinquent *only* to the extent provided by the Legislature, and in some circumstances the Legislature has authorized the treatment of juvenile criminal offenders as adults. Under such circumstances, a juvenile criminal offender may be transferred to adult court for prosecution.

History of the Juvenile Justice System

Generally

Prior to the the 20th Century, juvenile criminal offenders were generally treated the same as adult criminal offenders.² America's juvenile justice system emerged in the late 1890s in response to dissatisfaction with a criminal court system that detained, tried, and punished children in the same manner as adults.³ Early juvenile law generally grew from citizen concern for children who, lacking parental control, discipline, and supervision, were coming before the criminal court for truancy, begging, homelessness, and petty criminal activity.⁴ Several states recognized the need for the government and courts to step in for the absent parent and control the behavior of children that, although not illegal, was considered undesirable by society.⁵

In 1899, Illinois created the first statewide system of juvenile courts through the Cook County Circuit Court with jurisdiction over cases of dependency, neglect, and delinquency. It took several

¹ "Child" has been defined by the Legislature as any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years. s. 985.03(7), F.S.

² Except that children age 6 and younger could not be held liable for their actions, but all others were not distinguished from adults. See NATIONAL CONFERENCE OF STATE LEGISLATURES, *Adolescent Development & Competency: Juvenile Justice Guide Book for Legislators*, <http://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf> (last visited January 17, 2018).

³ William W. Booth, "History and Philosophy of the Juvenile Court," *Florida Juvenile Law and Practice*, THE FLORIDA BAR, § 1.6: Origins of Concept, (14th ed.).

⁴ *Id.*

⁵ *Id.*

decades for every state to enact legislation establishing a juvenile justice system, but by the mid-1900s, it had become widely accepted that children were inherently different from adults and should not be subject to the harsh treatment of the criminal justice system.⁶ By 1945, juvenile court legislation had been enacted by all states and for use in the federal courts.⁷

Early juvenile courts implemented benevolent and paternalistic policies. The mere existence of the courts represented the belief that children should not be held solely and fully responsible for their actions. Instead, the courts acted to protect children and to maintain their best interests. The underlying goal of juvenile courts was to rehabilitate offenders through individualized justice, with the ultimate belief that children have greater capacity for rehabilitation. Dispositions reflected the preference for treatment over punitive measures. Juveniles rarely were transferred to criminal courts, although that option was possible.⁸

Development in Florida

In Florida, the Florida Constitution of 1885 embodied for the first time public concern about the separation of juveniles and adults in the criminal justice context. Article XIII, Section 2 of the 1885 Constitution provided:

A State Prison shall be established and maintained in such manner as may be prescribed by law. ***Provision may be made by law for the establishment and maintenance of a house of refuge for juvenile offenders***; and the Legislature shall have power to establish a home and work-house for common vagrants.

However, the Florida Constitution of 1885 did not create juvenile courts, instead vesting jurisdiction in other courts to try alleged law violators without regard to age. In 1911, the Legislature attempted to create a juvenile court through the use of county judges acting in an ex officio capacity in limited cases – those involving behavior problems of children that *did not* constitute law violations.⁹ It was not until 1914, after an amendment to the 1885 Constitution, that separate juvenile courts were created.¹⁰ However, the 1914 amendment did not affect the constitutional allocation of criminal jurisdiction, and thus neither the juvenile jurisdiction of the county court nor the jurisdiction of the separate juvenile court included cases of children accused of law violations.¹¹

In 1950, the Florida Constitution was amended to define violations of law committed by children as “acts of delinquency” rather than as crimes. Article I, Section 15(b), delegated to the Florida Legislature the power to define which children would be subject to the jurisdiction of the court.¹² The Florida Juvenile Court Act of 1951 gave to the juvenile court exclusive original jurisdiction of proceedings in which a child was alleged to be dependent or delinquent. The principal effect

⁶ *Supra* note 2.

⁷ *Supra* note 3.

⁸ *Supra* note 2.

⁹ William W. Booth, “History and Philosophy of the Juvenile Court,” Florida Juvenile Law and Practice, THE FLORIDA BAR, § 1.7: In General, (14th ed.).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

was to give to the juvenile court authority to hear all types of children's cases, including law violations, entirely outside of the adult system. The juvenile court's philosophy and purpose were, in part, "to protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of children who violate the laws..."¹³

Shift in Focus of Juvenile Justice Systems

Public sentiment regarding juvenile crime shifted drastically beginning in the 1980s due to rising crime rates, especially for homicides.¹⁴ The increase in juvenile crime, accompanied by heightened media attention, prompted a shift from a sympathetic view of juveniles. Rehabilitative policies were considered inadequate due to high recidivism rates, and some serious offenders were viewed as unreceptive to treatment-oriented sentences.

Consequently, more punitive criminal justice policies began to replace rehabilitative goals, and the transfer of juveniles to adult courts became more common. Several states lowered the age at which juveniles could be within criminal court jurisdiction; many states eased the methods for transferring juveniles; and some states expanded the list of offenses for which a transfer is possible.¹⁵

In Florida, high-profile juvenile gun homicides gave impetus to many of the get-tough reforms in the Florida Juvenile Justice system during the 1990s. The 1994 Juvenile Justice Act¹⁶ broadened the ability of state attorneys to direct file juveniles to adult court, and was further expanded in 2000 to mandate adult sentencing for some children as young as 14.¹⁷

Juvenile Transfers to Adult Court

Virtually every state has created processes in which juveniles can be transferred to adult court. While these processes vary, the National Conference of State Legislatures generally categorizes such processes into three groups:¹⁸

- Judicial Waiver (Judicially Controlled Transfer) - Judicial waiver laws allow juvenile courts to waive jurisdiction to adult court on a case-by-case basis. Cases in judicial waiver jurisdictions are originally filed in juvenile court, but may be transferred to adult court after the court holds a waiver hearing and finds the transfer is appropriate using statutory standards.¹⁹
- Mandatory Direct File (Statutory Exclusion) - Mandatory direct file laws grant adult courts exclusive jurisdiction over certain categories of cases involving juveniles. If a case falls

¹³ Section 39.20, F.S. (1951).

¹⁴ *Supra* note 2.

¹⁵ *Id.*

¹⁶ Ch. 94-249, Laws of Fla.

¹⁷ Ch. 2000-119, Laws of Fla.

¹⁸ *Infra* note 23.

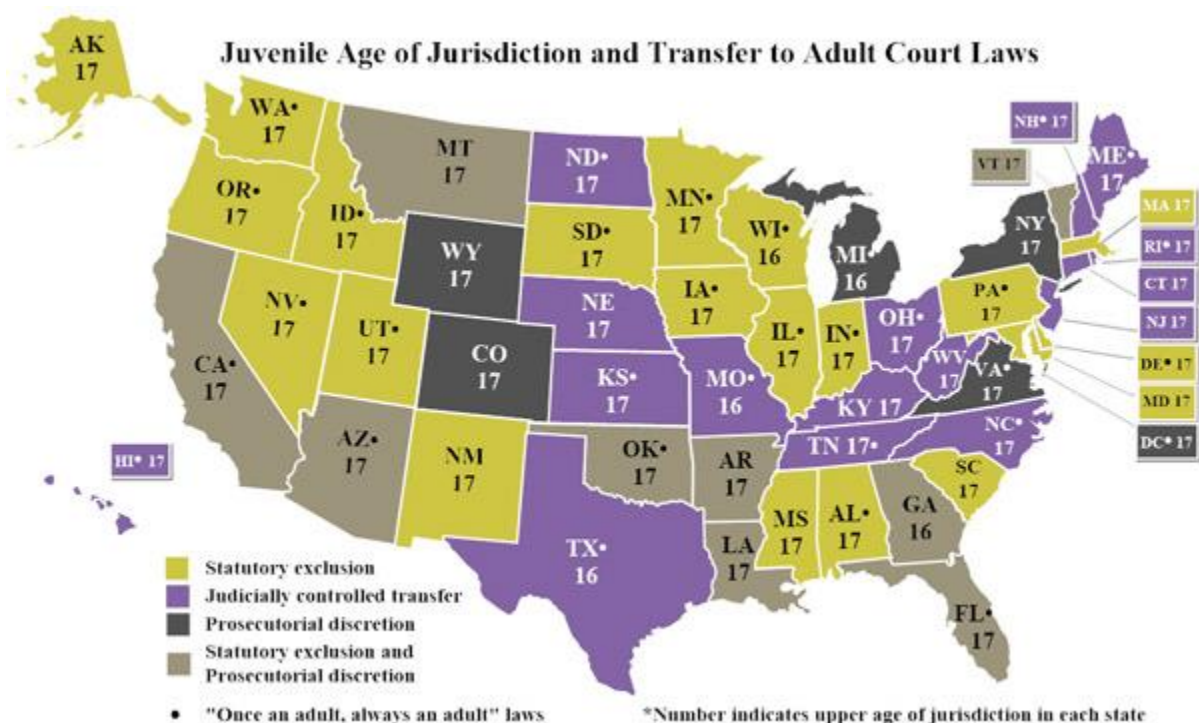
¹⁹ States that utilize judicial waiver solely include: Connecticut; Hawaii; Kansas; Kentucky; Maine; Missouri; Nebraska; New Hampshire; New Jersey; North Carolina; North Dakota; Ohio; Rhode Island; Tennessee; Texas; and West Virginia.

within a statutory exclusion category, it must be filed in adult court. Murder and serious violent felony cases are most commonly "excluded" from juvenile court.²⁰

- Discretionary Direct File (Prosecutorial Discretion Transfer) - Discretionary direct file laws allow the prosecutor to bring a case into adult court without a waiver hearing. The filing of these cases is entirely entrusted to the prosecutor and may or may not have any statutorily articulated standards that the prosecutor has to use in making their decision.²¹

Jurisdictions may combine or use any of the transfer methods exclusively. Additionally, many states also have one or more of the following:

- "Once an adult, always an adult" policies, which require a juvenile's case to be transferred to adult court if the juvenile has had a prior case transferred to adult court;
- Reverse waiver hearings, which allow a juvenile to petition for a transfer of their case back to juvenile court;²² and
- Blended sentencing laws, which allow adult courts to impose juvenile sanctions and vice versa.



Source: National Conference of State Legislatures²³

²⁰ States that utilize statutory exclusion solely include: Alabama; Alaska; Delaware; Idaho; Illinois; Indiana; Iowa; Maryland; Massachusetts; Minnesota; Mississippi; Nevada; New Mexico; Oregon; Pennsylvania; South Carolina; South Dakota; Utah; Washington; and Wisconsin.

²¹ Jurisdictions that utilize prosecutorial discretion solely include: Colorado; Michigan; New York; Virginia; Washington, D.C.; and Wyoming.

²² States that provide for reverse waiver hearings include: Arizona; Arkansas; California; Colorado; Connecticut; Delaware; Georgia; Iowa; Kentucky; Maryland; Mississippi; Montana; Nebraska; Nevada; New York; Oklahoma; Oregon; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; Wisconsin; and Wyoming.

²³ Anne Teigen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NATIONAL CONFERENCE OF STATE LEGISLATURES, Apr. 17, 2017, available at <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx> (last visited Jan. 15, 2018).

Florida Transfer Process

In Florida, there are several methods for transferring a child to adult court for prosecution:

- Voluntary waiver;
- Judicial waiver;
- Indictment by a grand jury; or
- Direct filing an information, commonly known as “direct file.”

This section provides a detailed description of each transfer method.

Voluntary Waiver (1.5% of annual transfers²⁴)

Pursuant to Article I, Section 15(b) of the Florida Constitution, a juvenile *of any age* charged as a delinquent has the right to be tried in an adult court upon his or her demand if the request is made prior to the commencement of the adjudicatory hearing in the juvenile court. The juvenile may voluntarily request a transfer for a variety of reasons, including to avail themselves of procedural rights which are unavailable in the juvenile court, such as a jury trial. Section 985.556(1), F.S., requires the juvenile court to transfer and certify the child’s criminal case for trial as an adult pursuant to his or her voluntary exercise of this right.

A juvenile transferred to adult court for prosecution pursuant to a voluntary waiver and found to have committed the charged offense, or a lesser included offense, is thereafter treated as an adult for any subsequent violation of law unless the court imposed juvenile sanctions.

Indictment (.5% of annual transfers)

Section 985.56, F.S., provides that a juvenile *of any age* who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment is returned on the charge by a grand jury. If the grand jury returns an indictment on the charge, the juvenile must be transferred to adult court and treated as an adult in every respect.²⁵

The decision to seek indictment rests entirely with the state attorney. If the juvenile is found to have committed the offense, the court must sentence the juvenile as an adult.²⁶ If the juvenile is found not to have committed the indictable offense, but is found to have committed a lesser included offense or any other offense for which he or she was indicted as part of the criminal episode, the court may sentence the juvenile as an adult, as a youthful offenders, or as a juvenile.²⁷ Over the past 5 years, there has been an average of 7 such transfers each year.²⁸

²⁴ This percentage represents the total of voluntary and judicial waivers combined.

²⁵ s. 985.56(1), F.S. The charge punishable by death or life imprisonment must be transferred, as well as all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or life imprisonment.

²⁶ s. 985.565(4)(a)1., F.S.

²⁷ *Id.*

²⁸ Department of Juvenile Justice, Agency Analysis of 2017-2018 CRC Proposal 73, p. 2 (Nov. 20, 2017)(on file with Declaration of Rights Committee)

Judicial Waiver (1.5% of annual transfers²⁹)

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis for juveniles **14 years of age or older** at the request of a state attorney. Section 985.556, F.S., provides for two types of waiver requests by state attorneys: discretionary and mandatory.

- Involuntary Discretionary Waiver – A state may file a motion requesting that the juvenile court transfer any case where the juvenile is 14 years of age or older;³⁰ and
- Involuntary Mandatory Waiver – A state attorney must request the transfer of a juvenile 14 years of age or older if the juvenile was:
 - Previously adjudicated delinquent for a specified felony and he or she is currently charged with a second or subsequent violent crime against a person; or
 - 14 years of age or older at the time of commission of a fourth or subsequent felony offense and he or she was previously adjudicated delinquent or had adjudication withheld for three felony offenses, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person.³¹

If the state attorney files a motion to transfer a juvenile to adult court, the court must hold a hearing to determine whether the juvenile should be transferred.³² The court must consider a variety of statutorily articulated factors when determining whether transfer is appropriate (e.g., the seriousness of the offense, the sophistication and maturity of the juvenile, the record and previous history of the juvenile, whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner, etc.).³³ The court must also provide an order specifying the reasons for its decision to impose adult sanctions.³⁴

If a juvenile transferred to adult court pursuant to a voluntary or involuntary discretionary waiver is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.³⁵ If the transfer was pursuant to an involuntary mandatory waiver, the court must impose adult sanctions.³⁶

Direct File (98% of annual transfers)

While judicial waiver and indictment are both available transfer tools, they are rarely used as s. 985.557, F.S., provides a state attorney with the power to directly file certain cases in adult court without the necessity of judicial approval or grand jury indictment. Direct file accounts for 98% of the juvenile cases transferred to adult court. “Discretionary direct file” is generally the most controversial of the transfer processes.

- *Discretionary Direct File* – Section 985.557(1), F.S., establishes Florida’s discretionary direct file method. This subsection *permits* a state attorney to file an information on certain juveniles’ cases in adult court, without a judicial waiver hearing, when, in the state

²⁹ This percentage represents the total of voluntary and judicial waivers combined.

³⁰ s. 985.556(2), F.S.

³¹ s. 985.556(3), F.S.

³² s. 985.556(4), F.S.

³³ s. 985.556(4)(c), F.S.

³⁴ s. 985.556(4)(e), F.S.

³⁵ s. 985.565(4)(a)2., F.S.

³⁶ s. 985.565(4)(a)3., F.S.

attorney's judgment, the public interest requires that adult sanctions be imposed. Specifically, a state attorney may file an information³⁷ in adult court when a juvenile who is:

- **14 or 15 years old** is charged with one of the following felony offenses:
 - Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; specified burglary of a dwelling or structure; burglary with an assault or battery; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft; possessing or discharging any weapon or firearm on school property; home invasion robbery; carjacking; grand theft of a motor vehicle; or grand theft of a motor vehicle valued at \$20,000 or more if the child has a previous adjudication for grand theft of a motor vehicle.³⁸
- **16 or 17 years old** is charged with any felony offense;³⁹ and
- **16 or 17 years old** is charged with any misdemeanor, provided the juvenile has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which is a felony.⁴⁰

Current law does not provide any standards that a state attorney must consider or use when determining whether to file a juvenile's case in adult court pursuant to the discretionary direct file power.

If a juvenile transferred to adult court pursuant to the discretionary direct file process is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.⁴¹

- **Mandatory Direct File** - Section 985.557(2), F.S., establishes Florida's mandatory direct file method. The subsection *requires* that a state attorney file a juvenile's case in adult court when a juvenile who is:
 - **16 or 17 years old** at the time of the alleged offense:
 - Has been previously adjudicated delinquent for an enumerated felony⁴² and is currently charged with a second or subsequent violent crime against a person;

³⁷ An "information" is the charging document that initiates prosecution. Any information filed pursuant to the direct file statute may include all charges that are based on the same act, criminal episode, or transaction as the primary offenses. s. 985.557(3), F.S.

³⁸ s. 985.557(1)(a), F.S.

³⁹ s. 985.557(1)(b), F.S.

⁴⁰ *Id.*

⁴¹ s. 985.565(4)(a)2. and (b), F.S.

⁴² The enumerated felonies listed in this subsection include the commission of, attempt to commit, or conspiracy to commit: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; or aggravated assault.

- Is currently charged with a forcible felony⁴³ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other;⁴⁴ or
- Is charged with committing or attempting to commit an offense enumerated in s. 775.087(2)(a)1.a.-q., F.S.,⁴⁵ and, during the commission of the offense, actually possessed or discharged a firearm or destructive device.⁴⁶
- **Any age** who is alleged to have committed an act that involves stealing a vehicle where the juvenile caused serious bodily injury or death to a person who was not involved in the underlying offense while possessing the vehicle.⁴⁷

The court has discretion to sentence a child transferred to adult court by mandatory direct file as an adult, a youthful offender, or a juvenile if:

- The child was 16 or 17 years old at the time of the offense, the charged offense is listed in s. 775.087(2)(a)1.a.-p., F.S., and during the commission of the offense the child actually possessed or discharged a firearm or destructive device; or
- The charged offense involves stealing a vehicle in which the child, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.⁴⁸

The court must impose adult sanctions on a child transferred to adult court by mandatory direct file who was 16 or 17 years old at the time of the offense and:

- Is charged with committing a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony; or
- Is charged with committing a forcible felony and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other.⁴⁹

Imposition of Adult or Juvenile Sanctions in Adult Court

As noted above, unless specifically required to sentence a transferred child as an adult, judges have discretion to impose adult or juvenile sanctions under certain circumstances. In such instances, the

⁴³ Section 776.08, F.S., defines “forcible felony” to mean treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

⁴⁴ Section 985.557(2)(b), F.S., also states that this paragraph does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

⁴⁵ This list includes: murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1), F.S.

⁴⁶ The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

⁴⁷ s. 985.557(2)(c), F.S.

⁴⁸ s. 985.565(4)(a)2., F.S.

⁴⁹ s. 985.565(4)(a)3., F.S.

judge must consider a number of statutorily enumerated factors in determining whether adult or juvenile sanctions are appropriate for the child. Such factors include:

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;⁵⁰
- The sophistication and maturity of the offender;
- The record and previous history of the offender;
- The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to DJJ services and facilities;
- Whether DJJ has appropriate programs, facilities, and services immediately available; and
- Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than juvenile sanctions.⁵¹

A pre-sentence investigation report (PSI) is prepared by the Department of Corrections (DOC) regarding the suitability of a juvenile for disposition as an adult or juvenile to assist the judge in his sentencing determination.⁵² The PSI report must include a comments section prepared by DJJ, with its recommendations as to disposition.⁵³ The court must give all parties⁵⁴ present at the disposition hearing an opportunity to comment on the issue of sentence and any proposed rehabilitative plan, and may receive and consider any other relevant and material evidence.⁵⁵

If the court imposes juvenile sanctions, the court must adjudge the child to have committed a delinquent act.⁵⁶ Upon adjudicating a child delinquent, the court may:

- Place the juvenile in a probation program under the supervision of DJJ for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court;
- Commit the juvenile to DJJ for treatment in an appropriate program for an indeterminate period of time until the child is 21 or sooner if discharged by DJJ;⁵⁷ or
- Order, if the court determines not to impose youthful offender or adult sanctions, any of the following:⁵⁸
 - Probation and post commitment probation or community service under s. 985.435, F.S.;
 - Restitution under s. 985.437, F.S.;

⁵⁰ Greater weight is given to offenses against persons, especially if personal injury resulted.

⁵¹ s. 985.565(1)(b), F.S.

⁵² s. 985.565(3), F.S. This report requirement may be waived by the offender.

⁵³ *Id.*

⁵⁴ This includes the parent, guardian, or legal custodian of the offender; the offender's counsel; the State; representatives of DOC and DJJ; the victim or victim's representative; representatives of the school system; and LEOs involved in the case.

⁵⁵ *Id.* Other relevant evidence may include other reports, written or oral, in its effort to determine the action to be taken with regard to the child. This evidence may be relied upon by the court to the extent of its probative value even if the evidence would not be competent in an adjudicatory hearing.

⁵⁶ s. 985.565(4)(b), F.S. Adjudication of delinquency is not deemed a conviction, nor does it operate to impose any of the civil disabilities ordinarily resulting from a conviction.

⁵⁷ DJJ must notify the court of its intent to discharge the juvenile from the commitment program no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

⁵⁸ s. 985.565(4)(b), F.S.

- Violation of probation or post commitment probation under s. 985.439, F.S.;
- Commitment under s. 985.441, F.S.;
- Work program liability and remuneration under s. 985.45, F.S.; and
- Other dispositions under s. 985.455, F.S.

In cases in which the court has imposed juvenile sanctions, if DJJ determines that the sanction is unsuitable for the juvenile, DJJ must return custody of the juvenile to the sentencing court for further proceedings, including the imposition of adult sanctions.⁵⁹

Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or list the criteria used as any basis for its decision to impose adult sanctions.⁶⁰

A court may not sentence a child to a combination of adult and juvenile sanctions.⁶¹

Effect of Transferring a Child to Adult Court on Contemporaneous or Subsequent Law Violations

If a child transferred to adult court is found to have committed the offense, or a lesser included offense, the child must thereafter be treated as an adult in all respects for any subsequent law violations.⁶² The court must also immediately transfer and certify all unresolved⁶³ felony cases pertaining to the child to adult court for prosecution.⁶⁴

Florida Transfer Statistics

Since FY 12-13, there has been a significant reduction (-31 percent) in children transferred to adult court, as well as a significant reduction in the overall incidence of juvenile arrests (-24%).⁶⁵ The most recent fiscal year data available, FY 16-17, shows there were a total of 1,101 youth statewide that were transferred to adult court, mostly for felony offenses (98%).⁶⁶ The majority of transferred youth were 17 years of age or older (67%) and overwhelming male (96%).⁶⁷ The ten most common offenses that resulted in youth being transferred to adult court in FY 16-17 included:⁶⁸

- Burglary (247 youth, 22%⁶⁹)
- Armed Robbery (227, 21%)
- Aggravated Assault/Battery (154, 14%)

⁵⁹ *Id.* DJJ also has recourse if the judge imposes a juvenile sanction and the child proves not to be suitable to the sanction. In such instances, DJJ must provide the sentencing court a written report outlining the basis for its objections to the juvenile sanction and schedule a hearing. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any adult sanction it may have originally lawfully imposed. s. 985.565(4)(c), F.S.

⁶⁰ s. 985.565(4)(a)4., F.S.

⁶¹ *Id.*

⁶² ss. 985.556(5), 985.56(4), and 985.557(3), F.S. This provision does not apply if the adult court imposes juvenile sanctions under s. 985.565, F.S.

⁶³ Unresolved cases include those which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not been made. s. 985.557(3), F.S.

⁶⁴ ss. 985.556(5), 985.56(4), and 985.557(3), F.S.

⁶⁵ Department of Juvenile Justice Delinquency Profile 2017, <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last visited Jan. 15, 2018).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ All percentages rounded to the next whole number.

- Weapon/Firearm (96, 9%)
- Murder/Manslaughter (55, 5%)
- Felony Drug (48, 4%)
- Auto Theft (43, 4%)
- Sexual Battery (36, 3%)
- Attempted Murder/Manslaughter (34, 3%)
- Other Robbery (28, 3%)

Additional DJJ statistical data relating to the transfer of youth to adult court is provided in **Appendix “A.”**

Recent Public Policy Debates Related to Juvenile Transfers to Adult Court

In recent years, public policy debates have emerged regarding the appropriateness of adult prosecution of juveniles due to their emotional and developmental differences from adults as well as the breadth of prosecutorial discretion to pursue cases against juveniles in adult court.

Opponents of juvenile transfers point to a body of research which shows that adolescent brains are not fully developed until about age 25, and the immature, emotional, and impulsive nature that is characteristic of adolescents makes them more susceptible to commit crimes.⁷⁰ Some studies have shown that juveniles who do commit crimes or otherwise engage in socially deviant behavior are not necessarily destined to be criminals as adults.⁷¹

Relying on similar types of studies, the U.S. Supreme Court in recent years has found in multiple cases that the differences between children and adults require separate consideration and treatment under the law. In *Roper v. Simmons*, 543 U.S. 551 (2005), in which the court prohibited the execution of any person for a crime committed before age 18, the court pointed out that juveniles’ susceptibility to immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible as that of an adult. The Court also found that because juveniles are still struggling to define their identity, it is less supportable to conclude that even the commission of a heinous crime is evidence of an irretrievably depraved character. The Supreme Court would go on to prohibit mandatory life sentences without the possibility of parole for juvenile offenders⁷² and prohibit life imprisonment without parole for non-homicide offenses⁷³ based on similar concerns in subsequent cases and the recognition of the diminished culpability of juveniles as compared to adults.

Recent Legislative Efforts

In each of the past five years, legislation has been filed that attempted to modify Florida’s direct file system.⁷⁴ While there were variations in each years’ bills, the bills generally attempted to:

- Repeal mandatory direct file;

⁷⁰ *Supra* note 2.

⁷¹ *Supra* note 2.

⁷² *Miller v. Alabama*, 567 U.S. 460 (2012).

⁷³ *Graham v. Florida*, 560 U.S. 48 (2010).

⁷⁴ SB 392 (2018), SB 192 (2017), HB 129 (2016), SB 314 (2016), HB 195 (2015), HB 783 (2015), SB 980 (2014), SB 280 (2013).

- Establish statutory criteria for use by state attorneys when deciding whether to exercise the discretion to transfer a case to adult court;
- Require a state attorney to file a written explanation with the court as to why transfer was appropriate; and
- Create a reverse waiver process.

Prior to 2011, state attorneys were required to develop written policies to govern discretionary direct file determinations.⁷⁵ These policies had to be submitted to the Governor, Senate, and House of Representatives annually. In 2011, this requirement was repealed by the Legislature.⁷⁶

B. EFFECT OF PROPOSED CHANGES:

The proposal requires that state attorneys petition the circuit court for approval if the state attorney “decides to pursue prosecution” of a child as an adult in criminal court rather than in juvenile court. This provision appears to require a judicial waiver process for all juvenile transfers to adult court, abrogating transfer by voluntary waiver, grand jury indictment or discretionary direct file. It is unclear if mandatory direct file is affected by the proposal as state attorneys have no discretion to “decide to pursue prosecution” in cases that are subject to mandatory direct file unless they do not pursue charges at all.

The proposal also requires that the circuit court consider the differences in the development of adults and children in determining whether to approve a state attorney’s petition to prosecute a child as an adult in criminal court. It is unclear if factors specified in the current judicial waiver process satisfy this requirement, or if courts must rely on the type of medical, psychological, or other similar research considered by the U.S. Supreme Court in the *Roper*, *Graham*, and *Miller* cases.

If approved by the voters, the proposal will take effect on January 8, 2019.⁷⁷ The proposal is silent with regard to retroactivity or applicability to pending cases.

See “*Technical Deficiencies*” for additional discussion of proposal impacts.

C. FISCAL IMPACT:

If passage of the proposal results in the reduction of youth who are transferred to adult court, it could be expected that at least a portion of such youth would be served by the Department of Juvenile Justice (DJJ) instead of the Department of Corrections. To the extent this shift of juveniles to the juvenile justice system occurs, the proposal will likely result in a negative prison bed impact on the Department of Corrections and a positive residential bed impact on DJJ.

⁷⁵ See s. 985.557(4), F.S. (2010).

⁷⁶ Ch. 2011-200, Laws of Fla.

⁷⁷ See FLA. CONST. ART XI, S. 5(E) (1968) (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

DJJ estimates that such youth would likely be served through secure detention, commitment to a residential program, and/or community probation, all which would have a fiscal impact to DJJ.⁷⁸ Local governments, which are partially responsible for the funding of local detention centers, may also be impacted by the retention of such youth who would likely spend time in secure detention.⁷⁹

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

The proposal repeals the current constitutional provision relating to the juvenile justice system and replaces it with the language of the proposal. Article I, Section 15(b), the current constitutional provision governing the juvenile justice system, provides:

“When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Any child so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law.”

Unless the current language of Article I, Section 15(b) is retained in conjunction with the proposed amendment, there no longer appears to be an organic source for the creation of a juvenile justice system. In other words, the proposal would repeal the Legislature’s authority to create a juvenile justice system and to define children that may be treated as juvenile delinquents. The meaning of the term “child” would be subject to judicial interpretation.

The repeal of the current language also removes a child’s right to demand adult prosecution instead of prosecution in juvenile court, thereby availing themselves of procedural rights, such as the right to a trial by jury, which are unavailable in the juvenile court. This may implicate the child’s right to due process.

Additionally, the proposal provides that the state attorney must petition “the circuit court” to try a child (however defined) in adult court, but does not specify whether the petition

⁷⁸ *Supra* note 28.

⁷⁹ *Supra* note 28.

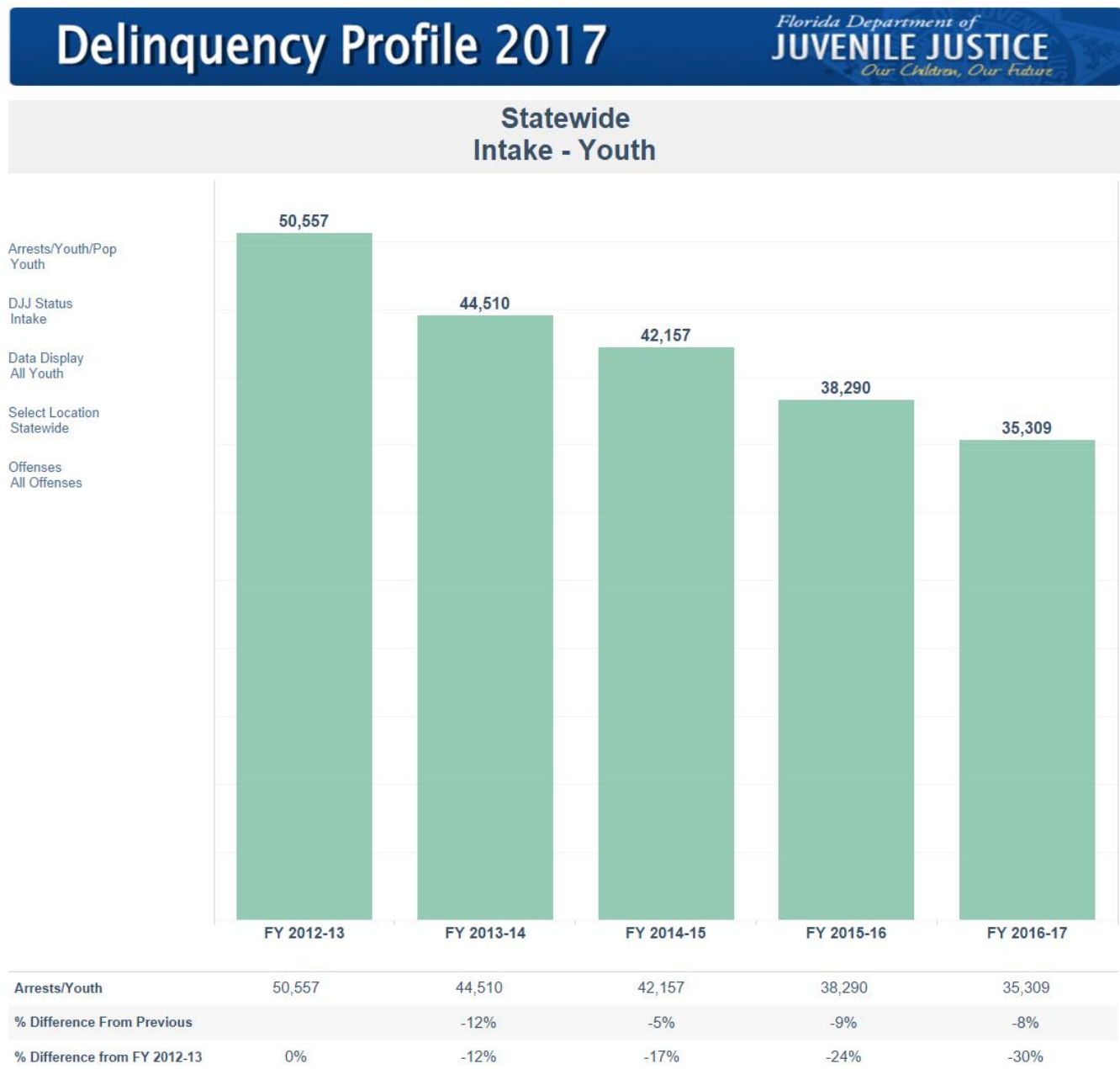
must be filed in the juvenile division or the adult criminal division. Thus, it is unclear whether the proposal contemplates a waiver process (state attorney files in the juvenile division and transferred to adult court) or a reverse waiver process (state attorney may file in the adult criminal division, but court may transfer to juvenile division).

D. Related Issues:

None.

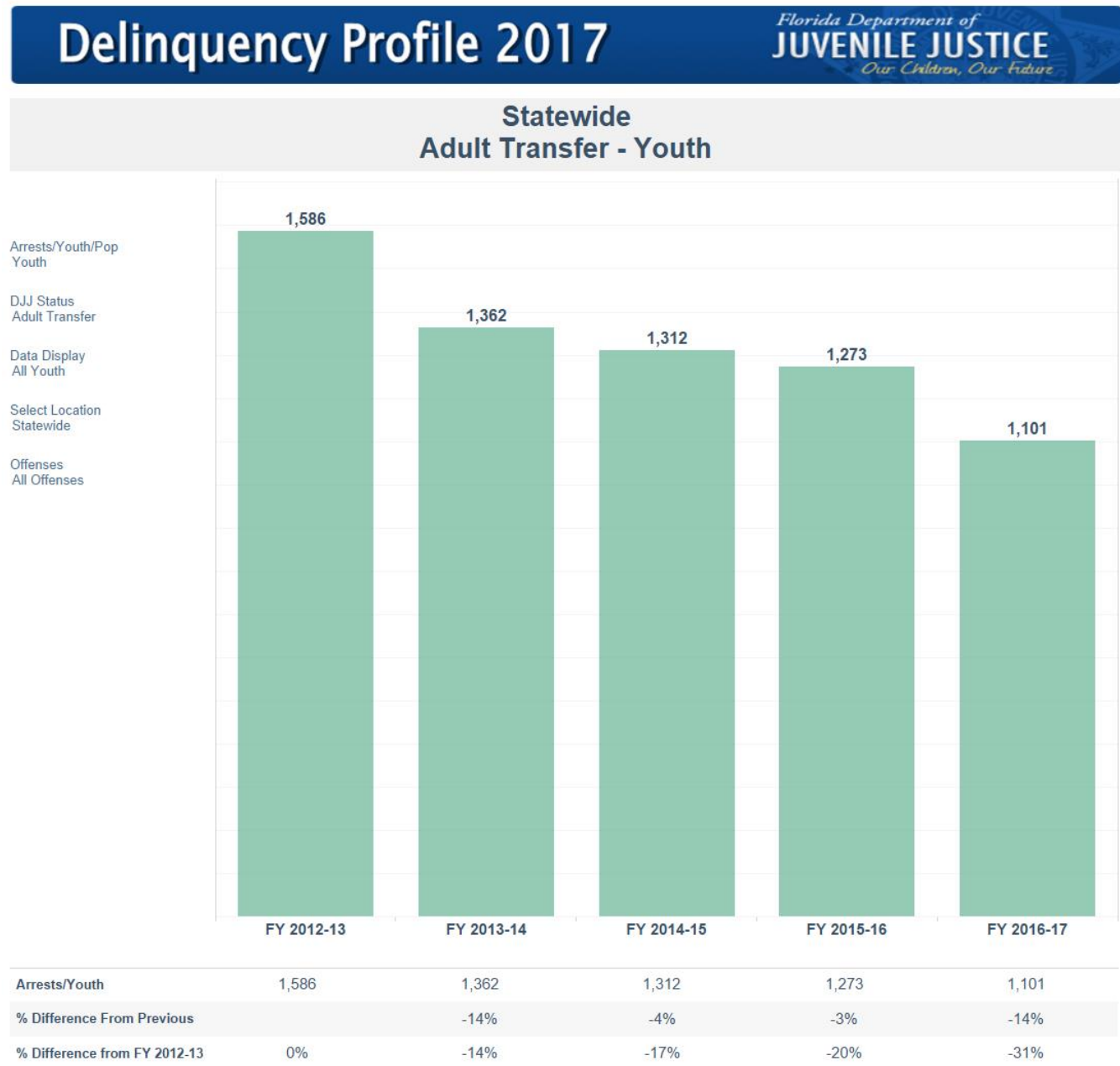
Appendix "A"

Fig. 1



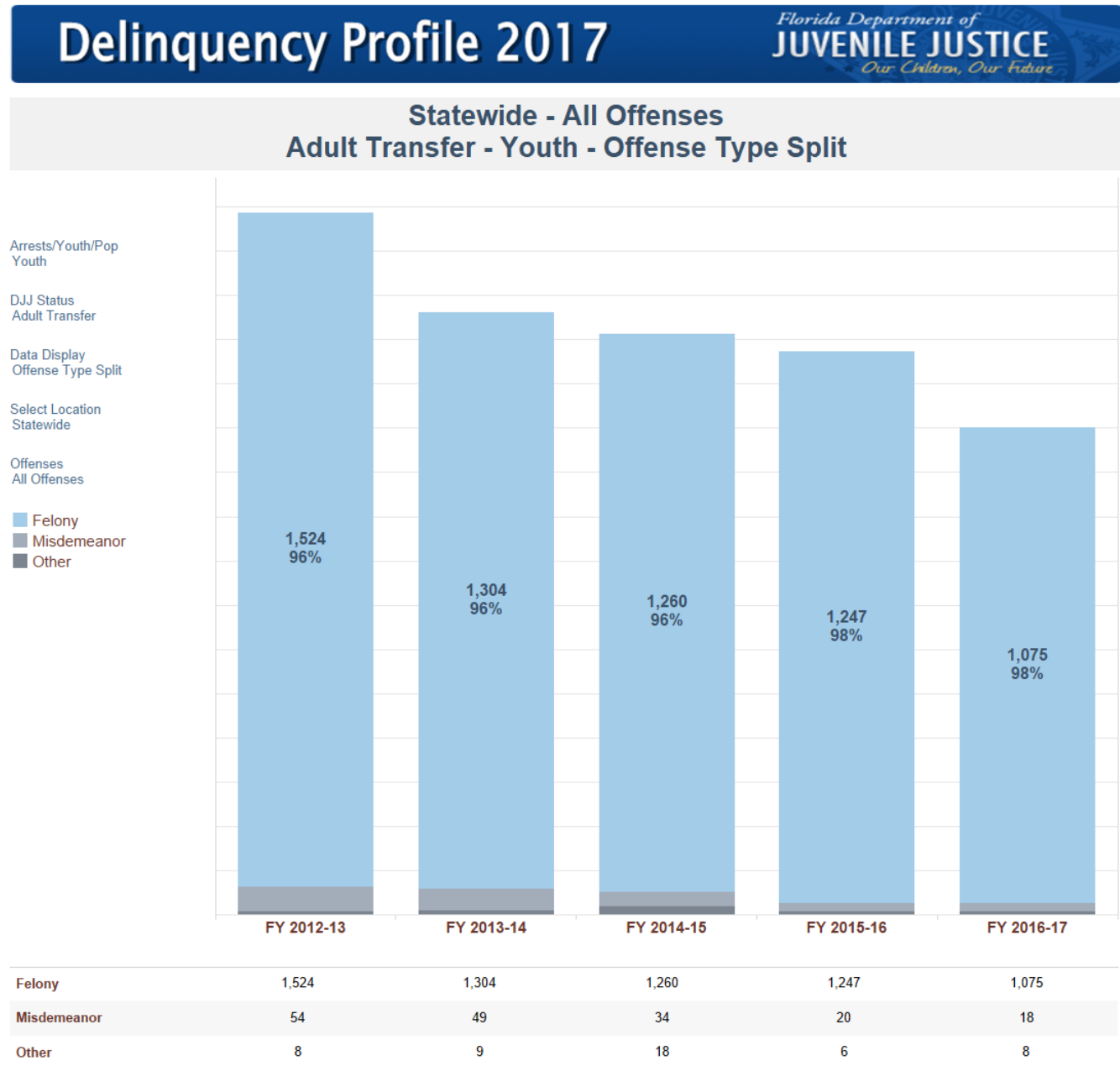
This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

Fig 2.



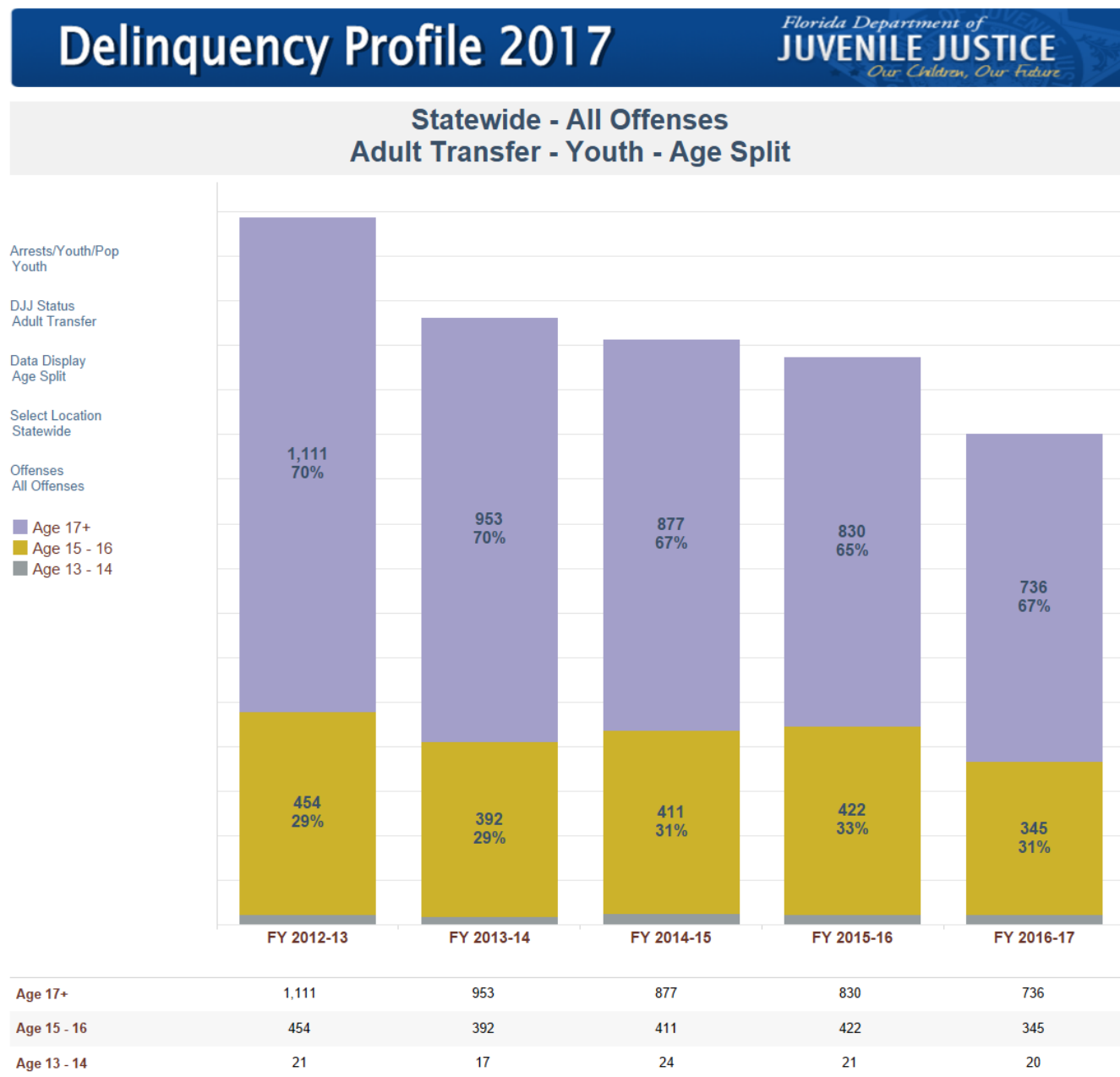
This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

Fig. 3



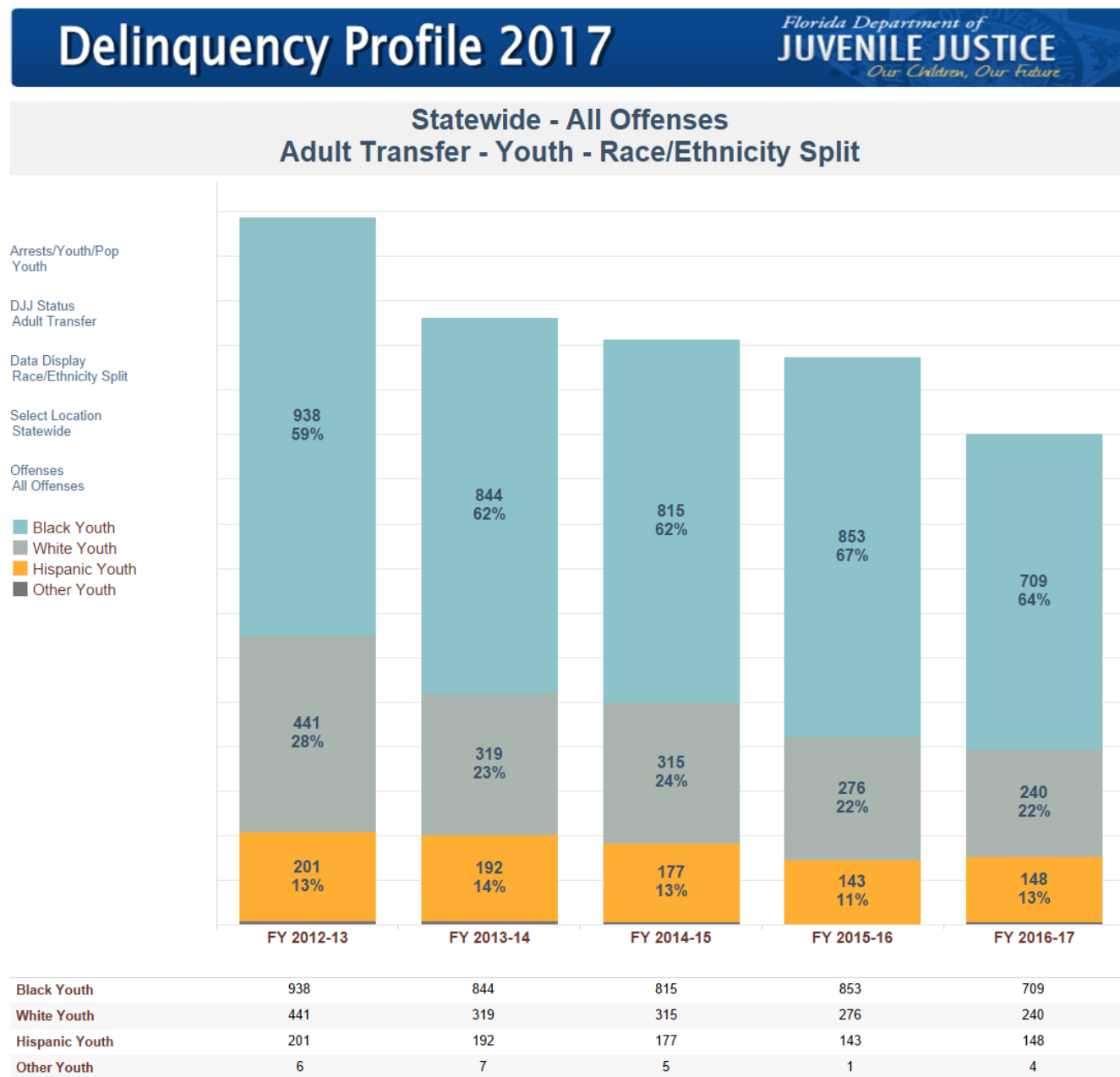
This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

Fig. 4



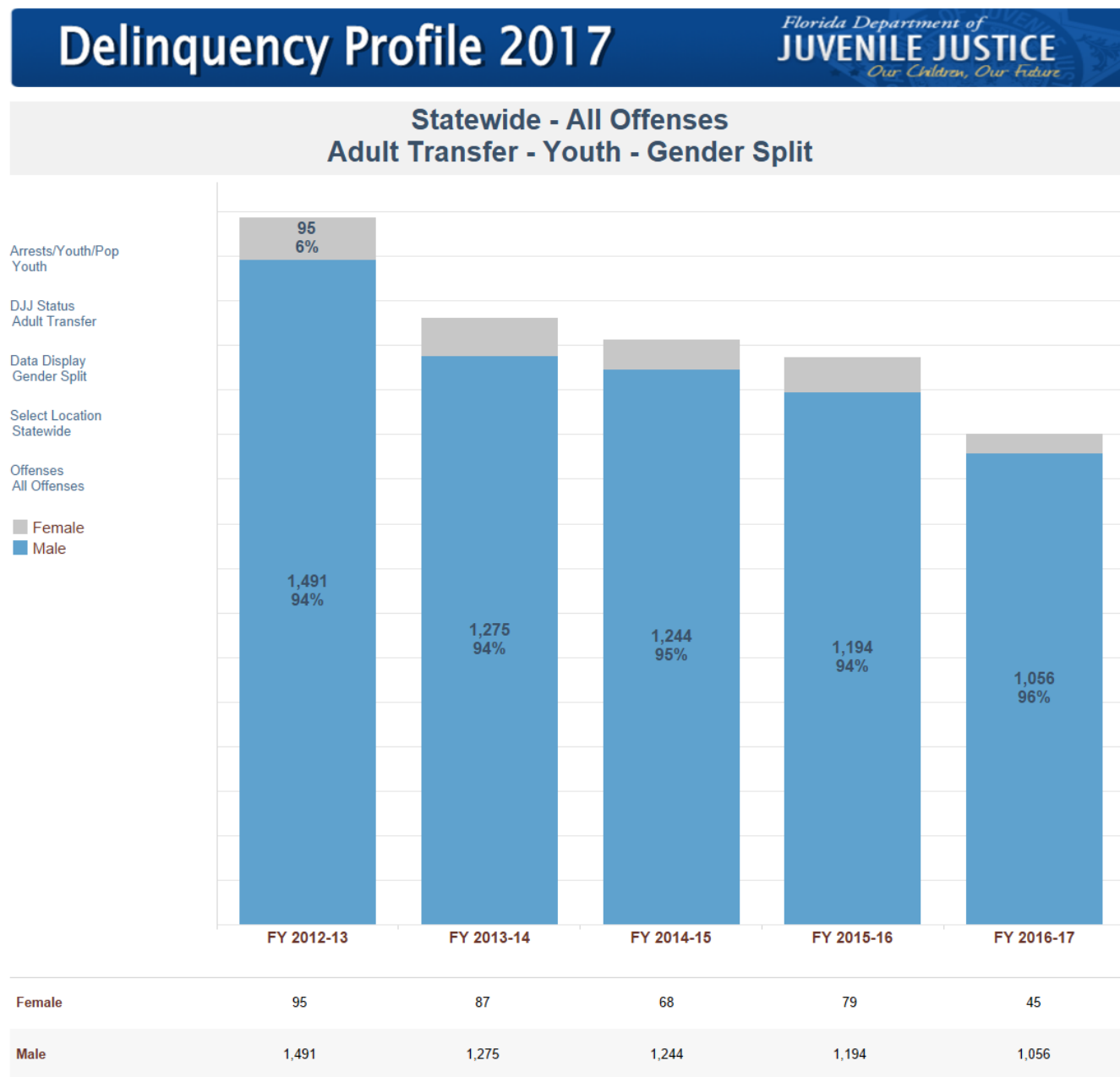
This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

Fig. 5



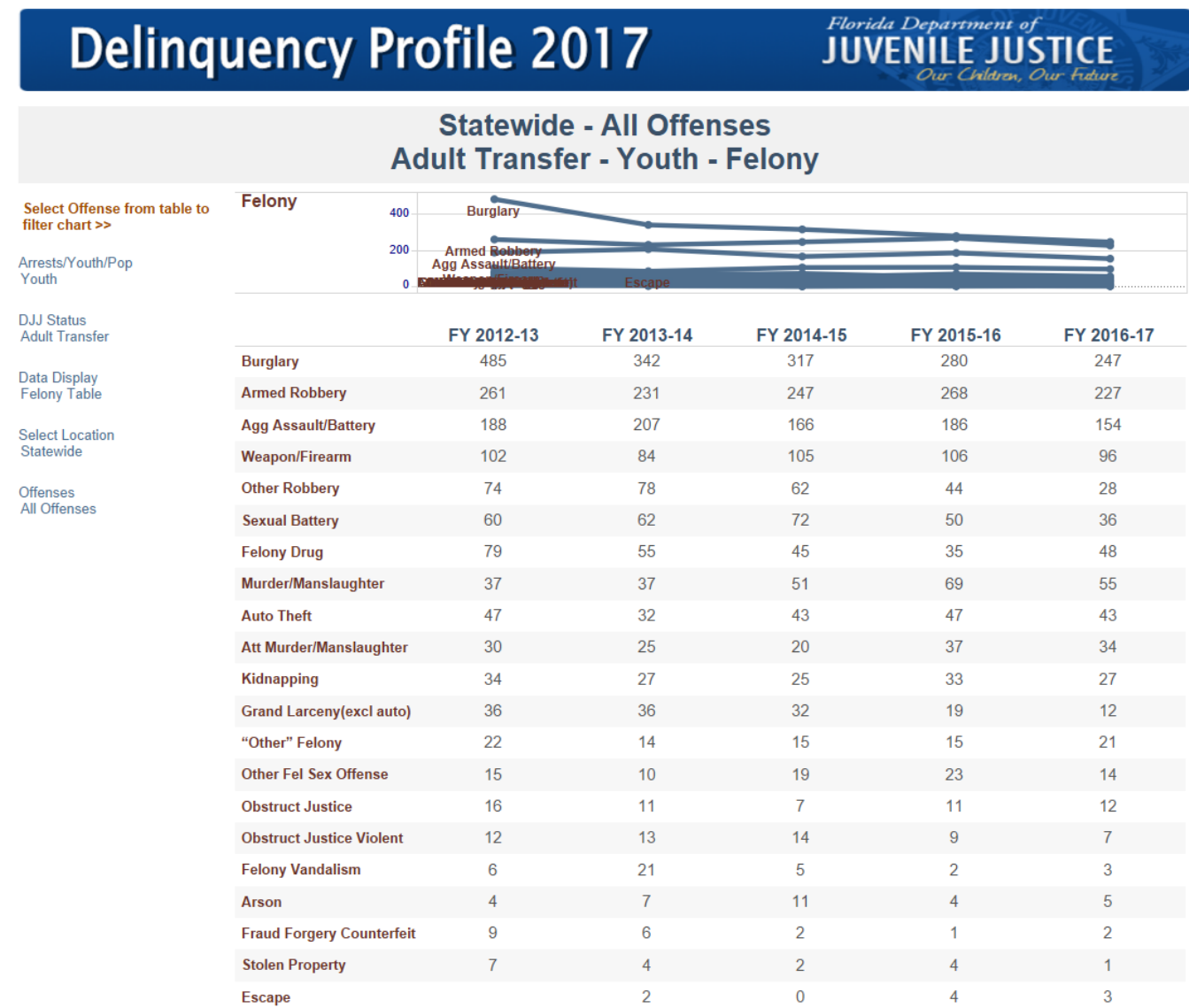
This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

Fig. 6



This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

Fig. 7



This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

By Commissioner Cox

coxeh-00096-17

201773__

A proposal to amend

Section 15 of Article I of the State Constitution to require circuit court review before a state attorney may pursue prosecution of a child as an adult in criminal court.

Be It Proposed by the Constitution Revision Commission of Florida:

Section 15 of Article I of the State Constitution is amended to read:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 15. Prosecution for crime; offenses committed by children.—

(a) No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial.

(b) It is the policy of this state that, because children are more neurologically, psychologically, and emotionally underdeveloped than adults, the state attorney must petition the circuit court for approval if he or she decides to pursue prosecution of a child as an adult in criminal court rather than in juvenile court. The circuit court must consider the differences in the development of adults and children in determining whether to approve a state attorney's decision to prosecute a child as an adult in criminal court. When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and

Page 1 of 2

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

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~~tried without a jury or other requirements applicable to criminal cases. Any child so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law.~~

Page 2 of 2

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



Florida Public Defender Association, Inc.

TO: Constitution Revision Commission re Proposed Amendment 73

FROM: Florida Public Defender Association, President Bob Dillinger

DATE: November 30, 2017

PUBLIC DEFENDERS

*Bruce Miller
First Circuit
Treasurer*

*Andrew Thomas
Second Circuit*

*Blair Payne
Third Circuit*

*Charles Cofer
Fourth Circuit*

*Mike Graves
Fifth Circuit*

*Bob H. Dillinger
Sixth Circuit
President*

*James S. Purdy
Seventh Circuit*

*Stacy A. Scott
Eighth Circuit
Secretary*

*Rex Dimmig
Tenth Circuit
Vice-President*

*Carlos J. Martinez
Eleventh Circuit*

*Larry L. Eger
Twelfth Circuit*

*Julianne M. Holt
Thirteenth Circuit*

*Mark Sims
Fourteenth Circuit*

*Carey Haughwout
Fifteenth Circuit
President-Elect*

*Robert Lockwood
Sixteenth Circuit*

*Howard Finkelstein
Seventeenth Circuit*

*Blaise Trettis
Eighteenth Circuit*

*Diamond R. Litty
Nineteenth Circuit*

*Kathleen A. Smith
Twentieth Circuit*

*Legislative Consultant
Nancy Daniels*

EXECUTIVE DIRECTOR
Kristina Wiggins, MPA

GENERAL COUNSEL
Robert Trammell

**Amending Section 15 of Article I of the State Constitution to require
circuit court review before a state attorney may pursue prosecution of
a child as an adult in criminal court.**

(b) It is the policy of this state that, because children are more neurologically, psychologically, and emotionally underdeveloped than adults, the state attorney must petition the circuit court for approval if he or she decides to pursue prosecution of a child as an adult in criminal court rather than in juvenile court. The circuit court must consider the differences in the development of adults and children in determining whether to approve a state attorney's decision to prosecute a child as an adult in criminal court.

Florida's Public Defenders, attorneys who practice in Florida's juvenile courts around the state, believe that the development and protection of Florida's children, including those charged with criminal offenses, must be an imperative of the State of Florida and therefore a part of the Florida Constitution. Currently, Florida's children are not adequately protected. Prosecutors can unilaterally send children into adult court without oversight by the courts. The proposed amendment would recognize the

fundamental developmental differences between children and adults, and require the court system to recognize these differences in the evaluation of children charged with a crime by the state. This amendment would create checks and balances and require review before a child could be treated as an adult in the courts. The judicial review mandated by this amendment would protect the interests of the most vulnerable citizens of our state, greatly improving our current system

The children of Florida are not small adults. They are mentally, emotionally and developmentally different than adults. Extensive brain research has confirmed that these differences are both profound and complex. This research has led the United States Supreme Court to find in multiple cases that the differences between children and adults require separate treatment under the law. In coming to this conclusion, the Supreme Court considered the testimony of health care professionals and organizations regarding adolescent brain development. The first of these Supreme Court cases was a dozen years ago in *Roper v. Simmons*, 543 U.S. 551 (2005). The Supreme Court found that there was an “evolving standard of decency” for children. Basing its decision on research, the court found that juveniles had diminished culpability due to their immaturity and susceptibility to outside pressures and influences. *Roper* was followed in 2010 by *Graham v. Florida*, 130 S. Ct. 2011 (2010) which found again that juveniles are different than adults. In 2012, the Supreme Court in *Miller v. Alabama* and *Jackson v. Hobbs*, 132 S. Ct. 2455 (2012) emphasized that “transient rashness, proclivity for risk, and inability to assess consequences,” are inherent in being a juvenile, and required sentencing courts to consider these factors. The Court recognized that children displayed “immaturity, impetuosity, and failure to appreciate risks and consequences.” Subsequently, in *Montgomery v. Louisiana*, the Court found unequivocally that “children are constitutionally different from adults in their level of culpability.” and that the extreme punishment must be reserved “for the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility.” Under these authorities, the use of adult sanctions against juveniles should be reserved for the rarest of children, and only after petition by the state and review by the courts.

The children of Florida are at a distinct disadvantage compared to adults when trying to understand and navigate the court system. As the Supreme Court found, children have difficulty assisting in their own defenses. Children are more susceptible than adults to the high pressures of interrogation. Children are not able to comprehend the adult system and therefore should only be exposed to its dangers in the most extreme cases.

Despite these realities, our current system allows state attorneys to send children to adult court without consistent standards. This system does not provide the protection of an impartial court. Furthermore, it is not in tune with the growing recognition of the diminished capacity and culpability of children. Allowing state attorneys sole discretion creates unequal justice depending on the individual prosecutor. It allows an unequal use of the discretion based on the circuit the child resides in, and creates pressure on children in some circuits to give up their right to trial in juvenile court in order to avoid the adult system. It allows prosecutors to charge children as adults even when they have been found incompetent by the juvenile court. It allows children to be direct filed in adult court even when there are more intense juvenile sanctions available. It allows children to be direct filed when the child is not considered a physical threat to anyone.

The proposed amendment would recognize the essential differences between children and adults. It would allow the child a significant protection- review by an impartial judge- before the State of Florida could take the extreme step of charging that child as an adult. Therefore, the Florida Public Defender Association strongly recommends the adoption of Amendment 73.

January 17, 2018

DELIVERED VIA EMAIL

Florida Constitution Revision Commission
The Capitol
400 S. Monroe Street
Tallahassee, FL 32399

Re: Vote Yes on Proposal 73, Amending Art. 1, Section 15
Judicial Approval When Prosecuting Children as Adults

Dear Chair Carlton and Declaration of Rights Committee Commissioners:



4343 W. Flagler St.
Miami, FL
(786) 363-2700
aclufl.org

Kirk Bailey
Political Director

On behalf of more than 130,000 members and supporters state-wide, the American Civil Liberties Union (ACLU) of Florida submits this testimony urging the Constitution Revision Commission to adopt Commissioner Coxe's Proposal to require judicial approval for the criminal prosecution of youth as adults (Proposal 73).

Judicial Approval of Prosecuting Youth as Adults

We urge the Commission to vote Yes on Proposal 73, requiring judicial approval as a prerequisite to the criminal prosecution of youth as adults.

Commissioner Coxe's proposal would require judicial approval when a state attorney decides to prosecute a youth as an adult – a decision which is currently unilateral and not subject to judicial review. Proposal 73 recognizes the widely accepted scientific notion that youth are developmentally different than adults and comports to recent developments in U.S. Supreme Court jurisprudence that they must be treated differently under the law. It also reflects the will of Floridians, the majority of whom believe this decision is best left to judges.

Passage of this amendment would ensure that youth receive their rightful due process and would be a step toward redeeming Florida's unfortunate reputation as a leader in incarcerating children in adult prisons. If adopted, Florida will join the many states that have recognized the importance of judicial involvement in determining whether a child should be prosecuted as an adult.

Florida is a Leader in Prosecuting Children as Adults

Florida has sent more than 8,600 youth to adult court since 2011 at a disproportionately high rate compared to other states.ⁱ About 98% of Florida kids are transferred at the sole, unreviewable discretion of a prosecutor.ⁱⁱ Only two other states (Louisiana and Michigan) and the District of Columbia similarly don't allow for any judicial involvement in the decision to prosecute children as adults. This is also at odds with Floridians' values. A recent poll found that 70% of voters trusted judges more than prosecutors to decide whether a child should be charged as an adult.ⁱⁱⁱ



In Florida, there are no statutorily required standards for this decision – no aggravating or mitigating factors that must be considered; no reporting or transparency requirements – and no opportunity for the child to weigh in. Many assume that only the worst offenders are moved from a system designed to rehabilitate (juvenile detention) to a system designed to punish (adult prisons), yet this assumption is not supported by the evidence. More than 70 percent of youth convicted in adult courts are sentenced to probation, not prison.^{iv} Moreover, the majority receive this probation via plea agreement.^v If these children truly are the worst of the worst, beyond redemption and only fit for adult prison, then why are so many of them only receiving probation? Furthermore, significant racial disparities exist and are exacerbated by this system: black youth, who are 3.6 times as likely to be arrested as their white peers, are 6.7 times as likely to be charged as adults.^{vi}

Adoption of this proposal would allow for a neutral decision-maker, a judge, to be involved in this crucial life-altering decision, and would help to bring Florida's rate of charging youth as adults in line with national trends.

Age is More than a Number

Parents, scientists and legal scholars agree that “youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.”^{vii} The U.S. Supreme Court has recognized that youth are neurologically different from adults – less mature, wired for impulsive recklessness, more vulnerable to outside pressures and influences, and thus more malleable. These differences ultimately make them less culpable.^{viii} This proposal would ensure these factors would be considered before a child was transferred to the more punitive adult criminal justice system.

The Adult Criminal Justice System Puts Youth at Risk of Further Criminal Behavior and Other Harms

All kids who are prosecuted in adult court in Florida go to adult jails pending their trial. Some stay for more than a year. If they are in a small county – or if they are the rare girl charged as an adult – they are held in isolation throughout this time with minimal educational services.

This is clearly not an environment that supports their maturation or improves their chances of aging out of criminal behavior. Youth prosecuted in adult court are more likely to reoffend than their peers facing the same charges in juvenile court.^{ix} Moreover, youth in adult prisons and jails are 36 times as likely to commit suicide as those in juvenile facilities.^x

As the U.S. Supreme Court has recognized, “the features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings.”^{xi} The juvenile justice system was developed to address juvenile delinquency in an

atmosphere that better accommodated these features and was more appropriate to rehabilitation. The focus of the juvenile justice system is on supporting the youth's maturation and prioritizing rehabilitation.

Floridians agree: three quarters of voters believe minors charged with adult crimes should stay in the juvenile system. Furthermore, 86 percent of voters recognize that adult jails are no place for minors awaiting trial as adults.^{xii}

While adult court judges sentencing youth may issue juvenile sanctions, the U.S. Supreme Court has recognized that the "key moment for the exercise of discretion is the transfer" of youth to adult court.^{xiii} This proposal would ensure that judges have that opportunity to be involved at this critical stage.



Conclusion

Teens are not adults – no matter how severe their criminal behavior. Prosecuting them as adults is often counterproductive and harmful. The decision to do so must be deliberate, transparent, standardized, and must be approved by a neutral decision-maker. Judicial involvement is necessary for such a decision that will forever change a youth's life.

Thank you for your consideration of the above and we look forward to working with you as this process moves forward. Please do not hesitate to contact me at (786) 363-2713 or kbailey@aclufi.org if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink that reads "Kirk Bailey". The signature is written in a cursive, flowing style.

Kirk Bailey
Political Director

Cc: Michelle Morton
Juvenile Justice Policy Coordinator

ⁱ Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone, Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting, Office of Juvenile Justice and Delinquency Prevention, Juvenile Offenders and Victims National Report Series Bulletin. (2011).

ⁱⁱ Branded for Life: Florida's Prosecution of Children as Adults under its "Direct File" Statute, Human Rights Watch, 19 (2014).

ⁱⁱⁱ Fabrizio, Lee & Assoc., Right on Crime Florida Registered Voters Survey (2017), available at <http://rightoncrime.com/2017/11/florida-poll-reveals-strong-support-for-criminal-justice-reform>.

^{iv} Deborah Brodsky & Sal Nuzzo, No Place for a Child: Direct File of Juveniles Comes at a High Cost, James Madison Institute Policy Brief (2016).

^v *Id.*

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- ^{vi} Fla. Dept. of Juvenile Justice Juvenile Delinquency Profile (2017).
- ^{vii} Eddings v. Oklahoma, 455 U.S. 104, 115 (1982).
- ^{viii} Roper v. Simmons, 543 U.S. 551, 569 (2005).
- ^{ix} No Place for a Child, *supra* n. iv.
- ^x Jailing Juveniles, Campaign for Youth Justice (2007).
- ^{xi} Miller v. Alabama, 567 U.S. 460, 478, 132 S. Ct. 2455, 2468, 183 L. Ed. 2d 407 (2012)
- ^{xii} Right on Crime Florida Survey, *supra* n. iii
- ^{xiii} Miller v. Alabama, 567 U.S. 460, 488 (2012).



COMMITTEE: Declaration of Rights
ITEM: P 73
FINAL ACTION:
MEETING DATE: Friday, January 19, 2018
TIME: 8:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building, Tallahassee, Florida

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 88

Relating to: DECLARATION OF RIGHTS, creates new section

Introducer(s): Commissioner Heuchan

Article/Section affected: Article I, creates new section

Date: January 18, 2018

	REFERENCE	ACTION
1.	<u>DR</u>	<u>Pre-meeting</u>

I. SUMMARY:

This proposal creates a new section in Article I of the State Constitution regarding rights of residents of nursing homes and assisted living facilities. The series of rights of residents of nursing homes and assisted living facilities include, but are not limited to:

- The right to know and hold accountable all persons or entities who own or operate the facilities;
- The right of access to courts and juries without limitations for loss, injury and damages caused to residents and their families by the abuse, negligence, neglect, exploitation, or violation of residents' rights by the facilities' owners, operators, employees, professionals, and others who care for residents at such facilities;
- The right that the facilities will have the financial resources or liability insurance in order to ensure that residents and their families are justly compensated for any loss etc.

The proposal also prohibits nursing homes and assisted living facilities from soliciting, requiring, or asking residents or their guardians to waive these rights. The proposal provides that the rights granted do not dissolve upon the death or incapacity of a resident.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida Population

The Census Bureau reports that nearly one fifth of Florida's population is 65 years old or older as of July 2016, which is nearly a 3% jump from 2010 data.¹ That is nearly the same percentage of the population that is elderly as is under the age of 18.² The Florida Department of Elder Affairs reports that 13.6% of Florida's population is 70 years old or older.³ This includes more than half a million people who are 85 and older.⁴

"Florida is perhaps the 'oldest' state in the U.S. because of interstate migration and the aging of baby boomers who often choose Florida as their post-retirement home. The oldest old (85+) population in the state is expected to more than double between the years 1995 and 2020. In 2010, three of the top five counties in the United States having the highest percentages of the population in the age group of 65 years and over were in Florida (Sumter 43%, Charlotte 34%, and Highlands 32%)."⁵

Florida Long Term Care Facilities (Nursing Homes and Assisted Living Facilities)

There are 683 licensed nursing homes in Florida, with approximately 83,587 beds.⁶ These facilities are at 85% capacity at any given time.⁷ There are 3,089 licensed assisted living facilities in Florida, representing approximately 92,000 beds.⁸ The median annual cost of care for a semi-private room in a Florida nursing center is \$87,600.⁹ The median annual cost of care for a private room in a Florida nursing center is \$96,725.¹⁰ The median annual cost for care for a private room in a Florida assisted living facility is \$37,800.¹¹ Nearly 40 percent of long term care spending is paid for by private funds.¹²

Medicare, which covers rehabilitation services after an individual is discharged from a hospital, pays for 19 percent of all long-term care spending.¹³ Medicaid, which covers health care costs for low-income individuals, pays for approximately 60 percent of all long-term care spending.¹⁴ Accounting for about 40 percent of total expenditures on nursing centers, Medicaid's payments cover the care of more than half of all nursing home residents.¹⁵ Medicare patients have short

¹ See United States Census Bureau website: <https://www.census.gov/quickfacts/fact/table/FL/PST045216> (last visited 1/18/18).

² Id.

³ See Florida Department of Elder Affairs website: http://elderaffairs.state.fl.us/doea/pubs/stats/County_2016_projections/Counties/Florida.pdf (last viewed 1/18/2018).

⁴ Id.

⁵ See University of Florida IFAS Extension website, *The Future of Aging is Florida*, revised 7/12. <http://edis.ifas.ufl.edu/fy624> (last visited 1/18/2018)

⁶ See Florida Health Care Association website, *Facts About Long Term Care in Florida*. http://www.fhca.org/media_center/long_term_health_care_facts (last visited 1/18/18).

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

rehabilitative stays, averaging 33 days.¹⁶ Medicaid and private pay patients typically have longer stays, with a 386 day average.¹⁷ Florida has one of the lowest over-65 population to nursing home population ratio in the country.¹⁸ Nursing center expenditures account for less than 15% of the overall Medicaid budget, which is down from 19% in 2001.¹⁹

Long term care facilities in Florida support an estimated \$20.2 billion (2.7%) of Florida's economy.²⁰ These facilities contribute to nearly 259,250 jobs and support \$9.1 billion in labor income through employment of both direct caregivers and support staff, and generate over \$2.3 million in state and federal tax revenue.²¹ Long term care centers contribute to other businesses through a ripple effect, with each nursing home job resulting in additional economic activity from the employees spending their incomes at other businesses.²²

Assisted living facilities are distinct from nursing homes. In nursing homes, residents are under constant medical supervision, need assistance with day-to-day living and are not capable of independent living.²³ Assisted living residents are more independent. Residents may still drive, cook their own meals, come and go freely, have security of medical supervision, and social interaction with other residents.²⁴ Both assisted living facilities and nursing homes are regulated by Florida law.²⁵ Applicants for licensure must disclose any civil verdict or judgment involving the applicant rendered within the 10 years preceding the application, relating to medical negligence, violation of residents' rights, or wrongful death.²⁶ As a condition of licensure, the licensee agrees to provide to the agency copies of any new verdict or judgment involving the applicant, relating to such matters, within 30 days after filing with the clerk of the court.²⁷ Applicants must also provide proof of liability insurance, but there is no requirement as to the amount.²⁸ Assisted care community license applicants must also show proof of passing a fire safety inspection, and proof of passing a sanitation inspection by the county health department.²⁹

Under Florida law, "Assisted living facility" means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.³⁰ "Adult family-care home" means a full-time, family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id.

²³ The Florida Senate Interim Project Report 2001-025 *Long Term Care Affordability and Availability* on file with CRC staff.

²⁴ Id.

²⁵ F.S. 400 and F.S. 429.

²⁶ F.S. 400.071(1)(e)

²⁷ Id.

²⁸ F.S. 400.141(1)(q)

²⁹ F.S. 429.11

³⁰ F.S. 429.02

than five disabled adults or frail elders who are not relatives.³¹ “Adult day care center” or “center” means any building, buildings, or part of a building, whether operated for profit or not, in which is provided through its ownership or management, for a part of a day, basic services to three or more persons who are 18 years of age or older, who are not related to the owner or operator by blood or marriage, and who require such services.³²

Long Term Care Resident Rights

Federal

Residents’ Rights are guaranteed by the Federal 1987 Nursing Home Reform Law.³³ The law requires nursing homes to “promote and protect the rights of each resident” and places a strong emphasis on individual dignity and self-determination. Nursing homes must meet federal residents’ rights requirements if they participate in Medicare or Medicaid.³⁴

The rights enumerated under federal law are broadly designed to give residents dignity and self-determination. These rights include equal access to quality care, the right to be fully informed as to health status, access to one’s own medical records, choice of attending physician, freedom from chemical or physical restraints not required by medical treatment, and the right to manage one’s own personal financial affairs.³⁵ Notably, the federal law specifies the right to be notified in advance of changes to the plan of care, the type of care to be furnished, the caregiver, the risks and benefits of the proposed care, and what charges a facility may impose against a resident’s personal funds.³⁶

The 1987 Nursing Home Reform Law does not cover assisted living facility residents.

State

Nursing Homes

Florida Statutes 400.022–400.023, known as the Nursing Home Residents’ Bill of Rights (2001), were enacted by the state government in response to the findings of the Legislature’s Task Force on Availability and Affordability of Long Term Care in 2000.³⁷

State law provides residents the right to civil and religious liberties, including knowledge of available choices and the right to independent personal decision, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights.³⁸ Residents also have the right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident’s choice during visiting hours, and overnight visitation outside the facility with

³¹ F.S. 429.65(2)

³² F.S. 429.901 (1)

³³ CFR §483.10.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ *The Gerontologist, The Nursing Home Problem in Florida* Vol. 43, Special Issue II, 7-11 (2003).

³⁸ F.S. 400.022

family and friends in accordance with facility policies.³⁹ There is also the right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, the right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents, the right to participate in social, religious, and community activities that do not interfere with the rights of other residents, and the right to examine, upon reasonable request, the results of the most recent inspection of the facility conducted by a federal or state agency.⁴⁰ Residents also have the right to manage their own financial affairs.⁴¹

Assisted Living Facilities

State law provides rights to residents of assisted care facilities.⁴² Every resident of a facility shall have the right to live in a safe and decent living environment, be treated with consideration and respect and with due recognition of personal dignity, retain and use his or her own clothes and other personal property in his or her immediate living quarters, have unrestricted private communication, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his or her choice, at any time between the hours of 9 a.m. and 9 p.m. at a minimum, have freedom to participate in and benefit from community services and activities, manage his or her financial affairs, and share a room with his or her spouse if both are residents of the facility.⁴³ Residents must be afforded opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals, and be permitted to exercise civil and religious liberties, including the right to independent personal decisions. Additionally, residents shall have access to adequate and appropriate health care, and be given at least 45 days' notice of relocation or termination of residency from the facility.⁴⁴ The statute also provides that residents may present grievances and recommend changes in policies, procedures, and services to any other person without restraint, interference, coercion, discrimination, or reprisal.⁴⁵

Enforcement of Long Term Care Resident Rights

The Miami Herald conducted a yearlong investigation of abuse and neglect in over 2,800 assisted living facilities. The news story that emerged from this study was a Pulitzer finalist in 2012.⁴⁶ The state shut down 13 facilities after publication of the story, and penalized nearly 3 dozen others.⁴⁷

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

⁴² F.S. 429.28

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ *Neglected to Death, Part I: Once Pride of Florida; Now Scenes of Neglect*, Miami Herald, 4/31/11 <http://www.miamiherald.com/news/special-reports/neglected-to-death/article1938076.html> (last visited 1/18/2018).

⁴⁷ <http://www.miaminewtimes.com/best-of/2012/arts-and-entertainment/best-miami-herald-reporters-6403061> (last visited 1/18/2018).

While there is a statutory scheme for enforcement of rights,⁴⁸ Florida has led the way in both the impact of litigation on the nursing home industry and liability premium increases.⁴⁹ Media reports detailing high-jury awards for high-profile examples of poor-quality care began to appear in the 1990s in Florida.⁵⁰ Traditionally, the major opportunity for relief through the court system for resident care issues was through malpractice law using a negligence standard, although claims could also be brought against nursing homes under various intentional tort and contract claims.⁵¹ The licensees or entities are not liable for the acts or omissions of its employees or agents or any other third party.⁵² The negligence standard limits many of the options available to plaintiffs.⁵³ The Florida Wrongful Death Act (2003) outlines one type of negligence claim, and it provides a limited remedy because of the inability of claimants to sue for the pain and suffering of deceased plaintiffs.⁵⁴ In Florida, an estimated 20% of long-term-care nursing home residents with less than 1 year in a facility have no family and therefore cannot file suits under the wrongful death statute.⁵⁵

The issue of arbitration clauses (where residents waive litigation in favor of binding arbitration) in admissions contracts has become an issue of litigation and regulatory scrutiny.⁵⁶ Proponents argue that arbitration saves nursing homes and residents litigation costs and resolves disputes faster. Opponents argue that arbitration is expensive, and that residents sign these contracts either under duress or without knowledge of the rights they are waiving. In the last six years, the Florida Supreme Court has dealt with several cases involving these agreements. In 2011, the Court held that only courts and not arbitrators can determine whether an arbitration agreement is unenforceable on public policy grounds.⁵⁷ In 2013, the Florida Supreme Court held that a nursing home arbitration agreement binds heirs in wrongful death case.⁵⁸ And in 2016, the Court held that a father is not bound by an arbitration clause between his son and the nursing home.⁵⁹

Centers for Medicare and Medicaid Services, by rule adopted on October 4, 2016, prohibited pre-dispute agreements for binding arbitration in facilities that accept Medicare and Medicaid. The nursing home industry sued to enjoin enforcement of rule, and was granted an injunction in November of that year. CMS has now proposed to revise the rule which would authorize a facility to *require* a pre-dispute binding arbitration agreement as a condition of admission.⁶⁰

⁴⁸ See F.S. 400.22-400.0238 for nursing homes and F.S. 429.28-429.298 for Assisted Living Facilities.

⁴⁹ *Factors Predicting Lawsuits Against Nursing Homes in Florida 1997-2001*, The Gerontologist. <https://academic.oup.com/gerontologist/article/44/3/339/699468> (last visited 1/18/2018).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² F.S. 415.1111

⁵³ *Factors Predicting Lawsuits Against Nursing Homes in Florida 1997-2001*, The Gerontologist. <https://academic.oup.com/gerontologist/article/44/3/339/699468> (last viewed 1/18/2018).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See *Shotts v. OP Winter Haven, Inc.*, 86 So. 3d 456 (Fla. 2011), *Laizure v. Avante at Leesburg*, 44 So.3s 1254 (Fla. 2013), *Mendez v. Hampton Court*, 203 So.3d 146 (Fla. 2016), and letter from Long-term Care ombudsman, on file with CRC staff.

⁵⁷ *Shotts v. OP Winter Haven, Inc.*, 86 So. 3d 456 (Fla. 2011)

⁵⁸ *Laizure v. Avante at Leesburg*, 44 So.3s 1254 (Fla. 2013)

⁵⁹ *Mendez v. Hampton Court*, 203 So.3d 146 (Fla. 2016)

⁶⁰ See letter from Long-term Care ombudsman, on file with CRC staff.

B. EFFECT OF PROPOSED CHANGES:

This proposal grants a series of rights to residents of nursing homes and assisted living facilities including, but not limited to:

- The right to know and hold accountable all persons or entities who own or operate the facilities;
- The right of access to courts and juries without limitations for loss, injury and damages caused to residents and their families by the abuse, negligence, neglect, exploitation, or violation of residents' rights by the facilities' owners, operators, employees, professionals, and others who care for residents at such facilities; and
- The right that the facilities will have the financial resources or liability insurance in order to ensure that residents and their families are justly compensated for any loss etc.

The proposal also prohibits nursing homes and assisted living facilities from soliciting, requiring, or even asking residents or their guardians to waive these rights. The proposal provides that the rights granted do not dissolve upon the death or incapacity of a resident.

FISCAL IMPACT:

Indeterminate negative fiscal impact.

III. Additional Information:**A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.



234562

CRC ACTION

Commissioner .
Comm: FAV .
01/19/2018 .
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The Committee on Declaration of Rights (Gainey) recommended the following:

CRC Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

A new section is added to Article I of the State
Constitution to read:

ARTICLE I

DECLARATION OF RIGHTS

Nursing Home and Assisted Living Facility Residents' Bill



234562

of Rights.—

(a) In addition to any other rights provided by law, the residents of nursing home facilities and assisted living facilities are entitled to be treated courteously, fairly, and with the fullest measure of dignity by the facilities' owners, operators, employees, professionals, and others who care for residents at such facilities.

(b) The right to be treated courteously, fairly, and with the fullest measure of dignity includes, but is not limited to:

(1) The right to adequate and appropriate health care and treatment that prioritizes the residents' needs and best interests.

(2) The right to a safe, clean, comfortable, and homelike environment that protects residents from harm and includes reasonable precautions to safeguard them from adverse effects caused by extreme climatic conditions and natural disasters.

(3) The right to access courts and a jury system that allows for a speedy trial and relief and remedies, without limitations, for loss, injury, and damages caused to residents and their families by the abuse, negligence, neglect, exploitation, or violation of residents' rights by the owners, operators, employees, professionals, and others who care for residents at such facilities.

(4) The right to know and hold accountable all persons or entities who either directly or indirectly own or operate the facilities.

(5) The right that the facilities will have the financial resources or liability insurance sufficient to ensure that residents and their families are justly compensated for any



234562

loss, injury, and damage they suffer because of abuse,
negligence, neglect, exploitation, or violations of residents'
rights by owners, operators, employees, professionals, and
others who care for the residents at such facilities.

(c) Nursing home facilities and assisted living facilities,
including the owners, operators, employees, professionals, and
others who care for residents at such facilities, may not
solicit, require, or ask residents to waive the rights provided
herein or by other laws. Nothing in this section shall be
construed to mean that residents are prohibited from voluntarily
waiving the rights provided herein or by other laws.

(d) Any rights granted under this section do not dissolve
upon the death or incapacity of a resident. Upon the death or
incapacity of a resident, such resident's heirs, estate, family
members, legal representatives, or other appropriate persons are
entitled to any of the rights granted under this section and as
may be provided by general law.

(e) A nursing home or assisted living facility resident may
not be deprived of any right on the basis of their admission to
or their residence in a nursing home or assisted living
facility.

(f) This section is self-executing and does not require any
implementing legislation or administrative rules.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A proposal to create



234562

68 a new section in Article I of the State Constitution
69 to establish certain rights for residents of assisted
70 living facilities and nursing home facilities in this
71 state.



512714

CRC ACTION

Commissioner .
Comm: WD .
01/19/2018 .
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The Committee on Declaration of Rights (Stemberger) recommended the following:

1 **CRC Substitute for Amendment (234562) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 A new section is added to Article I of the State
7 Constitution to read:

8 ARTICLE I
9 DECLARATION OF RIGHTS



512714

Nursing Home and Assisted Living Facility Residents' Bill
of Rights.—

(a) In addition to any other rights provided by law, the residents of nursing home facilities and assisted living facilities are entitled to be treated courteously, fairly, and with the fullest measure of dignity by the facilities' owners, operators, employees, professionals, and others who care for residents at such facilities.

(b) The right to be treated courteously, fairly, and with the fullest measure of dignity includes, but is not limited to:

(1) The right to adequate and appropriate health care and treatment.

(2) The right to a safe, clean, comfortable, and homelike environment that protects residents from harm and takes into account this state's challenges with respect to climate and natural disasters by having disaster plans and alternative power sources in place.

(3) The right to access courts and a jury system that allows for a speedy trial and relief and remedies for loss, injury, and damages caused to residents and their families by the abuse, negligence, neglect, exploitation, or violation of residents' rights by the owners, operators, employees, professionals, and others who care for residents at such facilities.

(4) The right that the facilities will have the financial resources or liability insurance sufficient to ensure that residents and their families are justly compensated for loss, injury, and damage they suffer because of abuse, negligence, neglect, exploitation, or violations of residents' rights by



512714

owners, operators, employees, professionals, and others who care for the residents at such facilities.

(c) Nursing home facilities and assisted living facilities, including the owners, operators, employees, professionals, and others who care for residents at such facilities, shall present to residents, their families, their legal representatives, or their duly appointed guardians, as applicable, an even-handed and non-pressured choice between resolving any potential disputes with the facility either in a judicial or non-judicial forum.

(d) Any rights granted under this section do not dissolve upon the death or incapacity of a resident. Upon the death or incapacity of a resident, such resident's heirs, estate, family members, legal representatives, or other appropriate persons are entitled to any of the rights granted under this section and as may be provided by general law.

(e) A nursing home or assisted living facility resident may not be deprived of any right on the basis of their admission to or their residence in a nursing home or assisted living facility.

(f) This section is self-executing and does not require any implementing legislation or administrative rules.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A proposal to create
a new section in Article I of the State Constitution



512714

68 to establish certain rights for residents of assisted
69 living facilities and nursing home facilities in this
70 state.

By Commissioner Heuchan

heuchanb-00089B-17

201788__

A proposal to create
a new section in Article I of the State Constitution
to establish certain rights for residents of assisted
living facilities and nursing home facilities in this
state.

Be It Proposed by the Constitution Revision Commission of
Florida:

A new section is added to Article I of the State
Constitution to read:

ARTICLE I

DECLARATION OF RIGHTS

Nursing Home and Assisted Living Facility Residents' Bill
of Rights.-

(a) In addition to any other rights provided by law, the
residents of nursing home facilities and assisted living
facilities are entitled to be treated courteously, fairly, and
with the fullest measure of dignity by the facilities' owners,
operators, employees, professionals, and others who care for
residents at such facilities.

(b) The right to be treated courteously, fairly, and with
the fullest measure of dignity includes, but is not limited to:

(1) The right to adequate and appropriate health care and
treatment that puts the residents' needs and best interests
first.

(2) The right to a safe, clean, comfortable, and homelike
environment that protects residents from harm and takes into
account this state's challenges with respect to climate and
natural disasters.

(3) The right to access courts and a jury system that
allows for a speedy trial and relief and remedies, without

Page 1 of 3

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

heuchanb-00089B-17

201788__

limitations, for loss, injury, and damages caused to residents
and their families by the abuse, negligence, neglect,
exploitation, or violation of residents' rights by the
facilities' owners, operators, employees, professionals, and
others who care for residents at such facilities.

(4) The right to know and hold accountable all persons or
entities who own or operate the facilities, including the
persons who are the owners of entities which own or operate the
facilities.

(5) The right that the facilities will have the financial
resources or liability insurance in order to ensure that
residents and their families are justly compensated for any
loss, injury, and damage they suffer because of abuse,
negligence, neglect, exploitation, or violations of residents'
rights by owners, operators, employees, professionals, and
others who care for residents at such facilities.

(6) The right to have the state require and implement
regular accountability, audit, and review programs that oversee
the facilities, require annual cost reports for reimbursement,
and safeguard the health and quality of life of the facilities'
residents.

(c) Nursing home facilities and assisted living facilities,
including the owners, operators, employees, professionals, and
others who care for residents at such facilities, may not
solicit, require, or ask residents, their families, their legal
representatives, and their duly appointed guardians to waive the
rights of residents provided herein or by other laws.

(d) Any rights granted under this section do not dissolve
upon the death or incapacity of a resident. Upon the death or

Page 2 of 3

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

heuchanb-00089B-17

201788__

62 incapacity of a resident, such resident's heirs, estate, family
63 members, legal representatives, or other appropriate persons are
64 entitled to any of the rights granted under this section and as
65 may be provided by general law.

66 (e) This section is self-executing and does not require any
67 implementing legislation or administrative rules. The
68 legislature may enact legislation that protects, furthers, and
69 enhances the rights established by this section. In addition, an
70 executive branch agency may adopt rules, in accordance with
71 general law, that protect, further, and enhance the rights of
72 residents established by this section.

73 (f) Any statute, rule, common law, or other law that is
74 inconsistent with the rights granted under this section is
75 preempted.



234562

CRC ACTION

Commissioner .
Comm: FAV .
01/19/2018 .
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The Committee on Declaration of Rights (Gainey) recommended the following:

CRC Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

A new section is added to Article I of the State
Constitution to read:

ARTICLE I

DECLARATION OF RIGHTS

Nursing Home and Assisted Living Facility Residents' Bill



234562

of Rights.—

(a) In addition to any other rights provided by law, the residents of nursing home facilities and assisted living facilities are entitled to be treated courteously, fairly, and with the fullest measure of dignity by the facilities' owners, operators, employees, professionals, and others who care for residents at such facilities.

(b) The right to be treated courteously, fairly, and with the fullest measure of dignity includes, but is not limited to:

(1) The right to adequate and appropriate health care and treatment that prioritizes the residents' needs and best interests.

(2) The right to a safe, clean, comfortable, and homelike environment that protects residents from harm and includes reasonable precautions to safeguard them from adverse effects caused by extreme climatic conditions and natural disasters.

(3) The right to access courts and a jury system that allows for a speedy trial and relief and remedies, without limitations, for loss, injury, and damages caused to residents and their families by the abuse, negligence, neglect, exploitation, or violation of residents' rights by the owners, operators, employees, professionals, and others who care for residents at such facilities.

(4) The right to know and hold accountable all persons or entities who either directly or indirectly own or operate the facilities.

(5) The right that the facilities will have the financial resources or liability insurance sufficient to ensure that residents and their families are justly compensated for any



234562

loss, injury, and damage they suffer because of abuse,
negligence, neglect, exploitation, or violations of residents'
rights by owners, operators, employees, professionals, and
others who care for the residents at such facilities.

(c) Nursing home facilities and assisted living facilities,
including the owners, operators, employees, professionals, and
others who care for residents at such facilities, may not
solicit, require, or ask residents to waive the rights provided
herein or by other laws. Nothing in this section shall be
construed to mean that residents are prohibited from voluntarily
waiving the rights provided herein or by other laws.

(d) Any rights granted under this section do not dissolve
upon the death or incapacity of a resident. Upon the death or
incapacity of a resident, such resident's heirs, estate, family
members, legal representatives, or other appropriate persons are
entitled to any of the rights granted under this section and as
may be provided by general law.

(e) A nursing home or assisted living facility resident may
not be deprived of any right on the basis of their admission to
or their residence in a nursing home or assisted living
facility.

(f) This section is self-executing and does not require any
implementing legislation or administrative rules.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A proposal to create



234562

68 a new section in Article I of the State Constitution
69 to establish certain rights for residents of assisted
70 living facilities and nursing home facilities in this
71 state.

CRC Proposal #88

Resident's Bill of Rights

Why?

- Paradigm of care
- Residents are a suspect class of people
- Unequal rights
- Florida is peculiar
- Current situation is insufficient
- We can do better

What does it do?

- Ensures Transparency
- Restores Access to Court/ Unequal
- Establish financial responsibility
- Rights for the elderly/ disabled remain in tact regardless of where you live

TRANSPARENCY

Journal of Health Law

Fall 2003 Volume 36, No. 4

Protecting Nursing Home Companies: Limiting Liability Through Corporate Restructuring

Joseph E. Casson
Julia McMillen

AMERICAN
HEALTH LAWYERS
ASSOCIATION

SAINT LOUIS
UNIVERSITY
SCHOOL OF LAW

Protecting Nursing Homes

Protecting Nursing Home Companies: Limiting Liability Through Corporate Restructuring

*Joseph E. Casson**
*Julia McMillen***

ABSTRACT: Nursing homes face two potential risks: exclusion from the Medicare and Medicaid programs; and financial liability through Medicare and Medicaid overpayments, false claims, and negligence actions. Given the current budget crisis and the scrutiny of nursing homes, the magnitude of these risks is only expected to increase. The authors address the increasing risks that nursing homes face and propose the creation of single-purpose ownership entities and single-purpose operating entities to minimize risk. In addition, they examine recent cases to show what factors the courts use to allow the United States and private plaintiffs to pierce the corporate veil. The authors conclude by showing how restructuring can reduce the unnecessary risks of exclusion and financial liability.

Business
Organizations
577

A corporation is an autonomous entity "separate and distinct from its shareholders, directors and officers, and generally, from other corporations with which it may be affiliated." . . . This autonomy shields parties related to a corporation from the liabilities of that corporation. . . . Indeed, one of the primary purposes of the corporate form is to insulate shareholders from financial liability for a corporation's debts. . . . Equity, however, has created a device called "piercing the corporate veil," which prevents purveyors of fraud and injustice from hiding behind the corporate form of organization. . . . Using this

* Joseph E. Casson is a partner and co-chair of the Health Care Department at Proskauer Rose LLP.

** Julia McMillen is an associate in the Health Care Department at Proskauer Rose LLP.

Layers of Ownership

Formation Properties purchased the Habana Healthcare Center and 48 other Florida nursing homes in 2002 and contracted with executives backed by Warburg Pincus to manage the facilities. Those executives created a complex corporate structure around each nursing home. As a result, many profits were shielded from lawsuits.

Listen to reporter Charles Duhigg explaining the complicated structure of the Habana Health Care nursing home and its facilities.



CONNECTING LINES

Direct ownership
or contract

* These four companies had no assets, offices or employees and were dissolved by 2005.

Sources: Court documents and depositions; documents filed with the Secretary of State of Florida; Habana Health Care's nursing home license and cost reports; other public documents filed with regulators.

Karl Russell, Vu Nguyen, Amy Schoenfeld / The New York Times

“Care Suffers As More Nursing Homes Feed Money Into Corporate Webs”

Kaiser Health News



“Almost every single one of these chains is doing the same thing,” said Charlene Harrington, a professor emeritus of the School of Nursing at the University of California-San Francisco. “They’re just pulling money away from staffing.”

A Message from our CEO



Welcome to the LaVie Care Centers Web site. We appreciate your interest in our company and invite you to learn more about the healthcare centers we proudly support. LaVie means "the life." Our focus and energy are placed on caring for the lives of others each and every day.

With this in mind, our company mission statement is "People taking care of people...Together we can do anything." Our 19,000 teammates selected our company name and mission, and together, we are redefining the meaning of quality care!

At LaVie, we are committed to being the very best at taking care of people. We accomplish this by delivering unsurpassed patient-focused services and by creating a work environment that attracts teammates who share our passion for enhancing the lives of others. Our success today and in the future will be ensured by our ongoing devotion to resident care, teammate care and business care.

If you are looking for quality skilled nursing or rehabilitation services for yourself or a love one, or if you are seeking a career with a leading national healthcare company, please contact us today.

Best regards,
Scott Bartos

Q. Yes. Do you know who LaVie Care Centers is?

A. I do.

Q. And is that a fictitious entity?

A. I'm not quite sure, actually.

Q. Who do you know LaVie Care Centers to be?

A. A consulting entity that provides support to various other entities within our organization.

Q. Who is your current -- and listen carefully. Who's your current employer? Who -- who pays your salary currently?

A. I don't know for sure, but I know when I was hired it was Genoa Consulting Group.

Q. And is there a difference between Genoa Consulting Group and Genoa Health Care Consulting, LLC?

A. I couldn't tell you that with any certainty.

Q. Who hired you?

A. The board of directors for GHG.

Q. Give me the exact name of GHG.

A. Genoa Health Care Consulting Group.

Q. Is that different than Genoa Health Care Consulting, LLC?

A. I could not tell you for sure.

Q. Okay. All right. LaVie Care Centers is a nursing home chain?

A. No.

Q. Okay. What is it?

A. We're -- LaVie Care Centers is a consulting group that supports nursing home facilities.

Q. Do you know who the LaVie Care Centers owner is?

A. Not specifically. I think there are

a host of investors in the business.

Q. Well, LaVie Care Centers is a fictitious name --

A. Okay.

Q. -- isn't it?

Do you know who LaVie Management Services' owner is?

A. Not specifically, no.

Q. Have you ever heard of them? Do you know who they are, LaVie Management Services?

A. We have a LaVie Management Services of Florida, and we have another LaVie Management Services also that's outside of Florida.

Q. And let's start with the LaVie Management Services. Do you know who the owner of that fictitious entity is?

A. I specifically do not know.

ACCESS TO COURT/UNEQUAL RIGHTS

Chapter 415: Adult Protective Services Act

“The Legislature recognizes that there are many persons in this state who, because of age or disability, are in need of protective services. Such services should allow such an individual **the same rights as other citizens**, and at the same time, protect the individual from abuse, neglect, and exploitation...”

“In taking this action, the Legislature intends to place the fewest possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect and exploitation.”

415.1111 – The exception

A vulnerable adult who has been abused, neglected, or exploited as specified in this chapter has a cause of action against **any perpetrator** and may recover actual and punitive damages for such abuse, neglect, or exploitation. The action may be brought by the vulnerable adult, or that person's guardian, by a person or organization acting on behalf of the vulnerable adult with the consent of that person or that person's guardian, or by the personal representative of the estate of a deceased victim without regard to whether the cause of death resulted from the abuse, neglect, or exploitation. The action may be brought in any court of competent jurisdiction to enforce such action and to recover actual and punitive damages for any deprivation of or infringement on the rights of a vulnerable adult. A party who prevails in any such action may be entitled to recover reasonable attorney's fees, costs of the action, and damages. The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to a vulnerable adult. **Notwithstanding the foregoing, any civil action for damages against any licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under part II of chapter 400 relating to its operation of the licensed facility shall be brought pursuant to s. 400.023, or against any licensee or entity who establishes, controls, conducts, manages, or operates a facility licensed under part I of chapter 429 relating to its operation of the licensed facility shall be brought pursuant to s. 429.29.** Such licensee or entity shall not be vicariously liable for the acts or omissions of its employees or agents or any other third party in an action brought under this section.

Chapter 400

- Creates an exclusive remedy
- Obstacles to discovery
- Limits who can be held accountable
- Hides and protects the real “perpetrators”
- Caps damages

FINANCIAL RESPONSIBILITY

Establishes Financial Responsibility

- Hospitals are required to have insurance and there are minimums
- Doctors are required to have insurance and there are minimums
- Automobile drivers are required to have insurance and there are minimums
- Why? Because there are dangers; society demands
- NOT FOR NURSING HOMES

RIGHTS REMAIN INTACT

Rights remain

Article 1, Sect 2 – Fla Constitution

Basic rights – All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness...

Rights remain

“Article 1, Section 2 is essentially Florida’s “Equal Protection” clause and is more extensive than the language in the US Constitution.

“Proposal 88 would expand Florida’s “equal protection” specifically to residents of ALF’s and nursing homes and define what those rights mean in the context of individuals who are vulnerable and dependent upon others for their care, safety, and dignity.”

- Sketchley, Zamora, Vazquez de Rincon

HOW DID WE GET HERE?

A closer look at the history of elder rights and protections in Florida, exploring landmark events that shored up, or downgraded, resident safeguards in nursing homes and assisted living facilities.

ELDER RIGHTS CHRONOLOGY



RESIDENTS WIN!

1987

NURSING HOME REFORM ACT

Congressionally enacted nursing home law that required promulgation of federal resident protections. The law also mandated each state develop a nursing home residents' bill of rights.

FLORIDA STAFFING/TORT LAW

Florida passes the nation's preeminent staffing law, requiring nursing homes to steadily increase caregiver hours over the next three years. Providers also win a key legislative victory, the capping of lawsuit damages.

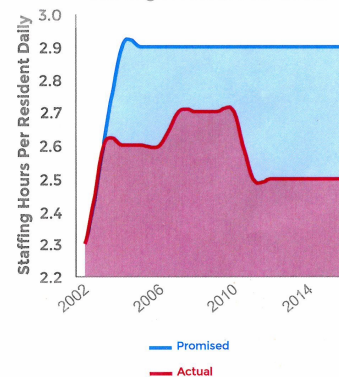
Unfortunately, Florida reneged on its staffing promise—at first delaying, then significantly reducing the staffing calculation. However, nursing home operators have been allowed to keep their tort laws to this day.

2001

RESIDENTS LOSE!



Florida's unrealized direct care staffing levels (2002-2016)





RESIDENTS LOSE!

2006

GENERATOR PROPOSAL

Florida lawmakers fail to pass critical nursing home generator legislation, unwittingly setting up the horrific Hollywood Hills tragedy that would occur 11 years later.

ASSISTED LIVING CRISIS

The *Miami Herald* publishes its award-winning series "Neglected to Death," showing widespread abuse and neglect in Florida's assisted living facilities (ALF). The governor, legislature, and grand jury call for sweeping reforms.



RESIDENTS LOSE!

2012-2015

ALF REFORM FAILS, PASSES

After numerous attempts, Florida finally passes an ALF reform bill. A key component of the new law, the development of an online ALF comparison tool. A glaring negative outcome is that the law deregulated those ALFs licensed to care for frailest assisted living residents.

PROVIDER PROTECTION LAW

Nursing home owners given additional lawsuit liability protections by Florida lawmakers while families of residents receive unenforceable records access provisions.



RESIDENTS LOSE!

2017

HOLLYWOOD HILLS TRAGEDY

14 residents die at the The Rehabilitation Center at Hollywood Hills following Hurricane Irma. The official cause of death for 12 residents is homicide.

ELDER RIGHTS AMENDMENT

Constitutional Commission considers landmark elder rights amendment.



2011

RESIDENTS LOSE!



2014

RESIDENTS LOSE!

FORMER SENATOR RONDA STORMS
2129 CROSBY ROAD
VALRICO, FLORIDA 33594

January 10, 2018

Commissioner Lisa Carlton
The Capitol
400 S. Monroe Street
Tallahassee, Florida 32399

Dear Senator Carlton:

I once read that true and undefiled religion in God's eyes is to care for the widows and orphans in their time of trouble and to keep oneself unstained by the world's corruption. For me, caring for the widows includes all the fragile people in facilities across Florida. This fundamental belief compels me to express my strong support for the Nursing Home and Assisted Living Facility Residents' Bill of Rights.

Ten years ago, I served in the Florida Senate and spearheaded legislation to reform the level of care provided to the vulnerable population in ALFs and NHs. At that time, people across Florida were repulsed and horrified to learn that frail people had been raped, murdered, robbed and abused in various facilities around the state. A frail lady in her mid 80's raped; a resident beaten to death with a brick; residents locked in closets; residents hyper-tranquilized- ad nauseam. However, the industry proved too powerful and reform was stopped. Most alarmingly, the industry roared back, aggressively fighting to roll back existing protections and further weaken protections.

Over the next four years, more statewide cases of abuse again shocked the conscience of the public across Florida. As a result, in 2011, I was tapped by legislative leadership to serve on a statewide taskforce to investigate the systemic problems and provide recommendations to the Governor and Florida Legislature. During that time, I was horrified to learn of a resident scalded to death while bathing; of a resident restrained so tightly and for so long that her paper-thin skin tore, leading to her death; of a resident with festering cancerous sores; and of a resident who became unresponsive in his wheel chair while staff merely threw a sheet over his head until staff finally called paramedics thirty minutes later—too late to save his life. Once again, the powerful industry lobby insulated the facilities from meaningful change and robbed the frail and vulnerable of needed protections.

Now, our state learns of new horrors—mass deaths during Hurricane Irma—and you have the opportunity for lasting, historic and meaningful reform. I strongly encourage you to act and close the gap where legislative response has been inadequate. Please vote for the Nursing Home and Assisted Living Facility Residents' Bill of Rights and vote for protecting fragile Floridians in their time of trouble.

Carpe diem,



Ronda R. Storms
Former State Senator
Florida

*P.S. Hope
you are well!
Happy New
Year!*

cc: Declaration of Rights Committee members



-AARP

20% of residents are subjected to abuse,
neglect and exploitation = approx 36,000 ppl

5 FACTS: FLORIDA'S NURSING HOME LISTS










Gold Seal

VS



WATCH LIST

3% <small>(22 GOLD SEAL NURSING HOMES)</small>	 <small>% OF NURSING HOMES STATEWIDE</small>	16% <small>(106 WATCH LIST NURSING HOMES)</small>
128	 <small>DEFICIENCIES SINCE 2014</small>	3,028
27%	 <small>% FOR-PROFIT FACILITIES</small>	77%
	 <small>LISTS' AVERAGED STAR RATING</small>	
+9% <small>EXTRA CARE PER RESIDENT DAILY</small>	 <small>STAFFING</small>	-4% <small>LESS CARE PER RESIDENT DAILY</small>

SOURCES: NURSING HOME COMPARE; FLORIDA HEALTH FINDER

14 DEATHS

Retirement home shut down after a death and beating

SMEARED IN FILTH

**BLEAK
CONDITIONS**

DON'T VALUE OLD PEOPLE"

Hidden cameras show abuse inside nursing home

URINE SOAKED

**56 PUNCHES IN
TWO MINUTES**

**Pensacola assisted living
accused in resident death**

ROTTEN FOOD

QUALITY CARE INDICATORS

US Government Accountability Office

November 2016

Nursing Homes

Consumers Could Benefit from Improvements to the Nursing Home Compare Website and Five-Star Quality Rating System

“... the Five-Star System does not include consumer satisfaction survey information, leaving consumers to make nursing home decisions without this important information. As a result, CMS cannot ensure that the Five-Star System fully meets its primary goal.”

FAU Study Says Some Nursing Homes Gaming the System to Improve Their Medicare Star Ratings



- "We were able to empirically demonstrate that inflation does exist in the current system," said Xu Han, assistant professor in the Department of Information Technology & Operations Management within FAU's College of Business,
- The study, which examined data from more than 1,200 nursing homes in **California**, provides systematic evidence that some nursing homes are inflating the self-reported measures in Medicare's star rating system.

Florida's nursing home REALITY ...

Six alarming facts about those 4- and 5-star rated nursing homes that the industry neglects to share.

5,356

The number of deficiencies cited against 4- and 5-star nursing homes over the past three years.

25%

The percentage of state watch list facilities that are rated as 4- and 5-star nursing homes.

\$1.4M

The amount of federal fines levied against 4- and 5-star rated nursing homes since 2014.



3

The number of 4- and 5-star rated nursing homes on the federal watch list.

70%

The percentage of 4- and 5-star rated nursing homes with 10 or more cited deficiencies since 2014.

.008%

The percentage of 4- and 5-star nursing homes with deficiency free inspections.

... the quality is **NOT AS GOOD** as we're being expected to believe.

Sources: Nursing Home Compare and Florida Health Finder

NURSING HOME FACTS

90

REPEAT OFFENDERS

Of the 90 nursing homes that have been repeatedly fined for violating the health, safety, or rights of residents over the past four years, nearly two-thirds are still rated below average by the Center for Medicare and Medicaid Services.

225

FINED

Nursing home regulators slapped 225 Florida nursing homes with a fine or denial of payment for neglecting the rights of residents since 2014, total levied fines eclipsed \$11 million during the period.

2:1

BAD ^{vs.} GOOD

Poor nursing home inspection scores outpaced good scores by a 2:1 margin, nearly twice as many homes scored a much below average rating (136) than those with a much above average inspection score (69).



THE PUZZLING REALITY OF A NURSING HOME RESIDENT'S DIMINISHED LEGAL RIGHTS

COMMON TORT LAW

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."
--United States Constitution

"Every person who causes to be subjected, any citizen the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding."
--42 USCS § 1983

VULNERABLE ADULT PROTECTION ACT

A vulnerable adult who has been abused, neglected, or exploited has a cause of action against any perpetrator and may recover:

- PUNITIVE DAMAGES
- ACTUAL DAMAGES
- ATTORNEY'S FEES
- ANY RELATED COSTS

Except

When the action is against the licensee or entity who establishes, controls, conducts, manages, or operates a nursing home or assisted living facility. Actions shall then be brought under the nursing home and assisted living statutes, which substantially diminish an elderly victim's legal rights.

NURSING HOME RESIDENT'S DIMINISHED LEGAL RIGHTS

⊖ CAPPED DAMAGES

⊖ LIMITED DISCOVERY

⊖ ACTIONS RESTRICTED TO:

- LICENSEE
- MANAGEMENT OR CONSULTANT COMPANY
- MANAGING EMPLOYEES
- DIRECT CAREGIVERS

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-19-18

Meeting Date

*Topic

Proposition 88 CRC

*Name

Steve Watrel

Address

6129 Atlantic Blvd

Street

Jacksonville

City

State

FL 32211

Zip

*Speaking:



For



Against



Information only

Waive Speaking:



In Support



Against

(The Chair will read this information into the record)

Are you representing someone other than yourself?



Yes



No

If yes, who?

Are you a registered lobbyist?



Yes



No

Are you an elected official or judge?



Yes



No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

88

Proposal Number (if applicable)

234562

Amendment Barcode (if applicable)

Phone

904 723-0030

Email

swatrel@stevewatrel.com

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

Meeting Date

1/19/18

Proposal Number (if applicable)

88

Amendment Barcode (if applicable)

512714 / 234562

*Topic

Residents Rights

*Name

Douglas Mannheim

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Phone

850 681 6810

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dmannheimer@

broadandcassel.com

*Speaking:

☐

For

☒

Against

☐

Information Only

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Florida Health Care Association

Are you a registered lobbyist?

☒

Yes

☐

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name Telica Phillip

Address 1415 Miami, Rd

Phone 9543287840

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State

Zip

Email telica.phillip@consul4bc

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name

Kathy GALLIN

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Phone

561 568-9067

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Lake City FL

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Zip

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kgalline@signaturehealthcare.com

*Speaking:

☐

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Signature Healthcare

Are you a registered lobbyist?

☒

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name Steven Rule

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Email srule@ssl.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Five Star Senior Living

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

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APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name Yale Metz

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State

Zip

Email ymetz@hcs9.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name Mickey Carroll

Address 324 Wilcox Blvd

Phone 386-317-1293

Street

Daytona Beach FL

32114

Email MCarroll@GCHC.com

City

State

Zip

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

***Topic** Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

***Name** Heather Jackson

Address 451 S. Amelia Ave

Phone 386-871-9448

Street

Deland FL

32724

City

State

Zip

Email hjackson@gchc.com

***Speaking:** ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name Justin Gibson

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Phone 850.932.9257

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Email JGibson@GCHC.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name Kim DelPlato

Address 3788 Cypress Lake Dr.
Street
Lake Worth, FL 33467
City State Zip

Phone 561-602-4140

Email Kdelplato1@AOL.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name MARCO CARRASCO - (West Cables Health Care Center)

Address 2525 SW. 75TH AVE

Phone (305) 265-9391 Ext 500

Street

Miami

Florida

33155

City

State

Zip

Email MARCO.CARRASCO@PCITEXAS.NET

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? West Cables Health Care Center

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name Mel Beal

Address 5280 N. Ocean Dr

Street

Riviera Beach FL

City

State

33404

Zip

Phone 561-386-1665

Email mel-beal@msv.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Aironid Health Services

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name MICHAEL M'QUILKIN

Address 13101 87th PLACE

Street

SEMINOLE

City

FL

State

33776

Zip

Phone 727-581-9427

Email mquilkim@oakmanorliving.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? OAKMANOR SENIOR LIVING COMMUNITY / WRIGHTS MEMPHIS CASE C. RETIRED.

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name Gainesville Health Care Center

Address 4842 SW. Archer

Phone 352-376-8821

Street

Gainesville, Florida

32608

City

State

Zip

Email ~~Execdirector@~~gainesvillehealthcarecenter.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Gainesville Health Care Center

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name

Lori S. Olsen King

Address

Quality Health Care Center

Street

6940 Outreach Way

City

North Port

State

FL

Zip

Phone

941-426-8411

Email

lori.king.admin@gmail.com

*Speaking:

☐

For

☒

Against

☐

Information Only

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Quality Health Care Center

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name Joseph Cassiba (Hawthorne)

Address 851 W Lumsden Rd

Phone

Street

Brandon

FL

33511

Email

City

State

Zip

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Hawthorne village of Brandon

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

***Topic** Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

***Name** Vernon Zeger (Florida Living Options)

Address 1206 851 West Lumsden Road

Phone (813) 541-1939

Street

Brandon

FL

33511

City

State

Zip

Email VZeger@lto.support.net

***Speaking:** ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Florida living options

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

***Topic** Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

***Name** James Archenbeck

Address 12201 Bluegrass Pkwy

Street

Louisville

City

KY

State

40299

Zip

Phone 502-568-7800

Email jaschenbeck@shccs.com

***Speaking:** ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Signature Healthcare

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name Matthew DeSmit

Address One Post ST

Street

San Francisco

City

CA

State

94104

Zip

Phone 916-802-2202

Email matthew.desmit@mckesson.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Mckesson Medical Surgical

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name John Simmons

Address 1504 Seabreeze Avenue

Phone 904-249-7421

Street

Jacksonville Bch Fl

State

Zip

32250

Email JSIMMONS@AVANTECENTERS.COM

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Avante at Jacksonville Beach

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name JEFF MARKULIK

Address 1771 Edgewood Ave

Phone 904-766-7436

Street

Jacksonville, FL 32208

City

State

Zip

Email jmarkulik@sterling-health.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who?

Edgewood Nursing Center

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name Bradlee Cox

Address 3798 Beacon Ridge Way

Phone 352-396-1544

Street

Clermont

FL

34711

City

State

Zip

Email bradleecox87@gmail.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name RANDALL BLUE

Address 1453 PAYETTE LN

Street

WEST MELBOURNE

City

FL

State

32904

Zip

Phone 321-537-0843

Email BLUETREASURE@BELLSOUTH.NET

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who?

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name TRISTAN MCHADEO - OPS RUENNE CENTER

Address 2810 RUENNE ST

Phone 352 - 357 - 1990

Street

EVISTIS, FL

FL

32724

City

State

Zip

Email tristan.mchadeo@opismr.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

January 19, 2018

Meeting Date

88

Proposal Number (if applicable)

*Topic Declaration of Rights - Proposal 88

Amendment Barcode (if applicable)

*Name ALEX TERENCEV

Address 782 Lake Como DR.

Phone 386-523-8345

Street

Lake Mary

FL

32746

City

State

Zip

Email

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Gulf Coast Health Care

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

88

Proposal Number (if applicable)

*Topic Resident Bill of Rights

Amendment Barcode (if applicable)

*Name Jennifer Howard

Address 1017 Strong Rd

Phone _____

Street Quincy State FL Zip 32381

Email jhoward@halcyonrehab.net

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

88

Proposal Number (if applicable)

*Topic Resident Bill of Rights

Amendment Barcode (if applicable)

*Name Tosha Houston

Address 1017 Strong Rd

Phone 850-825-3711

Street

Quincy

City

FL

State

32351

Zip

Email thouston@gchc.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

88

Proposal Number (if applicable)

*Topic Resident Bill of Rights

Amendment Barcode (if applicable)

*Name Jackie Cargo

Address 1017 Strong Rd

Phone 850-875-3711

Street

Quincy

City

FL

State

32351

Zip

Email jcargo@gcbc.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

9/19/18
Meeting Date

88
Proposal Number (if applicable)

234562
Amendment Barcode (if applicable)

*Topic P.88

*Name Michael Qark

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

1/19/18
Meeting Date

88
Proposal Number (if applicable)
234562
Amendment Barcode (if applicable)

*Topic P.88

*Name Patte Wallace

Address _____
Street

Phone _____

City

State

Zip

Email _____

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

7/19/18

Meeting Date

88

Proposal Number (if applicable)

*Topic

Amendment Barcode (if applicable)

*Name

Martha King

Address

1017 Strong Rd.

Phone

850-875-3711

Street

City

Quincy, IL 32351

State

Zip

Email

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☐ No

If yes, who? Gulf Coast Health Care RiverChase Health & Rehab Center

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

Proposal Number (if applicable)

Amendment Barcode (if applicable)

*Topic

Resident Rights

*Name

Ron Reid

Address

2255 Centerville Rd

Street

City

Tallahassee

State

FL

Zip

32308

Phone

850.386.4054

Email

reid@centrepointherehab.com

*Speaking:

☐

For

☐

Against

☐

Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who?

Centre Pointe Health and Rehabilitation

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

***Required**

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

Proposal Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date

*Topic Resident Rights

*Name Whitney Bolden

Address 2500 Merchants Row Blvd Unit 238

Phone 850-386-4054

Tallahassee FL 32311
City State Zip

Email _____

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Centre Pointe Health & Rehab

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting.
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***Required**

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CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-19-18

Meeting Date

88

Proposal Number (if applicable)

*Topic

Resident Rights

Amendment Barcode (if applicable)

*Name

Horace W. Walsh Jr.

Address

1815 Vineland Lane

Phone

850-524-4265

Street

Tallahassee

FL

32317

City

State

Zip

Email hwalshe@centrepointherehab.com

*Speaking:

☐

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☐

Yes

☐

No

If yes, who?

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-19-18
Meeting Date

88
Proposal Number (if applicable)

*Topic Resident Rights

Amendment Barcode (if applicable)

*Name LAURA MUNOZ (Centre Pointe Health)

Address 2255 Centerville Rd
Street

Phone (850) 299-6942

Tallahussee FL 32308
City State Zip

Email munoz5laura@gmail.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Centre Pointe Health & Rehab

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

88

Proposal Number (if applicable)

*Topic

Resident Rights

Amendment Barcode (if applicable)

*Name

Linda Blackshear

Address

1017 Strong Road

Phone

850-875-3711

Street

Quincy,

City

FL

State

32351

Zip

Email

lblackshear@gchc.com

*Speaking:

☐

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

RiverChase Health & Rehab Center

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/19/18

Meeting Date

88

Proposal Number (if applicable)

*Topic

Amendment Barcode (if applicable)

*Name

Demetri Sapp

Address

1017 Strong Road

Phone

850-875-3711

Street

Quincy

FL

32351

City

State

Zip

Email

desapp@gchc.com

*Speaking:

☐

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Gulf Coast Health Care (Riverchase Health Rehab)

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

88

Proposal Number (if applicable)

*Topic Proposal 88

Amendment Barcode (if applicable)

*Name Graham Campbell-Work

Address 785 S 2nd St.

Phone 850-842-2176

DeFuniak Springs FL 32435
City State Zip

Email admin.chautauqua@shccs.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-19-18

Meeting Date

88

Proposal Number (if applicable)

*Topic Prop 88

Amendment Barcode (if applicable)

*Name Bret Brown

Address 879 Usery Rd

Phone 852-638-4654

Street

Chipley

State

FL

Zip

32425

Email admin.washingtonshades.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

Meeting Date

Proposal Number (if applicable)

Amendment Barcode (if applicable)

*Topic

*Name

Address

Phone

Email

*Speaking:

☐

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-19-18

Meeting Date

88

Proposal Number (if applicable)

*Topic

Resident Rights

Amendment Barcode (if applicable)

*Name

KENNEDY NWOKEMI

Address

1240 HILL STREET

Phone

850 363 3561

Street

QUINCY, FL 32351

Email

knworeji@gchc.com

City

State

Zip

*Speaking:

☐

For

☐

Against

☐

Information Only

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☐

Yes

☒

No

If yes, who?

Are you a registered lobbyist?

☐

Yes

☒

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18
Meeting Date

88
Proposal Number (if applicable)

*Topic _____

Amendment Barcode (if applicable)

*Name Tenesia Pearson

Address 30 Carmen Maria Ln

Phone 850-264-4162

Quincy FL 32351
City State Zip

Email tpearson@gchc.com

*Speaking: ☐ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Riverchase Health & Rehab

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18
Meeting Date

88
Proposal Number (if applicable)

*Topic _____

Amendment Barcode (if applicable)

*Name Damonica Dubose

Address 1017 Strong Rd.

Phone 850 345 2271

Street

Quincy
City

FL
State

32353
Zip

Email ddubose@gche.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who?

Riverchase Health & Rehab

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/2017
Meeting Date

88
Proposal Number (if applicable)

*Topic Elder Rights

Amendment Barcode (if applicable)

*Name Brian Lee

Address _____ Phone _____

Street

Email _____

City

State

Zip

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Families for Better Care

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

88
Proposal Number (if applicable)

1-19-18
Meeting Date

*Topic Proposal 80

Amendment Barcode (if applicable)

*Name CONWELL Hooper

Address 225 Peachtree St

Phone 404 475 2566

ATLANTA GA 30303
City State Zip

Email Conwell.a@americanSeniorAlliance.org

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? American Senior Alliance

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

1-19-18

Meeting Date

88

Proposal Number (if applicable)

~~XXXXXXXXXX~~

Amendment Barcode (if applicable)

*Topic P.88

*Name Steve Watrel

Address 6129 Atlantic Blvd

Street Jacksonville FL 32211

City State Zip

Phone 904-723-0030

Email swatrel@stewatrel.com

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/14

Meeting Date

88

Proposal Number (if applicable)

*Topic Proposal 88/cor

Amendment Barcode (if applicable)

*Name William Large

Address 40 S. Monroe Street

Phone 850-509-0756

Street

Tallahassee, FL. 32308

Email will@cfjustice.org

City

State

Zip

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☐ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☐ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19
Meeting Date

88
Proposal Number (if applicable)

*Topic Declaration of Rights/Bill of Rights

Amendment Barcode (if applicable)

*Name Brewster Bevis

Address 516 N. 4th
Street

Phone 224-7371

TLH FL 32301
City State Zip

Email _____

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? Associated Industries of Florida

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

01.19.18

Meeting Date

P 88

Proposal Number (if applicable)

*Topic NURSING HOME & ASSISTED LIVING
FACILITY BILL OF RIGHTS

Amendment Barcode (if applicable)

*Name BOB NAVE

Address 106 N. BRONOUGH ST

Phone 850. 222. 5052

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email bnave@floridatxwatch.org

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? FLORIDA TAX WATCH

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/19/18

Meeting Date

88

Proposal Number (if applicable)

*Topic Patients Bill of Rights

Amendment Barcode (if applicable)

*Name Cordyn Johnson

Address 136 S Bronaugh St

Phone 521-1200

Street

Tallahassee

FL

32301

City

State

Zip

Email Cjohnson@flchamber.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? FL Chamber of Commerce

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18
Meeting Date

P88
Proposal Number (if applicable)

*Topic DECLARATION OF RIGHTS

Amendment Barcode (if applicable)

*Name STEVE BANNER

Address 1812 RIGGINS ROAD

Phone 850 671 3700

Street

TALLAHASSEE

FL

32308

City

State

Zip

Email SBANNER@LeadingAge
florida.org

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? LEADINGAGE FLORIDA

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

P88

Proposal Number (if applicable)

*Topic DECLARATION OF RIGHTS

Amendment Barcode (if applicable)

*Name TYLER SUNUNU

Address 4449 MEANDERING WAY

Phone 850 878 1136

Street

TALAHASSEE

City

FL

State

32308

Zip

Email TSUNUNU@WESERVICES.ORG

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? WESTMINSTER OAKS

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-19-18

Meeting Date

88

Proposal Number (if applicable)

*Topic _____

Amendment Barcode (if applicable)

*Name Pattie Wallace

Address 9001 Regina Rd

Phone 904-477-8056

Street

City

Jax

FL

State

32257

Zip

Email PattieWallace@Berkshire.net

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☐ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☐ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

P88

Proposal Number (if applicable)

*Topic DECLARATION OF RIGHTS

Amendment Barcode (if applicable)

*Name DON WILSON

Address 4449 MEANDERING WAY

Phone 850 878 1136

Street

TALLAHASSEE

FL

32308

City

State

Zip

Email DWILSON@WSERVICES.ORG

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? WESTMINSTER OAKS

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

88
Proposal Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date

*Topic _____

*Name Michael Clarke

Address _____

Street

Jacksonville

City

FL

State

Zip

Phone 904-571-8632

Email _____

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

88

Proposal Number (if applicable)

*Topic Resident Rights

Amendment Barcode (if applicable)

*Name Matt & Helen Thompson

Address 1001 Carpenters Way

Phone 863-858-3847

Street

Lake Land

FL

33809

City

State

Zip

Email MTHompson@lakeland.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? The Manor & Villa at Carpenters

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

1/19/18

Meeting Date

P88

Proposal Number (if applicable)

*Topic ELDER AFFAIR

Amendment Barcode (if applicable)

*Name CLAY CONNOR

Address _____

Phone _____

Street

WILKINSON

FLA

State

32698

Zip

Email _____

City

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

P88

Proposal Number (if applicable)

*Topic

Resident Rights

Amendment Barcode (if applicable)

*Name

Deborah Franklin

Address

2806 Fritzke Rd

Phone

8136797533

Street

Dover

FL

State

33527

Zip

Email

dfranklin@fhca.org

*Speaking:

☐

For

☒

Against

☐

Information Only

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Are you representing someone other than yourself?

☒

Yes

☐

No

If yes, who?

FHCA

Are you a registered lobbyist?

☒

Yes

☐

No

Are you an elected official or judge?

☐

Yes

☒

No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

Amendment #

88 / 512714
Proposal Number (if applicable)

1/19
Meeting Date

*Topic Proposal 88 / CRC Substitute 234562 / 512714 Amendment Barcode (if applicable)

*Name William Large

Address 210 S. Monroe Street.

Phone 850-509-0756

Street

Tallahassee

FL

State

32308

Zip

Email william@justice.org

City

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Florida Justice Reform Institute

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD
(Deliver completed form to Commission staff)

Meeting Date _____

88
Proposal Number (if applicable)
512714
Amendment Barcode (if applicable)

*Topic Elder Rights

*Name Brian Lee

Address _____ Phone _____
Street _____

City _____ State _____ Zip _____

*Speaking: ☒ For ☐ Against ☒ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Families for Better Care

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1-19-18

Meeting Date

88

Proposal Number (if applicable)

512714

Amendment Barcode (if applicable)

*Topic P. 88

*Name Steve Watrel

Address 6129 Atlantic Blvd.

Street

Jax

City

FL

State

32211

Zip

Phone 904-723-0030

Email swatrel@stevewatrel.com

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/13

Meeting Date

88

Proposal Number (if applicable)

512714

Amendment Barcode (if applicable)

*Topic P. 88

*Name Patte Wallace

Address _____

Phone _____

Street

Jax

City

FL

State

32257

Zip

Email _____

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18

Meeting Date

88

Proposal Number (if applicable)

512714

Amendment Barcode (if applicable)

*Topic P. 88

*Name Michael Clarke

Address _____

Street

Phone _____

City

State

Zip

Email _____

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☒ No

If yes, who? _____

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

11/19

Meeting Date

Amendment #
88/ 234562
Proposal Number (if applicable)

*Topic Proposal 88 / 234562

Amendment Barcode (if applicable)

*Name William Large

Address 210 S. Monroe St.
Street

Phone 850-509-0756

Tallahassee, FL. 32308
City State Zip

Email william@fljustice.org

*Speaking: ☐ For ☒ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☐ Yes ☐ No

If yes, who? Florida Justice Reform Institute

Are you a registered lobbyist? ☒ Yes ☐ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

CONSTITUTION REVISION COMMISSION

APPEARANCE RECORD

(Deliver completed form to Commission staff)

1/19/18
Meeting Date

88
Proposal Number (if applicable)

*Topic Brian Lee

234562
Amendment Barcode (if applicable)

*Name Elder Rights

Address _____
Street

Phone _____

City

State

Zip

Email _____

*Speaking: ☒ For ☐ Against ☐ Information Only

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? ☒ Yes ☐ No

If yes, who? Families for Better Care

Are you a registered lobbyist? ☐ Yes ☒ No

Are you an elected official or judge? ☐ Yes ☒ No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

*Required

COMMITTEE: Declaration of Rights
ITEM: P 88
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Friday, January 19, 2018
TIME: 8:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building, Tallahassee, Florida

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting