

Tab 1	SB 698 by Book (CO-INTRODUCERS) Stewart; (Compare to CS/H 01287) Assisted Reproduction Facilities					
662392	D	S	RCS	CJ, Book	Delete everything after	02/18 11:02 AM

Tab 2	SB 1054 by Gruters (CO-INTRODUCERS) Farmer; (Compare to CS/H 00941) Substance Abuse Services					
601520	D	S	RCS	CJ, Gruters	Delete everything after	02/18 11:02 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Perry, Chair
Senator Brandes, Vice Chair

MEETING DATE: Tuesday, February 18, 2020
TIME: 10:00 a.m.—12:00 noon
PLACE: *Mallory Horne Committee Room, 37 Senate Building*

MEMBERS: Senator Perry, Chair; Senator Brandes, Vice Chair; Senators Bracy, Flores, and Pizzo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 698 Book (Compare CS/H 1287)	Assisted Reproduction Facilities; Requiring a donor to enter into a certain contract with a donor bank or fertility clinic before he or she may donate; requiring a donor bank to clearly label each donation that is transferred to a fertility clinic according to the terms of each donor's contract; requiring the Department of Health to perform annual inspections of donor banks and fertility clinics without notice; providing civil and criminal causes of action for, criminal penalties for, and disciplinary action against a physician who intentionally or recklessly artificially inseminates a patient with the incorrect sperm, eggs, or embryos, etc. JU 02/11/2020 Favorable CJ 02/18/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0
2	SB 1054 Gruters (Compare CS/H 941)	Substance Abuse Services; Requiring the Department of Children and Families, in conjunction with the Office of the State Courts Administrator, to establish a process for electronically verifying compliance with certain court-ordered treatments, etc. CF 02/11/2020 Favorable CJ 02/18/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 698

INTRODUCER: Criminal Justice Committee and Senators Book and Stewart

SUBJECT: Assisted Reproduction Facilities

DATE: February 19, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 698 creates s. 383.61, F.S., which requires a commissioning party or donor to contract with a donor bank, fertility clinic, or health care practitioner prior to donating reproductive material.

This bill provides that by January 1, 2021, donor banks, fertility clinics, and health care practitioners must establish, and annually submit best practices, which are consistent with 42 U.S.C. part 263a(f), to the appropriate licensing agency for review. Donor banks, fertility clinics and health care practitioners must clearly label reproductive material, comply with the terms of the contract, and maintain records for a minimum of 30 years. The bill expressly prohibits a health care practitioner from implanting or inseminating a recipient with the reproductive material of the health care practitioner.

This bill provides that the Agency for Health Care Administration (AHCA), must perform annual inspections of donor banks and fertility clinics without notice. Donor banks and fertility clinics that are found in violation of a contract or best practice policies, including proper labeling and maintenance of records, are subject to penalties provided in s. 400.995, F.S, by the AHCA.

This bill creates s. 784.086, F.S., establishing the crime of reproductive battery. It is a third degree felony for a health care practitioner to intentionally penetrate the vagina of a recipient with the reproductive material of a donor that the recipient has not consented to. It is a second degree felony if the health care practitioner uses his or her own reproductive material.

This bill amends ss. 456.072, 458.331, and 459.015, F.S., to add new grounds for discipline of health care practitioners. Health care practitioners who intentionally implant or inseminate a recipient with the health care practitioner's reproductive material, or is found in violation of the contract or best practice policies, including proper labeling and maintenance of records, are subject to penalties provided in ss. 456.072, 458.331, or 459.015, F.S., as appropriate.

This bill creates s. 456.51, F.S., providing that a health care practitioner must have written consent to perform a pelvic examination. A health care practitioner may conduct a pelvic examination without written consent if a court orders the performance of the examination for the collection of evidence, or the examination is immediately necessary to avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function.

This bill may have an indeterminate fiscal impact on the AHCA and the Department of Health (DOH). Additionally, this bill may have a positive indeterminate prison bed impact (unquantifiable positive prison bed impact). See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2020.

II. Present Situation:

The recent arrival of genetic testing kits and ancestry reports, such as Ancestry.com or 23andMe, has yielded unsettling results for many users. According to media reports, several fertility doctors who represented that they were using the sperm of a patient's husband or an anonymous donor to artificially inseminate a patient, were in fact lying to their patients. The fertility specialists were inseminating the patients with their own sperm. Even more distressing to the victims of these acts was the realization that the doctors' actions were not actually illegal.¹

Fertility Specialists Alleged to Have Been Sperm Donors to their Patients

Virginia

One media report stated that Dr. Cecil Jacobson, a fertility specialist in Vienna, Virginia, may have secretly donated his own sperm to father at least 75 children. Although prosecutors wanted to try Dr. Jacobson for lying to patients about the source of the sperm, no laws at that time prohibited a doctor from donating sperm to a patient. Instead, prosecutors charged him with the more basic counts of criminal fraud in his medical practice which involved the use of telephones and the United States Postal Service. He was convicted of committing 52 counts of fraud and perjury in 1992.²

¹ Ellen Trachman, Above the Law, *Intense and Dramatic Testimony Propels Texas Fertility Fraud Bill Forward* (April 17, 2019), available at <https://abovethelaw.com/2019/04/intense-and-dramatic-testimony-propels-texas-fertility-fraud-bill-forward/> (last visited February 13, 2020) and CBS News, *Indiana Fertility Doctor Used Own Sperm to Impregnate Patients, Court Docs Say* (September 12, 2016), available at <https://www.cbsnews.com/news/indiana-fertility-doctor-used-own-sperm-to-impregnate-women-court-docs-say/> (last visited February 13, 2020).

² *Doctor Is Found Guilty in Fertility Case*, N.Y. TIMES (March 5, 1992), available at <https://perma.cc/J2NA-NUY8> (last visited February 14, 2020), cited by Jody Lynee Madeira, *infra* at Note 4.

Connecticut

A doctor in Greenwich, Connecticut, Ben D. Ramaley, settled a lawsuit in 2009 for secretly using his own sperm to impregnate a patient. The case was settled without any depositions being taken, but a gag order was issued which prevented the plaintiffs from discussing the case.³

When Barbara Rousseau used genetic testing to learn who her biological father was, she was astounded to learn that her father was actually her mother's fertility specialist in 1977, not an anonymous sperm donor. Barbara's parents filed a fertility fraud lawsuit against Dr. John Boyd Coats of Berlin, Vermont, in December, 2018, and seek compensatory and exemplary damages. The suit alleges that the doctor's conduct was "outrageously reprehensible" and had the character of outrage that is often "associated with a crime" and was done with malice.⁴

Indiana

In 2018, Dr. Ronald Cline of Zionsville, Indiana, surrendered his medical license after pleading guilty to two counts of obstruction of justice. It was alleged that he inseminated dozens of women with his own sperm while telling his patients that the donors were anonymous men. DNA tests revealed that he is likely the father of as many as 46 children whose mothers were his patients. Indiana law, at that time, did not specifically prohibit fertility specialists from donating their own sperm.^{5, 6}

Colorado

Dr. Paul Brennan Jones, a fertility specialist in Grand Junction, Colorado, was sued in October, 2019, for using his own sperm, rather than the sperm of anonymous donors, to impregnate women. Maia Emmons-Boring, whose mother relied on Dr. Jones for fertility treatment nearly 40 years earlier, has learned through DNA testing that she and her sister have five known half-siblings who were fathered by Dr. Jones. Ms. Emmons-Boring has been contacted by three additional people who are biologically linked to them through DNA testing. The civil lawsuit against the doctor alleges negligence, fraud, and other claims for damages.⁷

Idaho

In 2019, Dr. Gerald Mortimer, a retired gynecologist in Idaho Falls, Idaho, admitted to using his own sperm to impregnate multiple women in his infertility practice. He left the Obstetrics and

³ LeAnne Gendreau and Diana Perez, NBC Connecticut News, *Fertility Doc Accused of Making His Own Donation* (November 12, 2009) NBC News, available at <https://www.nbcconnecticut.com/news/local/fertility-doctor-may-have-done-the-deed-himself/2060754/> (last visited February 13, 2020).

⁴ Jody Lynee Madeira, *Understanding Illicit Insemination and Fertility Fraud, From Patient Experience to Legal Reform*, Columbia Journal of Gender & Law, 2019 Fall Issue 110, 123-124.

⁵ Associated Press, *Fertility Doctor Who Used Own Sperm to Impregnate Women Surrenders License* (August 23, 2018), available at <https://nypost.com/2018/08/23/fertility-doctor-who-used-own-sperm-to-impregnate-women-surrenders-license/> (last visited February 13, 2020).

⁶ Associated Press, *Indiana Senate Sends Sperm-Misuse Legislation to Governor* (April 17, 2019), available at <https://www.ibj.com/articles/73357-indiana-senate-sends-sperm-misuse-legislation-to-governor> (last visited February 13, 2020).

⁷ Morgan Phillips, Fox News, *Colorado fertility doctor used his own sperm to impregnate women, lawsuit claims* (October 29, 2019), available at <https://www.foxnews.com/us/colorado-fertility-doctor-used-his-own-sperm-to-impregnate-women-lawsuit-claims> (last visited February 13, 2020).

Gynecology Associates practice in Idaho Falls because he feared he would be caught using his own sperm to impregnate women. At least one lawsuit is pending against him.⁸

The Difficulty of Holding the Doctors Legally Accountable

Holding the fertility doctors legally accountable for their fraudulent acts, either criminally or civilly, has been difficult. One of the most obvious obstacles is an expired statute of limitation because the fraudulent act often occurred decades before it was discovered. Another obstacle involves the destruction of evidence which could be the destruction of medical records. It is difficult to prosecute a case criminally as a traditional sexual assault case because the women “consented” to the inseminations. It is difficult to prevail in a civil case because the facts do not readily lend themselves to the elements of fraud. The fraudulent inseminations more closely resemble “fraud in the inducement” where a person agrees to a procedure knowing what is involved, but consents to the procedure based upon false representations made by the defendant doctor.⁹

Several States’ Responses to Fertility Fraud

Texas

In response to the revelation that the doctors’ actions were not technically illegal, several states have enacted laws to criminalize the doctors’ deceptive acts. Texas, for example, enacted a law in 2019 that creates a sexual assault felony, punishable by up to 2 years’ imprisonment, if a health care services provider, while performing an assisted reproduction procedure, uses human reproductive material from a donor knowing that the recipient has not expressly consented to the use of the material from that donor. Additionally, and because most children born under these fraudulent circumstances and their parents do not discover the truth of their conception until many years later, victims are given 2 years from the time the offense is discovered to bring an action for the crime of sexual assault. The act is prospective in its application.¹⁰

California

California passed legislation in 2011 that criminalized the use of sperm, ova, or embryos in assisted reproduction technology for a purpose other than that indicated by the provider. A violator will be punished by imprisonment between 3 and 5 years and a fine that does not exceed \$50,000.¹¹

Indiana

Indiana similarly enacted legislation in 2019. The statute establishes a cause of action for civil fertility fraud and provides that a prevailing plaintiff may receive compensatory and punitive

⁸ Grace Hansen, EastIdahoNews.com, *Former Idaho Falls Doctor Admits to Using Own Sperm to Inseminate Multiple Patients* (November 7, 2019), available at <https://www.eastidahonews.com/2019/11/former-idaho-falls-gynecologist-admits-to-using-own-sperm-to-father-patients-children/> (last visited February 13, 2020).

⁹ *Supra*, Note 4 at 113, 184.

¹⁰ Texas SB 1259 (2019), available at <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=86R&Bill=SB1259> (last visited February 13, 2020).

¹¹ California Penal Code s. 367g., available at https://california.public.law/codes/ca_penal_code_section_367g (last visited February 13, 2020).

damages or liquidated damages of \$10,000. The legal action must be commenced within 10 years of the child's 18th birthday, 20 years after the procedure was performed, when the person first discovers evidence through DNA testing, when the person becomes aware of a record that provides sufficient evidence to bring a suit against the defendant, or when the defendant confesses to the offense.¹²

Colorado

Colorado is now considering a bill entitled "Misuse of Human Reproductive Material" which creates a new civil cause of action as well as a criminal offense if a health care provider, during the course of assisted reproduction, uses a donation from someone without obtaining the written consent of the patient. The bill provides for compensatory or liquidated damages of \$50,000 in a civil action and provides a felony penalty for the criminal act. Conviction of the offense is also considered unprofessional conduct under the licensing statute.¹³

Additional States Considering Legislation

Nebraska, Ohio, and Washington state are currently considering legislation to provide redress against physicians for fertility fraud.

Florida Law

It does not appear that Florida law specifically prohibits a health care practitioner from inseminating a patient with reproductive material from a donor without the patient's consent. As discussed above, the statute of limitations, the time allowed to bring an action for a previous act, has generally expired because many people do not realize that fraud was committed until decades after the insemination. Similarly, it would be challenging to prove sexual battery because the patient "consented" to the insemination, and the act was not technically committed against her will.

Fertility Clinics in Florida

As far as staff has been able to determine, no current law requires donor banks or fertility clinics to be regulated, registered, or inspected in the state. According to the DOH, there are approximately 30 fertility clinics operating in the state, some with multiple locations, and four donor banks.¹⁴

¹² Senate Enrolled Act No. 174, an act amending the Indiana Code concerning civil procedure, available at <http://iga.in.gov/legislative/2019/bills/senate/174#document-d66c4e90> (last visited February 13, 2020).

¹³ HB 20-1014, Colorado General Assembly, Second Regular Session, 72nd General Assembly, available at <https://www.leg.colorado.gov/bills/hb20-1014> (last visited February 13, 2020).

¹⁴ Florida Department of Health, *SB 698 Legislative Bill Analysis*, (February 7, 2020) (on file with the Senate Committee on Criminal Justice).

Licensing and Penalties

Health Care Practitioners

The DOH's Division of Medical Quality Assurance (MQA) has regulatory authority over health care practitioners.¹⁵ MQA works in conjunction with 22 boards and 4 councils to license and regulate 7 types of health care facilities and more than 40 health care professions.¹⁶ Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for MQA.

Section 456.072, F.S., authorizes a regulatory board or DOH, if there is no board, to discipline a health care practitioner for a number of offenses, including but not limited to:

- Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.
- Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.
- Engaging or attempting to engage in sexual misconduct as defined in s. 456.063, F.S.

If it is found that a licensee committed a violation, the board or DOH may impose penalties, including but not limited to:¹⁷

- Refuse to certify, or to certify with restrictions, an application for a license.
- Suspend or permanently revoke a license.
- Impose an administrative fine.
- Issue a reprimand or letter of concern.
- Place the licensee on probation.

The board or DOH, if there is no board, must consider what is necessary to protect the public or to compensate the patient when it decides the penalty to impose.¹⁸

Physicians

Florida licenses both allopathic and osteopathic physicians. Allopathic physicians diagnose, treat, operate, or prescribe for any human disease, pain, injury, deformity, or other physical or mental condition.¹⁹ The scope of practice for osteopathic physicians is the same as that of allopathic physicians; however, osteopathic medicine emphasizes the importance of the

¹⁵ Section 456.001(4), F.S., provides that "health care practitioners," include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dietitians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

¹⁶ Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2018-2019*, available at http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1819.pdf (last visited February 18, 2020).

¹⁷ Section 456.072(2), F.S.

¹⁸ *Id.*

¹⁹ Section 458.305, F.S.

musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.²⁰

Chapter 458, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Medicine (allopathic board) in conjunction with the DOH. The chapter provides, among other things, licensure requirements. An individual seeking to be licensed as an allopathic physician, must meet certain statutory requirements, including that he or she must not have committed an act or offense that would constitute a basis for disciplining a physician pursuant to s. 458.331, F.S.

Section 458.331, F.S., provides grounds for disciplinary action for allopathic physicians. An allopathic physician may be denied a license or disciplined²¹ for certain acts, including, but not limited to:

- Attempting to obtain, obtaining, or renewing a license to practice medicine by bribery, fraudulent misrepresentation, or through an error of the DOH or the board.
- Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or the ability to practice medicine.
- False, deceptive, or misleading advertising.
- Making deceptive, untrue, or fraudulent representations in or related to the practice of medicine or employing a trick or scheme in the practice of medicine.²²

Chapter 459, F.S., governs licensure and regulation of the practice of medicine by the Florida Board of Osteopathic Medicine (osteopathic board), in conjunction the DOH. The chapter provides, among other things, licensure requirements.

Section 459.015, F.S., provides grounds for disciplinary actions for osteopathic physicians. An osteopathic physician may be denied a license or disciplined²³ for certain acts, including, but not limited to:

- Attempting to obtain, obtaining, or renewing a license to practice medicine by bribery, fraudulent misrepresentation, or through an error of the DOH or the board.
- Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of medicine or the ability to practice medicine.
- Failing to perform a statutory or legal obligation placed upon a licensed osteopathic physician.
- Fraudulently altering or destroying records relating to patient care or treatment, including, but not limited to, patient histories, examination results, and test results.²⁴

²⁰ Section 459.003, F.S.

²¹ Section 458.331, F.S., provides that physicians found in violation of this section are subject to the penalties provided in s. 456.072(2), F.S.

²² Section 458.331, F.S.

²³ Section 459.015, F.S., provides that physicians found in violation of this section are subject to the penalties provided in s. 456.072(2), F.S.

²⁴ Section 459.015, F.S.

Clinics

Chapter 400, F.S., governs the licensure and regulation of health care clinics. The chapter provides, among other things, licensing requirements. A license must be obtained by the AHCA to operate a clinic.²⁵

Section 400.995, F.S., provides the administrative penalties that the AHCA may impose for a violation of statute or Rule. Administrative penalties, include, but are not limited to:

- Denial of the application for license renewal.
- Revoke and suspend the license.
- Impose administrative fines.²⁶

Florida Requirements for Informed Consent

The only general law in Florida on informed consent,²⁷ appears in ch. 766, F.S., Medical Malpractice and Related matters.²⁸ However, Florida physicians and physicians practicing within a postgraduate training program approved by the Board of Medicine must explain the medical or surgical procedure to be performed to the patient and obtain the informed consent of the patient. However, the physician does not have to obtain or witness the signature of the patient on the written form evidencing informed consent.²⁹

Pelvic Examinations

A pelvic examination involves the visual examination of the external genitalia and an internal visual examination of the vaginal walls and cervix using a speculum and palpation of the pelvic organs.³⁰ Health care practitioners often perform pelvic examinations as a part of the annual well woman visit.³¹ A health care practitioner may also perform a pelvic examination to diagnose specific health conditions, such as cancer and bacterial vaginosis.³²

²⁵ Section 400.991, F.S.

²⁶ Section 400.995, F.S.

²⁷ Informed consent is a process in which a health care provider educates a patient about the risks, benefits, and alternatives of a procedure or intervention. See William Gossman, Imani Thornton, John Hipskind, *Informed Consent*, (July 2019), available at <https://www.ncbi.nlm.nih.gov/books/NBK430827/> (last visited February 18, 2020).

²⁸ Section 766.103, F.S., provides generally that no recovery will be allowed against a health care practitioner when informed consent was obtained in accordance with an accepted standard of medical practice and a reasonable person would have an understanding of the procedure from the information that was provided, or the patient would reasonably, under all the circumstances, have undergone the procedure had the health care practitioner obtained informed consent in accordance with the accepted standard of medical practice.

²⁹ Rule 64B8-9.007, F.A.C.

³⁰ A pelvic examination usually involves an examination of a woman's vulva, vagina, uterus, ovaries, and fallopian tubes. It may also include examination of the bladder and the rectum. See Melissa Conrad Stoppler, MD, MedicineNet, *Pelvic Exam*, available at https://www.medicinenet.com/pelvic_exam/article.htm#why_is_a_pelvic_exam_performed (last visited February 18, 2020).

³¹ Amir Qaseem, et al., *Screening Pelvic Examination in Adult Women: A Clinical Practice Guideline from the American College of Physicians*, 161 *Ann Intern Med* 67 (July 2014), available at https://annals.org/aim/fullarticle/1884537/screening-pelvic-examination-adult-women-clinical-practice-guideline-from-american?_ga=2.7498674.1663533724.1580510917-1215329083.1580510917 (last visited February 18, 2020).

³² *Id.*

The American College of Obstetricians and Gynecologists finds that data is currently insufficient to make a recommendation for or against routine pelvic examinations.³³ Therefore, it recommends that pelvic examinations be performed when indicated by medical history or symptoms, such as abnormal bleeding, pelvic pain, or urinary issues.³⁴

Pelvic Examinations on Unconscious or Anesthetized Patients

In recent years, articles have detailed reports of medical students performing pelvic examinations, without consent, on women who are anesthetized or unconscious, a practice that has been common since the late 1800's.³⁵ In 2003, a study reported that 90 percent of medical students who completed obstetrics and gynecology rotations at four Philadelphia-area hospitals performed pelvic examinations on anesthetized patients for educational purposes.³⁶

Several medical organizations have taken positions that pelvic examinations should not be performed on anesthetized or incapacitated patients, including:

- The American Medical Association Council on Ethical and Judicial Affairs recommends that in situations where the patient will be temporarily incapacitated (e.g., anesthetized) and where student involvement is anticipated, involvement should be discussed before the procedure is undertaken whenever possible.³⁷
- The Committee on Ethics of the American College of Obstetricians and Gynecologists resolved that “pelvic examinations on an anesthetized woman that offer her no personal benefit and are performed solely for teaching purposes should be performed only with her specific informed consent obtained before her surgery.”³⁸

³³ *Id.*

³⁴ *Id.*

³⁵ See: Paul Hsieh, *Pelvic Exams on Anesthetized Women Without Consent: A Troubling and Outdated Practice*, FORBES (May 14, 2018), available at <https://www.forbes.com/sites/paulhsieh/2018/05/14/pelvic-exams-on-anesthetized-women-without-consent-a-troubling-and-outdated-practice/#74d152df7846> (last visited February 18, 2020); Dr. Jennifer Tsai, *Medical Students Regularly Practice Pelvic Exams on Unconscious Patients. Should They?*, ELLE (June 24, 2019), available at <https://www.elle.com/life-love/a28125604/nonconsensual-pelvic-exams-teaching-hospitals/> (last visited February 18, 2020); Lorelei Laird, *Pelvic Exams Performed without Patients' Permission Spur New Legislation*, ABA JOURNAL (September 2019), available at <http://www.abajournal.com/magazine/article/examined-while-unconscious> (last visited February 18, 2020); and Amanda Eisenberg, *New Bills Would Ban Pelvic Exams without Consent*, POLITICO (March 14, 2019), available at <https://www.politico.com/states/new-york/albany/story/2019/03/13/new-bills-would-ban-pelvic-exams-without-consent-910976> (last visited February 18, 2020).

³⁶ John Duncan, Dan Luginbill, Matthew Richardson, Robin Fretwell Wilson, *Using Tort Law to Secure Patient Dignity: Often Used as Teaching Tools for Medical Students, Unauthorized Pelvic Exams Erode Patient Rights, Litigation Can Reinstate Them*, 40 TRIAL 42 (October 2004).

³⁷ AMA Council on Ethical and Judicial Affairs, *Medical Student Involvement in Patient Care: Report of the Council on Ethical and Judicial Affairs*, AMA Journal of Ethics (March 2001), available at <https://journalofethics.ama-assn.org/article/medical-student-involvement-patient-care-report-council-ethical-and-judicial-affairs/2001-03> (last visited February 18, 2020).

³⁸ American College of Obstetricians and Gynecologists, Committee on Ethics, *Professional Responsibilities in Obstetric-Gynecologic Medical Education and Training*, (August 2011), available at <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Professional-Responsibilities-in-Obstetric-Gynecologic-Medical-Education-and-Training?IsMobileSet=false> (last visited February 18, 2020).

- The Association of American Medical Colleges reversing its prior policy position, offered that “performing pelvic examinations on women under anesthesia, without their knowledge or approval ... is unethical and unacceptable.”³⁹

California, Hawaii, Illinois, Iowa, Maryland, Oregon, Utah, and Virginia prohibit unauthorized pelvic examinations.⁴⁰

III. Effect of Proposed Changes:

This bill creates s. 383.61, F.S., which requires contracting prior to donating reproductive material, and requires the establishment of best practices and inspection of certain facilities that use assisted reproductive technology.

The bill defines the following terms:

- “Assisted reproductive technology,” means those procreative procedures which involve the laboratory handling of human eggs, pre-embryos, or sperm, including, but not limited to, in vitro fertilization embryo transfer, gamete intrafallopian transfer, pronuclear state transfer, tubal embryo transfer, and zygote intrafallopian transfer.
- “Commissioning party,” means the intended parent or parents of a child who will be conceived by means of assisted reproductive technology.
- “Donor,” means a person who donates reproductive material, regardless of whether for personal use or compensation.
- “Donor bank,” means any facility that collects reproductive material from donors for use by a fertility clinic.
- “Egg,” means the unfertilized female reproductive cell.
- “Fertility clinic,” means a facility in which reproductive materials are subject to assisted reproductive technology for the purpose of implantation.
- “Health care practitioner,” has the same meaning as provided in s. 456.001, F.S.
- “Preembryo,” means the product of fertilization of an egg by a sperm until the appearance of the embryonic axis.
- “Recipient,” means a person who receives, through implantation, reproductive material from a donor.
- “Reproductive material,” means any human “egg,” “preembryo,” or “sperm.”
- “Sperm,” means the male reproductive cell.

Additionally, s. 383.61, F.S., requires a commissioning party or donor to contract with a donor bank, fertility clinic, or health care practitioner prior to donating reproductive material. At a minimum, the contract must indicate what must be done with the reproductive material if:

- The donor dies or becomes incapacitated;
- A designated recipient for the donation dies or becomes incapacitated;

³⁹ Robin Fretwell Wilson, *Autonomy Suspended: Using Female Patients to Teach Intimate Exams Without Their Knowledge or Consent*, 8 J OF HEALTH CARE LAW AND POLICY 240, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=880120 (last visited February 18, 2020).

⁴⁰ Lorelei Laird, *Pelvic Exams Performed without Patients’ Permission Spur New Legislation*, ABA JOURNAL (September 2019), available at <http://www.abajournal.com/magazine/article/examined-while-unconscious> (last visited February 18, 2020).

- The commissioning party separate or their marriage is dissolved;
- One member of the commissioning party dies or becomes incapacitated;
- The reproductive material is unused, including whether it may be disposed of, offered to a different recipient, or donated to science; and
- Any other unforeseen circumstance occurs.

This bill provides that by January 1, 2021, donor banks, fertility clinics, and health care practitioners must establish, and annually submit best practices, which are consistent with 42 U.S.C. part 263a(f), to the appropriate licensing agency for review. Donor banks, fertility clinics, and health care practitioners must clearly label reproductive material, comply with the terms of the contract, and maintain records for a minimum of 30 years. The bill expressly prohibits a health care practitioner from implanting or inseminating a recipient with the reproductive material of the health care practitioner.

This bill provides that the AHCA must perform annual inspections of donor banks and fertility clinics without notice. Donor banks and fertility clinics that are found in violation of a contract or best practice policies, including proper labeling and maintenance of records, are subject to penalties provided in s. 400.995, F.S, by the AHCA.

This bill amends ss. 456.072, 458.331, or 459.015, F.S., to add new grounds for discipline of health care practitioners. Health care practitioners who intentionally implant or inseminate a recipient with the health care practitioner's reproductive material, or is found in violation of the contract or best practice policies, including proper labeling and maintenance of records, are subject to penalties provided in ss. 456.072, 458.331, or 459.015, F.S., as appropriate.

This bill creates s. 784.086, F.S., establishing the crime of reproductive battery. It is a third degree felony⁴¹ for a health care practitioner to intentionally penetrate the vagina of a recipient with the reproductive material of a donor that the recipient has not consented to. It is a second degree felony⁴² if the health care practitioner uses his or her own reproductive material.

The statute of limitations for a third or second degree felony is generally three years.⁴³ The bill provides that the statute of limitations for reproductive battery does not begin until the violation is reported to law enforcement or any other governmental agency.

This bill creates s. 456.51, F.S., providing that a health care practitioner must have written consent to perform a pelvic examination. A health care practitioner may conduct a pelvic examination without written consent if a court orders the performance of the examination for the collection of evidence, or the examination is immediately necessary to avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function.

This bill is effective July 1, 2020.

⁴¹ A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

⁴² A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

⁴³ Section 775.15(2)(b), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill makes it a third degree felony for a health care practitioner to intentionally penetrate the vagina of a recipient with the reproductive material of a donor that the recipient has not consented to. It is a second degree felony if the health care practitioner uses his or her own reproductive material. Because this bill creates new crimes, it may have a positive indeterminate prison bed impact (unquantifiable positive prison bed impact).

Additionally this bill may have an indeterminate fiscal impact on the DOH and the AHCA for inspections and implementing disciplinary action for violations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 383.61, 456.51, and 784.086.

This bill substantially amends the following sections of the Florida Statutes: 456.072, 458.331, and 459.015.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 18, 2020:

The committee substitute:

- Defines the terms, “assisted reproductive technology,” “commissioning party,” “donor,” “donor bank,” “egg,” “fertility clinic,” “health care practitioner,” “preembryo,” “recipient,” “reproductive material,” and “sperm.”
- Requires a commissioning party or donor of reproductive material to enter into a contract with a donor bank, fertility clinic, or health care practitioner, and provides for minimum contract requirements.
- Requires that donor banks, fertility clinics, and health care practitioners establish best practice policies, consistent with federal law. Additionally, requirements for labeling and maintenance of records is provided in the bill.
- Expressly prohibits a health care practitioner from inseminating or implanting a recipient with the reproductive material of the health care practitioner.
- Requires the AHCA to annually inspect all donor banks and fertility clinics.
- Provides penalties when donor banks, fertility clinics or health care professionals are found in violation of the best practices.
- Creates the crime of reproductive battery. It is a third degree felony for a health care practitioner to intentionally penetrate the vagina of a recipient with the reproductive material of a donor that the patient has not consented to. It is a second degree felony if the health care practitioner uses his or her own reproductive material.
- Requires a health care practitioner to obtain written consent to perform a pelvic exam.

B. Amendments:

None.



662392

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2020	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Book) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 383.61, Florida Statutes, is created to
read:

383.61 Assisted reproduction facilities.-

(1) DEFINITIONS.-As used in this section, the term:

(a) "Assisted reproductive technology" means those

procreative procedures which involve the laboratory handling of



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11 human eggs, preembryos, or sperm, including, but not limited to,
12 in vitro fertilization embryo transfer, gamete intrafallopian
13 transfer, pronuclear stage transfer, tubal embryo transfer, and
14 zygote intrafallopian transfer.

15 (b) "Commissioning party" means the intended parent or
16 parents of a child who will be conceived by means of assisted
17 reproductive technology.

18 (c) "Donor" means a person who donates reproductive
19 material, regardless of whether for personal use or
20 compensation.

21 (d) "Donor bank" means any facility that collects
22 reproductive material from donors for use by a fertility clinic.

23 (e) "Egg" means the unfertilized female reproductive cell.

24 (f) "Fertility clinic" means a facility in which
25 reproductive materials are subject to assisted reproductive
26 technology for the purpose of implantation.

27 (g) "Health care practitioner" has the same meaning as
28 provided in s. 456.001.

29 (h) "Preembryo" means the product of fertilization of an
30 egg by a sperm until the appearance of the embryonic axis.

31 (i) "Recipient" means a person who receives, through
32 implantation, reproductive material from a donor.

33 (j) "Reproductive material" means any human "egg,"
34 "preembryo," or "sperm."

35 (k) "Sperm" means the male reproductive cell.

36 (2) (a) CONTRACT REQUIREMENTS.—A commissioning party or
37 donor must enter into a contract with the donor bank, fertility
38 clinic, or health care practitioner before he or she may make a
39 donation of reproductive material. The contract must, at



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40 minimum, indicate what must be done with the reproductive
41 material if:

42 1. The donor dies or becomes incapacitated;

43 2. A designated recipient for the donation dies or becomes
44 incapacitated;

45 3. The commissioning party separate or their marriage is
46 dissolved;

47 4. One member of the commissioning party dies or becomes
48 incapacitated;

49 5. The reproductive material is unused, including whether
50 it may be disposed of, offered to a different recipient, or
51 donated to science; and

52 6. Any other unforeseen circumstance occurs.

53 (b) The donor bank, fertility clinic, or health care
54 practitioner must ensure that each donation is clearly labeled
55 according to the terms of each donor or commissioning party's
56 contract.

57 (c) The donor bank, fertility clinic, or health care
58 practitioner must ensure that the donation is implanted,
59 returned, disposed of, or stored according to the terms of the
60 contract.

61 (3) BEST PRACTICE POLICIES.—

62 (a) By January 1, 2021, each donor bank, fertility clinic
63 and health care practitioner that provides assisted reproductive
64 technology in this state, shall develop a written best practices
65 policy consistent with 42 U.S.C. part 263a(f).

66 (b) The best practices policy must be submitted to the
67 appropriate licensing agency or department annually for review.

68 (c) All reproductive material stored by a donor bank,



662392

69 fertility clinic, or health care practitioner must be clearly
70 labeled.

71 (d) A donor bank, fertility clinic, or health care
72 practitioner must comply with the terms of the contract,
73 pursuant to subsection (2).

74 (e) A donor bank, fertility clinic, or health care
75 practitioner must maintain all records for at least 30 years.

76 (f) A health care practitioner may not implant or
77 inseminate a recipient or cause a recipient to be implanted or
78 inseminated with reproductive material of the health care
79 practitioner.

80 (4) INSPECTIONS.—The Agency for Health Care Administration
81 shall perform annual inspections of donor banks and fertility
82 clinics without notice.

83 (5) PENALTIES.—A donor bank or fertility clinic in
84 violation of subsections (2) or (3) of this section are subject
85 to penalties provided in s. 400.995.

86 Section 2. Paragraph (pp) and paragraph (qq) are added to
87 subsection (1) of section 456.072, Florida Statutes, to read:

88 456.072 Grounds for discipline; penalties; enforcement.—

89 (1) The following acts shall constitute grounds for which
90 the disciplinary actions specified in subsection (2) may be
91 taken:

92 (pp) Intentionally implanting or inseminating a recipient
93 or causing a recipient to be implanted or inseminated with the
94 reproductive material, as defined in s. 383.61, of a donor
95 without the recipient's consent.

96 (qq) A violation of s. 383.61.

97 Section 3. Section 456.51, Florida Statutes, is created to



662392

98 read:

99 456.51 Health care practitioners; consent for pelvic
100 examinations.-

101 (1) As used in this section, the term "pelvic examination"
102 means the direct palpation of the organs of the female internal
103 reproductive system.

104 (2) A health care practitioner may not perform a pelvic
105 examination on a patient without the written consent of the
106 patient or the patient's legal representative executed specific
107 to, and expressly identifying, the pelvic examination, unless:

108 (a) A court orders performance of the pelvic examination
109 for the collection of evidence; or

110 (b) The pelvic examination is immediately necessary to
111 avert a serious risk of imminent substantial and irreversible
112 physical impairment of a major bodily function of the patient.

113 Section 4. Paragraph (ww) and paragraph (xx) are added to
114 subsection (1) of section 458.331, Florida Statutes, to read:

115 458.331 Grounds for disciplinary action; action by the
116 board and department.-

117 (1) The following acts constitute grounds for denial of a
118 license or disciplinary action, as specified in s. 456.072(2):

119 (ww) Intentionally implanting or inseminating a recipient
120 or causing a recipient to be implanted or inseminated with the
121 reproductive material, as defined in s. 383.61, of a donor
122 without the recipient's consent.

123 (xx) A violation of s. 383.61.

124 Section 5. Paragraph (yy) and paragraph (zz) are added to
125 subsection (1) of section 459.015, Florida Statutes, to read:

126 459.015 Grounds for disciplinary action; action by the



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127 board and department.-

128 (1) The following acts constitute grounds for denial of a
129 license or disciplinary action, as specified in s. 456.072(2):

130 (yy) Intentionally implanting or inseminating a recipient
131 or causing a recipient to be implanted or inseminated with the
132 reproductive material, as defined in s. 383.61, of a donor
133 without the recipient's consent.

134 (zz) A violation of s. 383.61.

135 Section 6. Section 784.086, Florida Statutes, is created to
136 read:

137 784.086 Reproductive battery.-

138 (1) As used in this section, the term:

139 (a) "Donor" has the same meaning as provided in s. 383.61.

140 (b) "Health care practitioner" has the same meaning as
141 provided in s. 456.001.

142 (c) "Recipient" has the same meaning as provided in s.
143 383.61.

144 (d) "Reproductive material" has the same meaning as
145 provided in s. 383.61.

146 (2) A health care practitioner may not intentionally
147 penetrate the vagina of a recipient with the reproductive
148 material of a donor or any object containing the reproductive
149 material of a donor, knowing the recipient has not consented to
150 the use of the reproductive material from that donor.

151 (a) A health care practitioner who violates this section
152 commits reproductive battery, a felony of the third degree,
153 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

154 (b) A health care practitioner who violates this section
155 and is the donor of the reproductive material commits a felony



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156 of the second degree, punishable as provided in s. 775.082, s.
157 775.083, or s. 775.084.

158 (3) Notwithstanding any other provision of law, the period
159 of limitation for a violation under this section does not begin
160 to run until the date on which the violation is discovered and
161 reported to law enforcement or any other governmental agency.

162 (4) It is not a defense to the crime of reproductive
163 battery that the recipient consented to an anonymous donor.

164 Section 8. This act shall take effect July 1, 2020.

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

167 And the title is amended as follows:

168 Delete everything before the enacting clause
169 and insert:

170 A bill to be entitled
171 An act relating to reproductive health; creating s.
172 383.61, F.S.; defining terms; requiring a
173 commissioning party or donor to enter into a contract;
174 providing requirements for the contract; requiring
175 donor banks, fertility clinics and health care
176 practitioners, to develop, by a specified date, a
177 written best practices policy consistent with 42
178 U.S.C. 263a(f); requiring the annual submission of
179 such written policies; requiring labeling of
180 reproductive material and contract compliance;
181 requiring records retention; prohibiting a health care
182 practitioner from implanting or inseminating a
183 recipient with reproductive material of the health
184 care practitioner; requiring annual inspections by the



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185 Agency for Health Care Administration; providing that
186 donor banks and fertility clinics are subject to
187 penalties for noncompliance; amending s. 456.072;
188 adding new grounds for discipline; creating s. 456.51,
189 F.S.; defining the term "pelvic examination";
190 prohibiting a health care practitioner from performing
191 a pelvic examination on a patient without first
192 obtaining the written consent of the patient or the
193 patient's legal representative; providing exceptions;
194 amending s. 458.331; adding new grounds for
195 discipline; amending s. 459.015; adding new grounds
196 for discipline; creating s. 784.086; creating the
197 criminal offense of reproductive battery; providing
198 criminal penalties; tolling the statute of
199 limitations; providing applicability; providing an
200 effective date.

By Senator Book

32-00305A-20

2020698__

1 A bill to be entitled
 2 An act relating to assisted reproduction facilities;
 3 creating s. 383.61, F.S.; defining terms; requiring a
 4 donor to enter into a certain contract with a donor
 5 bank or fertility clinic before he or she may donate;
 6 providing requirements for the contract; requiring a
 7 donor bank to clearly label each donation that is
 8 transferred to a fertility clinic according to the
 9 terms of each donor's contract; requiring a fertility
 10 clinic to ensure that each donation received from a
 11 donor or a donor bank is implanted, returned, or
 12 disposed of according to the terms of the applicable
 13 donor's contract; requiring donor banks and fertility
 14 clinics to develop, by a specified date, a written
 15 best practices policy for storing and segregating
 16 sperm, eggs, and embryos; requiring the annual
 17 submission of such written policies to the department
 18 for review; creating a presumption of recklessness
 19 against a physician at a fertility clinic that does
 20 not have such a written policy; requiring the
 21 Department of Health to perform annual inspections of
 22 donor banks and fertility clinics without notice;
 23 requiring the department to impose specified fines on
 24 donor banks and fertility clinics for certain
 25 violations and specified conduct; requiring such fines
 26 to be deposited into the Rape Crisis Program Trust
 27 Fund; providing civil and criminal causes of action
 28 for, criminal penalties for, and disciplinary action
 29 against a physician who intentionally or recklessly

Page 1 of 5

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

32-00305A-20

2020698__

30 artificially inseminates a patient with the incorrect
 31 sperm, eggs, or embryos; tolling applicable time
 32 limitations for civil actions, criminal prosecution,
 33 and disciplinary proceedings relating to certain
 34 violations until certain conditions are met; providing
 35 an effective date.
 36

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

38
 39 Section 1. Section 383.61, Florida Statutes, is created to
 40 read:

41 383.61 Assisted reproduction facilities.-
 42 (1) DEFINITIONS.-As used in this section, the term:
 43 (a) "Assisted reproductive technology" means all treatments
 44 or procedures that include the handling of human eggs, sperm, or
 45 embryos, including in vitro fertilization, gamete intrafallopian
 46 transfer, zygote intrafallopian transfer, and any other specific
 47 technology the department deems appropriate by rule.
 48 (b) "Department" means the Department of Health.
 49 (c) "Donation" means the giving of human sperm, eggs, or
 50 embryos to a donor bank or fertility clinic for use in assisted
 51 reproduction, regardless of whether for personal use or
 52 compensation.
 53 (d) "Donor" means a person who gives a donation.
 54 (e) "Donor bank" means a facility that collects donations
 55 from donors for use by a fertility clinic.
 56 (f) "Fertility clinic" means a facility in which human eggs
 57 are subject to assisted reproductive technology based on
 58 manipulation of eggs or embryos that are subject to

Page 2 of 5

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

32-00305A-20

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59 implantation.

60 (g) "Incorrect insemination" means the implantation of
 61 sperm, eggs, or embryos into a patient which is contrary to the
 62 terms of the donor's contract.

63 (2) DONOR CONTRACTS.-

64 (a) A donor must enter into a contract with a donor bank or
 65 fertility clinic before he or she may donate to that donor bank
 66 or fertility clinic. The contract must, at a minimum, indicate
 67 what must be done with the specimen if:

68 1. The donor dies or becomes incapacitated;

69 2. A designated recipient for the donation dies or becomes
 70 incapacitated;

71 3. The donor and recipient separate or their marriage is
 72 dissolved; and

73 4. The specimen is unused, including whether it may be
 74 disposed of, offered to a different recipient, or donated to
 75 science.

76 (b) A donor bank must ensure that each donation transferred
 77 to a fertility clinic is clearly labeled according to the terms
 78 of each donor's contract.

79 (c) A fertility clinic must ensure that each donation
 80 received from a donor or a donor bank is implanted, returned, or
 81 disposed of according to the terms of the applicable donor's
 82 contract.

83 (3) BEST PRACTICES POLICIES.-

84 (a) By January 1, 2021, each donor bank and fertility
 85 clinic in this state shall develop a written best practices
 86 policy for storing and segregating sperm, eggs, and embryos to
 87 ensure that the correct specimens are implanted in the correct

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88 individuals and otherwise handled as directed by each donor's
 89 contract with the donor bank or fertility clinic.

90 (b) The best practices policy must be submitted to the
 91 department annually for review.

92 (c) Evidence that a fertility clinic does not have a
 93 written best practices policy in place creates a presumption of
 94 physician recklessness in a cause of action brought under this
 95 section.

96 (4) INSPECTIONS.-The department shall perform annual
 97 inspections of donor banks and fertility clinics without notice.

98 (5) FINES.-

99 (a) The department shall impose a fine of \$5,000 on a donor
 100 bank for each failure to clearly label a donation or otherwise
 101 comply with the terms of a donor's contract or this section.

102 (b) The department shall impose a fine of up to \$20,000 on
 103 a fertility clinic that fails to comply with the terms of a
 104 donor's contract or this section.

105 (c) The department shall impose an administrative fine of
 106 up to \$20,000 on a donor bank or a fertility clinic for each
 107 violation of 42 U.S.C. part 263.

108 (d) Fines collected under this section shall be deposited
 109 into the Rape Crisis Program Trust Fund established within the
 110 department under s. 794.056.

111 (6) CAUSES OF ACTION.-A physician who intentionally or
 112 recklessly implants the incorrect sperm, eggs, or embryos into a
 113 patient:

114 (a) Is liable to that patient or a child born from such
 115 assisted reproduction for all damages reasonably necessary to
 116 compensate the patient or the child for any injuries suffered as

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2020698__

117 a result of the physician's intentional or reckless incorrect
118 insemination, including, but not limited to, emotional or mental
119 distress.

120 (b) Commits a felony of the third degree, punishable as
121 provided in s. 775.082, s. 775.083, or s. 775.084.

122 (c) Commits a sexual battery under s. 794.011, if the
123 incorrect insemination is of the physician's own biological
124 specimen.

125 (d) Is subject to disciplinary action under s.
126 456.072(1)(k), s. 458.331(1), or s. 459.015(1).

127 (7) TOLLING TIME LIMITATIONS.—

128 (a) The time limitations with respect to any civil action
129 that may be brought by, or on behalf of, a patient or a child
130 allegedly injured as a result of an incorrect insemination do
131 not begin to run until the patient discovers the violation.

132 (b) The applicable time limitations in s. 775.15 to
133 commence prosecution for a violation of subsection (6) do not
134 begin to run until the patient discovers the violation and
135 reports it to a law enforcement agency or other governmental
136 agency. Such law enforcement agency or other governmental agency
137 shall promptly report such allegation to the state attorney for
138 the judicial circuit in which the alleged violation occurred.

139 (c) The applicable time limitations in s. 456.073(13) to
140 file an administrative complaint against a licensee for a
141 violation of subsection (6) do not begin to run until the
142 patient discovers the violation and reports it to the department
143 or a law enforcement agency. Such law enforcement agency shall
144 promptly report such allegation to the department.

145 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-2020
Meeting Date

SR 698
Bill Number (if applicable)

*662392
Amendment Barcode (if applicable)

Topic "Pre-embryos"

Name Andrew Shirvell

Job Title Executive Director

Address PO Box 12152
Street

Phone (850) 404-3414

Tallahassee FL 32317
City State Zip

Email Andrew@FloridaVoiceFortheUnborn.com

Speaking: For Against Information

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

Representing Florida Voice for the Unborn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage 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.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-2020
Meeting Date

* SB 698
Bill Number (if applicable)

Topic Assisted Reproduction Facilities

Amendment Barcode (if applicable)

Name Andrew Shirvell

Job Title Executive Director

Address PO Box 12152

Phone (850) 404-3414

Street

Tallahassee FL 32317

City

State

Zip

Email andrew@floridavoicefortheunborn.com

Speaking: For Against Information

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

Representing Florida Voice For the Unborn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage 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.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18

Meeting Date

6918

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chelsea MURPHY

Job Title State Director

Address 1005 MIDDLE BROOK CR

Phone _____

Street

City

PLH

State

FL

Zip

32312

Email _____

Speaking: For Against Information

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

Representing Right on Crime

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage 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.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-20

Meeting Date

698

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pount

Job Title _____

Address 9166 Sunrise Dr

Phone _____

Street

Largo FL 33773

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Saving Families

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage 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.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18

Meeting Date

498

Bill Number (if applicable)

Topic Fertility Fraud

Amendment Barcode (if applicable)

Name Eve Wiley

Job Title

Address 16411 Pemberton Drive

Phone 938 590 1986

Street

Dallas TX 75230

City

State

Zip

Email e.eve.wiley@gmail.com

Speaking: [X] For [] Against [] Information

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

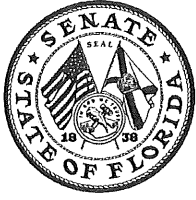
Representing

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage 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.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Children, Families, and Elder Affairs, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human
Services
Health Policy
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR LAUREN BOOK
32nd District

February 11, 2020

Chair Keith Perry
Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Perry:

I respectfully request that **SB 698—Assisted Reproduction Facilities** be placed on the agenda for the next Committee on Criminal Justice meeting, if received by the Committee.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book
Senate District 32

Cc: Lauren Jones, Staff Director
Sue Arnold, Administrative Assistant

REPLY TO:

- 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
- 202 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Florida Department of Health

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 698
BILL TITLE:	Assisted Reproduction Facilities
BILL SPONSOR:	Book
EFFECTIVE DATE:	7/1/2020

<u>COMMITTEES OF REFERENCE</u>
1) Judiciary
2) Criminal Justice
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

<u>CURRENT COMMITTEE</u>
Judiciary

<u>SIMILAR BILLS</u>	
BILL NUMBER:	CS HB 1287
SPONSOR:	Jenne

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
Click or tap here to enter text.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	02/07/2020
LEAD AGENCY ANALYST:	Rhonda Jackson
ADDITIONAL ANALYST(S):	Jennifer Wenhold, Anna Simmons
LEGAL ANALYST:	Louise St. Laurent
FISCAL ANALYST:	Matthew Martin, Jonathon Sackett

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill creates section 381.61 Florida Statutes, requiring individuals who donate human sperm, eggs, or embryos to a donor bank or fertility clinic to enter into certain contracts with these facilities prior to donation. It also specifies requirements for the contract and donations; requiring donor banks and fertility clinics to develop best practices policies and submit these documents to the Department annually. Finally, the bill requires these facilities to undergo annual inspections with penalties and fines attached if necessary. The fines would be deposited into the Rape Crisis Trust Fund.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Centers for Medicare & Medicaid Services (CMS) regulates all laboratory testing (except research) performed on humans in the U.S. through the Clinical Laboratory Improvement Amendments (CLIA). The Division of Clinical Laboratory Improvement & Quality, within the Quality, Safety & Oversight Group, under the Center for Clinical Standards and Quality (CCSQ) has the responsibility for implementing the CLIA Program. The objective of the CLIA program is to ensure quality laboratory testing.

In Florida, the Agency for Healthcare Administration (AHCA) is responsible for processing the CLIA Applications for Certification Forms and has oversight of the CLIA certified facilities. AHCA conducts CLIA inspections every two years for each CLIA certified facility in Florida. However, there are no current inspections or licensure required beyond that. Additionally, there is not a singular location detailing the number of these facilities in Florida.

The Federal Clinical Laboratory Improvement Amendments of 1988 (CLIA), at 42 CFR 493, define a clinical laboratory as any facility that examines materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. Any facility that meets this definition must have the appropriate CLIA certificate to perform laboratory tests. If a facility is only collecting specimens, a CLIA certificate is not required.

Effective July 1, 2018, the State of Florida no longer requires a state license for clinical laboratory services, however the federal CLIA program is still in effect. CLIA certification is required for facilities that test clinical specimens for the purpose of diagnosis, treatment, or prevention of disease.

2. EFFECT OF THE BILL:

The bill requires fertility clinics and donor banks to enter into contracts with donors prior to any donations being made. The contract, at a minimum, must designate what should be done with the specimen (including whether it may be disposed of, offered to a different recipient, or donated to science) if: the donor dies or becomes incapacitated; a designated recipient for the donation dies or becomes incapacitated; the donor and recipient separate or their marriage is dissolved; and the specimen is unused.

The bill requires each donor bank and fertility clinic to develop a written best practices policy for storing and segregating sperm, eggs, and embryos to ensure that the correct specimens are implanted in the correct individuals and otherwise handled as directed by each donor's contract with the donor bank or fertility clinic by January 1, 2021. This bill charges the Department of Health (Department) to review all best practice policies created by each donor bank and fertility clinic in the state on an annual basis. To achieve this, the Department would be required to maintain a registry of all donor banks, and contract with a fertility specialist physician to establish guidelines for reviewing these policies to ensure the policies adhere to current clinical guidelines and standards.

The bill also requires the Department to conduct annual inspections of donor banks and fertility clinics without notice.

It provides the Department may issue fines resulting from the inspection:

- Donor bank: \$5,000 for each Failure to clearly label a donation or otherwise comply with the terms of a donor's contract or this section.
- Up to \$20,000 on a fertility clinic that fails to comply with the terms of a donor's contract or this section.

- An administrative fine of up to \$20,000 on a donor bank or a fertility clinic for each violation of 42 U.S.C. part 263.

Fines collected under this section shall be deposited into the Rape Crisis Program Trust Fund established within the department under s. 794.056.

The bill establishes liabilities and penalties for a physician who intentionally or recklessly implants the incorrect sperm, eggs, or embryos into a patient.

It creates causes of action against a physician and provides for disciplinary action under sections 456.072, 458.331, or 459.015, F.S.

The bill tolls the time limitations with respect to any civil action, in s. 775.15, and s. 456.073(13) until the patient discovers the violation.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input checked="" type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown.
Opponents and summary of position:	Unknown.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y N

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A

Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y N

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	N/A
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y N

Revenues:	<p>This bill reflects a potential increase in revenue for the Rape Crisis Trust Fund; however, impact cannot be determined at this time.</p> <p>Any imposed fines ranging from \$5,000 to \$20,000 per penalty will be added to the Rape Crisis Trust Fund.</p>
Expenditures:	<p>The size and impact of these new regulated entities is unknown and would cause an increased workload on the Department. There is approximately 30 fertility clinics in Florida, with some clinics having multiple locations, and four donor banks.</p> <p>There is currently no data system established to register and track donor banks and fertility clinics.</p> <p>In order to effectively inspect these facilities, the Department anticipates having to hire additional clinical nursing staff. It is estimated that DOH would need to hire one executive nursing supervisor and five registered nursing consultants to conduct facility inspections. In addition, the Department estimates resources to contract with fertility specialist physicians will be required.</p> <p>There would be a fiscal impact of \$610,423 to support 6 FTE and a contracted physician.</p>

	Additional contract management or legal staff may be required to conduct annual contract review, contract compliance, and compliance with 42 U.S.C. part 263.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

Revenues:	Unknown.
Expenditures:	This bill allows for the imposition of fines ranging from \$5,000 to \$20,000.
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

If yes, explain impact.	The bill allows for the imposition of fines ranging from \$5,000 to \$20,000.
Bill Section Number:	Section 1.

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y N

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A
--	-----

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y N

If yes, describe the anticipated impact including any fiscal impact.	N/A
--	-----

ADDITIONAL COMMENTS

None.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	<p>Lines 91-92 require donor banks and fertility clinics to submit best practice policies to the department for review. The legislation provides no guidance on the content requirements of the policies nor sufficient information to guide the department in its review to determine whether the best practice is acceptable or unacceptable.</p> <p>Lines 97-98 require the department to inspect donor banks and fertility clinics on an annual basis. Current law does not grant jurisdiction over these facilities to the department and there is no current law that requires donor banks and fertility clinics to be regulated or registered and the proposed legislation does not contain any such provision. Consequently, the department would have no information or knowledge regarding the location, business, or practices of donor banks or fertility clinics. Additionally, the bill does not provide guidance on the nature of the inspection or what constitutes an acceptable or a failed inspection.</p> <p>In addition to the requirement to inspect donor banks and fertility clinics set forth above, lines 99-109 require the department to impose a range of fines for specific violations. The proposed bill does not provide rule authority sufficient to meet APA standards that would enable the department to implement these provisions of the bill.</p>
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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1054

INTRODUCER: Criminal Justice Committee and Senators Gruters and Farmer

SUBJECT: Substance Abuse Services

DATE: February 18, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1054 amends s. 397.334, F.S., which provides that drug court participants who are ordered by the court to document their participation in substance abuse self-help groups, may be offered either an electronic or a written option for documenting that participation.

The bill has an effective date of July 1, 2020.

II. Present Situation:

Problem-Solving Courts

In 1989, Florida created the first drug court in the United States in Miami-Dade County. Other types of problem-solving court dockets subsequently followed using the drug court model and were implemented to assist individuals with a range of problems such as drug addiction, mental illness, domestic violence, and child abuse and neglect.¹

Florida's problem-solving courts address the root causes of an individual's involvement with the justice system through specialized dockets, multidisciplinary teams, and a nonadversarial

¹The most common problem-solving courts in Florida are drug courts, mental health courts, veterans courts, and early childhood courts. Florida Courts, Office of Court Improvement, Problem-Solving Courts, available at <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts> (last visited February 12, 2020).

approach.² As of July 2019, the following more commonly known problem-solving courts operated in the state:

- 54 Adult Drug Courts;
- 31 Veteran’s Courts;
- 27 Mental Health Courts;
- 20 Juvenile Drug Courts;
- 23 Early Childhood Courts;
- 13 Family Dependency Drug Courts; and
- 4 DUI Courts.³

When the court’s focus is on helping people overcome substance use issues that contributed to their justice system involvement (drug court, juvenile drug court, family dependency drug court, and DUI court), the program will involve various treatment options. However, even when the docket seemingly consists exclusively of different types of cases (early childhood courts, mental health courts, and veteran’s courts), substance use issues may play a part and may be treated in those courts, too.

In Drug Courts, a participant’s goal is usually to complete the phases of the program and graduate. Phase promotion is predicated on the achievement of realistic and defined behavioral goals. Criteria for phase advancement and graduation include objective evidence that participants are engaged in productive activities; such as, employment, education, or attendance in peer support groups.⁴

Drug Court participants regularly attend self-help or peer support groups in addition to group and individual counseling. The peer support groups follow a structured model such as 12-step or Smart Recovery. Before participants enter the peer support groups, treatment providers use an evidence-based preparatory intervention, such as 12-step facilitation therapy, to prepare the participants for what to expect in the groups and assist them to gain the most benefit from the groups. The Florida Adult Drug Court Best Practice Standards states that participants should have the option to choose a secular alternative to 12-step peer support groups.⁵

If a Drug Court participant attends peer support group meetings, and he or she wants the court to be made aware of that productive behavior, there must be proof that the participant attended the meeting. Based upon the Drug Court Model, the Case Manager is likely to receive such proof from the participant at their meeting and report it to the drug court team. Traditionally, this proof of meeting attendance is provided by a paper record of attendance.

² *Id.*

³ *Id.*

⁴ Florida Courts, Office of Court Improvement, Problem-Solving Courts, Florida Problem Solving Courts Best Practice Standards, Florida Adult Drug Court Best Practice Standards, available at <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts/Florida-Problem-Solving-Courts-Best-Practice-Standards> (last visited February 12, 2020).

⁵ *Id.*

GEO Fencing and GEO Location Technology as a Possible Reporting Tool

Geofencing is a location-based service in which an application (app) or other software uses GPS, RFID, Wi-Fi or cellular data to trigger a pre-programmed action when a mobile device or RFID tag enters or exits a virtual boundary set up around a geographical location, known as a geofence. A geofence is most commonly defined within the code of a mobile application, especially since users need to opt-in to location services for the geofence to work.⁶

With the rising popularity of mobile devices, the use of geofencing has become a standard practice for businesses. Once a geographic area has been defined, the opportunities are seemingly endless for what companies can do, and it has become especially popular in marketing and social media. Some companies rely on geofencing for monitoring employees, especially workers who spend time off-site doing field work. It's also an easy way to automate time cards, clocking employees in and out as they come and go.⁷

There are also apps available that will “locate” the user for specific periods of time. For example, if a person is in a support group meeting, it is possible for the app, through the user's telephone, to let a case manager, but not necessarily anyone else, know the location of the person in real time.⁸

III. Effect of Proposed Changes:

The bill amends s. 397.334, F.S., which allows a problem-solving court to offer a drug court participant either an electronic or a written option of proving attendance in self-help or support groups if such participation is a component of the person's court-ordered treatment.

Case managers in a problem-solving court will be required to report a defendant's compliance or non-compliance with the conditions of the participant's program to the court regardless of the process by which verification is obtained.

The bill has an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁶ Sarah K. White, CIO, What is geofencing? Putting location to work, November 1, 2017, available at <https://www.cio.com/article/2383123/geofencing-explained.html> (last visited February 13, 2020).

⁷ *Id.*

⁸ Lynn Morton, R2I, 6 Geolocation Apps You May Not Have Heard About, available at <https://www.r2integrated.com/r2insights/6-geolocation-apps-you-may-not-have-heard-about> (last visited February 13, 2020).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 397.334 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 18, 2020:

The committee substitute:

- Eliminates the requirement that the Department of Children and Families and the Office of the State Court Administrator collaborate to develop an electronic process by which problem-solving court participants can verify their participation in self-help or support groups.

- Specifies that a drug court may offer an electronic reporting option to drug court participants who are required to verify their participation in ancillary services like self-help or support groups.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



601520

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2020	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (6) through (10) of section 397.334, Florida Statutes, are renumbered as subsections (7) through (11), respectively, and a new subsection (6) is added to that section, to read:

397.334 Treatment-based drug court programs.—

(6) If the court orders a defendant to enter into a



601520

11 pretrial treatment-based drug court program or a
12 postadjudicatory treatment-based drug court program, and if the
13 defendant is ordered to document participation in self-help or
14 other support groups and activities as an element of ancillary
15 services, as described in s. 394.67, the court may offer the
16 defendant an option for either electronic or written
17 verification of such participation.

18 Section 2. This act shall take effect July 1, 2020.

19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete everything before the enacting clause
23 and insert:

24 A bill to be entitled
25 An act relating to treatment-based drug court
26 programs; amending s. 397.334, F.S.; authorizing a
27 court to offer an option for verification of
28 participation in self-help groups or activities to
29 certain defendants; providing an effective date.

By Senator Gruters

23-01469-20

20201054__

A bill to be entitled

An act relating to substance abuse services; creating s. 394.6745, F.S.; requiring the Department of Children and Families, in conjunction with the Office of the State Courts Administrator, to establish a process for electronically verifying compliance with certain court-ordered treatments; providing an effective date.

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

Section 1. Section 394.6745, Florida Statutes, is created to read:

394.6745 Electronic verification for certain court-ordered substance abuse services.—The department, in conjunction with the Office of the State Courts Administrator, shall establish a process for electronically verifying a person's compliance with any court-ordered treatment that requires participation in self-help groups or activities.

Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-20

Meeting Date

1054

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo

Fla.

33773

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing saving families

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage 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.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2 18 20

Meeting Date

1054

Bill Number (if applicable)

Topic SUBSTANCE ABUSE SERVICES

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title vol pres, TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Address PO Box 1201

Phone 850 570-1967

Street

Tallahassee,

FL

32302

Email danbhendrickson@comcast.net

City

State

Zip

Speaking: For Against Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage 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.

This form is part of the public record for this meeting.

S-001 (10/14/14)

OFFICE OF THE STATE COURTS ADMINISTRATOR
2020 JUDICIAL IMPACT STATEMENT

BILL NUMBER: SB 1054

DATE: February 7, 2020

SPONSOR(S): Senator Gruters

STATUTE(S) AFFECTED: Creating s. 394.6745, F.S.

COMPANION BILL(S): HB 941

AGENCY CONTACT: Sean Burnfin

TELEPHONE: (850) 922-0358

ASSIGNED OSCA STAFF: CK/EWM

- I. **SUMMARY:** The bill creates s. 394.6745, F.S., which requires the Department of Children and Families (DCF), in conjunction with the Office of the State Courts Administrator (OSCA), to establish a process for electronically verifying a person's compliance with any court-ordered treatment that requires participation in self-help groups or activities.
- II. **EFFECT OF PROPOSED CHANGES:** The bill would require DCF and OSCA to establish a process for electronically verifying a person's compliance with any court-ordered treatment that requires participation in self-help groups or activities. Although the bill does not prescribe a particular manner of electronic verification, there are applications (apps) available in the marketplace that allow individuals to use a mobile device to establish attendance – electronically rather than with paper documentation – at events, meetings, or analogous activities, using biometric authentication or facial recognition, GPS, barcode, or comparable technologies. This type of app could be a method used to implement the requirement of the bill for verifying participation in court-ordered self-help groups or activities. Similarly, such apps may enable justice system entities to monitor compliance with attendance requirements.
- III. **ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT:** The bill is not anticipated to affect judicial workload directly. However, OSCA will experience increased administrative workload associated with establishing and deploying the electronic-verification solution in conjunction with DCF. The bill applies to any court-ordered treatment that requires participation in self-help groups or activities. Courts will experience additional administrative workload in implementing and maintaining an electronic-verification solution for the potentially broad scope of cases in which self-help participation may be ordered (e.g., deployment of any technology, training on use of any technology, etc.). However, to the extent electronic verification enhances monitoring of compliance with court-ordered activities, the bill may result in operational efficiencies for

the court system, including judges and staff. The total impact on OSCA and court system workload is unknown at this time and will be affected by the type of electronic-verification solution established by DCF and OSCA.

Further, there could be a fiscal impact for the state court system depending upon the type of electronic-verification solution established (e.g., procurement costs, vendor fees, or other costs, if applicable). The fiscal impact cannot be determined at this time.

IV. IMPACT TO COURT RULES/JURY INSTRUCTIONS: None anticipated.

V. **ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:**

A. **Revenues: None.**

B. **Expenditures: Minimal fiscal impact is expected from any effects on judicial time. However, OSCA and courts may experience costs related to establishing, deploying, using, and maintaining the electronic-verification solution. The amount of fiscal impact is indeterminate and will depend upon the type of solution established.**



2020 AGENCY LEGISLATIVE BILL ANALYSIS

Department of Children and Families

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 1054
BILL TITLE:	Substance Abuse Services
BILL SPONSOR:	Senator Gruters
EFFECTIVE DATE:	July 1, 2020

<u>COMMITTEES OF REFERENCE</u>
1) Children, Families, and Elder Affairs
2) Criminal Justice
3) Rules
4)
5)

<u>CURRENT COMMITTEE</u>
Children, Families, and Elder Affairs

<u>SIMILAR BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	N/A

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	N/A

<u>Is this bill part of an agency package?</u>
No

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	January 17, 2020
LEAD AGENCY ANALYST:	Heather Allman, DCF, SAMH
ADDITIONAL ANALYST(S):	William Hardin, DCF, SAMH Elizabeth Hockensmith, DCF, SAMH Tracey Fannon, DCF, SAMH
LEGAL ANALYST:	Ivory Avant, DCF, OGC
FISCAL ANALYST:	Paula Anthony, DCF, ASB

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill creates s. 394.6745, F.S., requiring the Department of Children and Families (Department) to work with the Office of the State Courts Administrator (OSCA) to establish a process for electronically verifying a person's compliance with any court-ordered substance abuse treatment that requires participation in self-help groups or activities.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Licensure and Regulation of Substance Abuse Services

The Department is the single state authority for substance abuse and mental health services in Florida and is statutorily responsible for the licensure and regulation of substance abuse treatment services pursuant to Ch. 397, F.S., and 65D-30, F.A.C. The Department licenses individual service components which include a continuum of substance abuse prevention, intervention, and clinical treatment services.

Clinical treatment is defined as a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.¹ "Clinical treatment services" subject to licensure by the Department include, but are not limited to, the following licensable service components:

- Addictions receiving facility
- Day or night treatment
- Day or night treatment with community housing
- Detoxification
- Intensive inpatient treatment
- Intensive outpatient treatment
- Medication-assisted treatment for opiate addiction
- Outpatient treatment
- Residential treatment.²

Self-help groups for substance use disorders, most typically recognized as twelve-step programs such as Alcoholics Anonymous and Narcotics Anonymous, are not considered to be a form of therapy or treatment because they do not need to be led or supervised by a qualified professional. Additionally, the Department specifically excludes twelve-step programs from the Schedule of Covered Services, as noted in Rule 65E-14.021(1)(z), F.A.C.

For these reasons, the Department does not currently track or collect any information on self-help groups or client participation in these groups.

Alcoholics Anonymous

Alcoholics Anonymous is an international fellowship of men and women who have had a drinking problem. It is nonprofessional, self-supporting, multiracial, apolitical, and available almost everywhere. There are no age or education requirements. Membership is open to anyone who wants to do something about his or her drinking problem.

Alcoholics Anonymous, as stated on the organization's website, does not "keep attendance records or case histories" or "provide progress reports on court clients to the referring agency."³

Narcotic Anonymous

Narcotics Anonymous is a global, community-based organization with a multi-lingual and multicultural membership. The group atmosphere provides help from peers and offers an ongoing support network for addicts who wish to pursue and maintain a drug-free lifestyle. The name, Narcotics Anonymous, is not meant to imply a

¹ Section 397.311(26), F.S.

² Section 397.311(26)(a), F.S.

³ A.A. World Services, Inc. F-177 Alcoholics Anonymous as a Resource For Drug & Alcohol Court Professionals.

https://www.aa.org/pages/en_US/alcoholics-anonymous-as-a-resource-for-drug-and-alcohol-court-professionals. Last visited on January 17, 2020.

focus on any particular drug; the organization's approach makes no distinction between drugs including alcohol. Membership is free, and we have no affiliation with any other organizations, including governments, religions, law enforcement groups, or medical and psychiatric associations.⁴

Narcotics Anonymous, as stated on their website, does not keep attendance records or case histories for its purposes or the purposes of others.⁵

2. EFFECT OF THE BILL:

Section 1

The bill creates s. 394.6745, F.S., requiring the Department to work with OSCA to establish a process for electronically verifying a person's compliance with any court-ordered treatment that requires participation in self-help groups or activities.

The Department has been informed by OSCA that it also does not currently track or collect this information. Therefore, it may be challenging for the Department to create a system that verifies participation compliance in self-help groups due to their anonymous nature, and because self-help groups, such as Alcoholics Anonymous and Narcotics Anonymous, do not maintain attendance records or case histories.

Section 2

This section of the bill provides an effective date of July 1, 2020.

3. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

If yes, explain:	N/A
What is the expected impact to the agency's core mission?	N/A
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	Unknown
Provide a summary of the proponents' and opponents' positions:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

If yes, provide a description:	No.
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL?

Board:	No.
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⁴ <https://na.org/?ID=PR-index>. Last visited on January 17, 2020.

⁵ <https://www.na.org/admin/include/spaw2/uploads/pdf/handbooks/IGG.pdf>. Last visited on January 17, 2020.

Board Purpose:	N/A
Who Appoints:	N/A
Appointee Term:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	The Department's Office of Administrative Services finds that there are no expenditures generated by this bill.
Does the legislation increase local taxes or fees?	The Department's Office of Administrative Services finds that this bill does not increase local taxes or fees.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	The Department's Office of Administrative Services finds that this section is not applicable.

2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	The Department's Office of Administrative Services finds that there are no expenditures generated by this bill.
Does the legislation contain a State Government appropriation?	The Department's Office of Administrative Services finds that this bill does not contain a State Government Appropriation.
If yes, was this appropriated last year?	The Department's Office of Administrative Services finds that this section is not applicable.

3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?

Revenues:	The Department's Office of Administrative Services finds that there are no revenues generated by this bill.
Expenditures:	The Department's Office of Administrative Services finds that there are no expenditures generated by this bill.
Other:	The Department's Office of Administrative Services finds that this section is not applicable.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Does the bill increase taxes, fees or fines?	The Department's Office of Administrative Services finds that this bill does not increase taxes, fees, or fines.
Does the bill decrease taxes, fees or fines?	The Department's Office of Administrative Services finds that this bill does not decrease taxes, fees, or fines.
What is the impact of the increase or decrease?	The Department's Office of Administrative Services finds that this section is not applicable.

Bill Section Number:	The Department's Office of Administrative Services finds that this section is not applicable.
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TECHNOLOGY IMPACT

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	The Department's Office of Information Technology Services finds that this bill does not have an impact on the agency's technology systems.
If yes, describe the anticipated impact to the agency including any fiscal impact.	The Department's Office of Information Technology Services finds that this is not applicable.

FEDERAL IMPACT

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	The Department's Office of Substance Abuse and Mental Health finds that this bill does not have a federal impact.
If yes, describe the anticipated impact including any fiscal impact.	The Department's Office of Substance Abuse and Mental Health finds that this section is not applicable.

ADDITIONAL COMMENTS

None.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments
and recommended action:

The Department's Office of the General Counsel does not find any issues or concerns with this bill.

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 2/18/2020 10:01:10 AM

Ends: 2/18/2020 10:29:33 AM Length: 00:28:24

10:01:09 AM Meeting called to order by Chair Perry
10:01:13 AM Comments from Chair Perry
10:01:17 AM Roll call by AA Sue Arnold
10:01:24 AM Quorum present
10:01:27 AM Introduction of Tab 2 by Chair Perry
10:01:36 AM Explanation of SB 1054, Substance Abuse Services by Senator Gruters
10:01:39 AM Introduction of Amendment Barcode No. 601520 by Chair Perry
10:01:46 AM Explanation of Amendment by Senator Gruters
10:02:08 AM Amendment adopted
10:02:15 AM Dan Hendrickson, Tallahassee Veterans Legal Collaborative waives in support
10:02:36 AM Question from Senator Bracy
10:02:41 AM Response from Senator Gruters
10:02:59 AM Follow-up from Senator Bracy
10:03:05 AM Response from Staff Connie Cellon
10:03:49 AM Question from Senator Pizzo
10:03:54 AM Response from Senator Gruters
10:04:49 AM Speaker Greg Pound
10:05:56 AM Closure waived
10:06:00 AM Roll call by AA
10:06:03 AM CS/SB 1054 reported favorably
10:06:14 AM Introduction of Tab 1 by Chair Perry
10:06:24 AM Introduction of SB 698, Assisted Reproduction Facilities and Delete-all Amendment Barcode No. 662392 by Chair Perry
10:06:37 AM Explanation of Amendment and Bill by Senator Book
10:11:02 AM Speaker Andrew Shirvell, Florida Voice For the Unborn in opposition
10:13:25 AM Question from Senator Pizzo
10:13:31 AM Response from Mr. Shirvell
10:13:53 AM Follow-up question from Senator Pizzo
10:13:59 AM Response from Mr. Shirvell
10:14:13 AM Follow-up question from Senator Pizzo
10:14:20 AM Response from Mr. Shirvell
10:15:40 AM Follow-up question from Senator Pizzo
10:15:47 AM Response from Mr. Shirvell
10:15:58 AM Follow-up question from Senator Pizzo
10:16:05 AM Response from Mr. Shirvell
10:16:30 AM Additional question from Senator Pizzo
10:16:36 AM Response from Mr. Shirvell
10:17:09 AM Additional question from Senator Pizzo
10:17:16 AM Response from Mr. Shirvell
10:17:31 AM Question from Senator Brandes
10:17:36 AM Response from Mr. Shirvell
10:18:45 AM Follow-up question from Senator Brandes

10:18:53 AM Response from Mr. Shirvell
10:19:38 AM Follow-up question from Senator Brandes
10:19:45 AM Response from Mr. Shirvell
10:20:30 AM Senator Book in closure on Amendment
10:20:37 AM Amendment adopted
10:20:51 AM Speaker Eve Wiley, Dallas Texas in support
10:24:50 AM Comments from Senator Pizzo
10:25:10 AM Speaker Greg Pound
10:25:46 AM Chelsea Murphy, Right on Crime waives in support
10:25:51 AM Speaker Andrew Shirvell, Florida Voice For the Unborn in opposition
10:27:10 AM Question from Senator Brandes
10:27:15 AM Response from Mr. Shirvell
10:28:08 AM Closure waived
10:28:16 AM Roll call by AA
10:28:19 AM CS/SB 698 reported favorably
10:28:32 AM Comments from Chair Perry
10:28:40 AM Senator Pizzo moves to adjourn, meeting adjourned