The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Storms, Chair
Senator Hill, Vice Chair

MEETING DATE: Tuesday, March 22, 2011
TIME: 8:00 —10:00 a.m.
PLACE: *James E. "Jim" King, Jr., Committee Room,* 401 Senate Office Building

MEMBERS: Senator Storms, Chair; Senator Hill, Vice Chair; Senators Detert, Hays, and Rich

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 504** Bogdanoff (Identical H 387)	Child Visitation; Requires probable cause of sexual abuse in order to create a presumption of detriment. Provides that persons meeting specified criteria may not visit or have contact with a child without a hearing or court order. Revises requirements for a hearing seeking to rebut a presumption of detriment. Revises provisions relating to hearings on whether to prohibit or restrict visitation or other contact with the person who is alleged to have influenced a child's testimony, etc. CF 03/22/2011 JU BC	
2	**SM 954** Flores (Identical HM 557)	Parental Rights Amendment; Urges the Congress of the United States to propose to the states for ratification an amendment to the United States Constitution relating to parental rights. JU 03/09/2011 Not Considered JU 03/14/2011 Favorable CF 03/14/2011 Not Received CF 03/22/2011 GO	
3	**SB 1992** Children, Families, and Elder Affairs	Background Screening; Includes volunteers within the definition of the term "direct service provider" for purposes of background screening. Exempts a volunteer who meets certain criteria and a client's relative or spouse from the screening requirement. Excepts certain licensed professionals and persons screened as a licensure requirement from further screening under certain circumstances. Requires direct service providers working as of a certain date to be screened within a specified period. Provides a phase-in for screening direct service providers, etc. CF 03/22/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1994** Children, Families, and Elder Affairs	Child Protection; Requires the Secretary of Children and Family Services to establish the Child Protection Response Workgroup for the purpose of developing an implementation plan for a differential response system to be used in responding to reports of child abuse or neglect. Specifies the duties of the workgroup. Requires a report to the Legislature. Requires the Secretary of Children and Family Services to establish the Child Welfare Professional Advisory Council. Specifies the scope of work of the council. Provides for the secretary to appoint members to the council, etc. CF 03/22/2011 BC	
5	**SB 166** Hill (Identical H 581)	Forensic Services; Provides legislative intent that forensic services be provided to a person charged with a misdemeanor as well as a felony offense. Amends specified provisions relating to definitions, the rights of forensic clients, the involuntary commitment of a defendant with mental illness, and the involuntary commitment of a defendant determined to be incompetent. Conforms provisions to changes made by the act. CF 03/22/2011 CJ JU BC	
6	**SB 226** Smith (Identical H 1143)	Human Services; Allows the national accreditation of human service providers to substitute for certain agency licensure and monitoring requirements. Requires a single lead agency to be responsible for monitoring human services delivery for designated populations. Requires agencies to provide an analysis of every new governmental mandate to an affected contractor before the mandate may be required or imposed, etc. CF 03/22/2011 CJ GO BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 578** Ring (Similar S 1262, Identical H 697)	Disability Awareness; Requires district school boards to provide disability history and awareness instruction in all K-12 public schools during the first week in October. Requires certified individuals in disability awareness or teachers who specialize in exceptional student education to provide such instruction. Requires the Governor's Commission on Disabilities to initiate a study on training in disability awareness to be conducted by a private nonprofit entity. Requires the commission to promote such training in all public entities in the state. Requires the commission to adopt rules, etc. CF 03/22/2011 ED BC	
8	**CS/SB 926** Commerce and Tourism / Storms (Similar CS/H 405)	Liability/Employers of Developmentally Disabled ; Provides that an employer, under certain circumstances, is not liable for the acts or omissions of an employee who is a person with a developmental disability. Provides that a supported employment service provider that provides or has provided supported employment services to a person with a developmental disability is not liable for the actions or conduct of the person occurring within the scope of the person's employment. Defines the terms "developmental disability" and "supported employment service provider." Provides for application of the act. CM 03/16/2011 Fav/CS CF 03/22/2011 JU	
9	**CS/SB 930** Judiciary / Lynn (Similar CS/H 647)	Protection of Volunteers; Clarifies that in order to fall under the protection of the Florida Volunteer Protection Act, a person performing a service for a nonprofit organization may not receive compensation from the nonprofit organization for that service, regardless of whether the person is receiving compensation from another source. Provides an exception. JU 03/14/2011 Fav/CS CF 03/22/2011 GO	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 1902** Rich (Similar H 1241)	Independent Living; Requires the court to exercise jurisdiction until a child is 21 years of age if the child elects to receive Foundations for Success services. Directs the Department of Children and Family Services (DCFS) to administer a system of independent living transition services to enable older children in out-of-home care to make the transition to self-sufficiency as adults. Requires the DCFS to provide or arrange services for the Pathways to Success, Foundations for Success, and Jumpstart to Success programs, etc. CF 03/22/2011 BC	
	Consideration of proposed committee bill (Interim Project 2011-106 - Review the Forensic Hospital Diversion Pilot Program):		
11	**SPB 7078**	Mental Health and Substance Abuse Treatment; Redefines the term "court" for purposes of the Forensic Client Services Act to include county courts. Requires the Department of Children and Family Services to provide a discharged defendant with a 7-day supply of psychotropic medication when he or she is returning to jail from a state treatment facility. Requires the department to prescribe a specified formulary when filling prescriptions for psychotropic medications. Creates the Forensic Hospital Diversion Pilot Program, etc.	
	Consideration of proposed committee bill:		
12	**SPB 7080**	Persons with Developmental Disabilities; Prohibits monitoring requirements that mandate pornographic materials be available in residential facilities that serve clients of the Agency for Persons with Disabilities. Requires the court to order a person involuntarily admitted to residential services to be released to the agency for appropriate residential services. Forbids the court from ordering that such person be released directly to a residential service provider. Authorizing the agency to transfer a person from one residential setting to another, etc.	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**SB 1088** Altman (Identical H 705)	Criminal Conduct; Defines the term "mental injury" with respect to the offenses of abuse, aggravated abuse, and neglect of a child. Requires that a person acting as an expert witness have certain credentials. Provides affirmative defenses to the offenses of child abuse, aggravated child abuse, and neglect. Conforms cross-references. Redefines the term "crime" for purposes of crime victims compensation to include additional forms of injury. Redefines the term "victim" to conform with the modified definition of the term "crime." CF 03/22/2011 CJ JU BC	

296334

LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Hill) recommended the following:

Senate Amendment

Delete lines 27 - 28

and insert:

criteria under paragraph (3)(a) and a child victim in any proceeding pursuant to this chapter ~~visitation and other~~

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 Children, Families, and Elder Affairs Committee

BILL:	SB 504
INTRODUCER:	Senator Bogdanoff
SUBJECT:	Child Visitation
DATE:	March 21, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	**Pre-meeting**
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill amends Florida's Keeping Children Safe Act to require probable cause of sexual abuse by a parent or caregiver in order to create a presumption of detriment to a child. The bill further provides that persons meeting specified criteria may not visit or have contact with a child without a hearing and order by the court, and in order to begin or resume contact with the child, there must be an evidentiary hearing to determine whether contact is appropriate. The bill provides that the court shall hold a hearing within seven business days of finding out that a person is attempting to influence the testimony of the child. The hearing is to determine whether visitation with the person who is alleged to have influenced the testimony of the child is in the best interest of the child.

This bill also amends the legislative intent of the Act to provide that it is the intent to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in *any* proceeding under the laws of this state.

This bill substantially amends section 39.0139, Florida Statutes.

II. Present Situation:

Supervised Visitation

Children involved in custody and visitation disputes are often considered "high risk" and can

present emotional and behavioral difficulties later in life.[1] Research has shown that a child's long-term behavioral and emotional adjustment will be more positive if he or she has contact with both parents.[2]

Supervised visitation programs "emerged as a service necessary for families experiencing separation and divorce, when conflict between the parents necessitates an 'outside resource' to allow the child contact with a noncustodial parent."[3] These programs provide parents who may pose a risk to their children or to another parent an opportunity to experience parent-child contact while in the presence of an appropriate third party.[4] Supervision is available in a variety of ways: on-site visitation, off-site visitation at a neutral location, off-site visitation at the home of a relative or foster parent, or supervision of telephone calls between the parent and child.[5]

In addition to enabling and building healthy relationships between parents and children, other purposes of supervised visitation programs include:

- Preventing child abuse;
- Reducing the potential for harm to victims of domestic violence and their children;
- Providing written factual information to the court regarding supervised contact;
- Reducing the risk of parental kidnapping;
- Assisting parents with juvenile dependency case plan compliance; and
- Facilitating reunification, where appropriate.[6]

The use of supervised visitation programs has grown throughout the years. In 1995, there were only 56 documented programs throughout the United States and by 1998, 94 programs had been identified.[7] In January 2005, the Florida Clearinghouse on Supervised Visitation started collecting program and service data in a web-based database.[8] By 2006, Florida had over 60 supervised visitation programs and the database held information on 5,196 cases.[9]

As of 2007, Florida was the only state that tracked the statewide usage of supervised visitation across all types of referrals, including domestic violence, child abuse and neglect, and separation or divorce cases.[10]

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[1] Rachel Birnbaum and Ramona Alaggia, *Supervised Visitation: A Call for a Second Generation of Research*, 44 FAM. CT. REV. 119, 119 (Jan. 2006).
[2] *Id*.
[3] Wendy P. Crook et al., Institute for Family Violence Studies, Florida State University, *Florida's Supervised Visitation Programs: A Report from the Clearinghouse on Supervised Visitation*, 6 (Jan. 2007), *available at* http://familyvio.csw.fsu.edu/1996/BigDig1_2007.pdf (last visited Mar. 16, 2011).
[4] Nat Stern et al., *Visitation Decisions in Domestic Violence Cases: Seeking Lessons from One State's Experience*, 23 WIS. J.L. GENDER & SOC'Y 113, 114 (Spring 2008).
[5] Nancy Thoennes and Jessica Pearson, *Supervised Visitation: A Profile of Providers*, 37 FAM. & CONCILIATION COURTS REV. 460, 465 (Oct. 1999).
[6] Wendy P. Crook, *supra* note 3, at 6.
[7] *Id*.
[8] *Id*. at 7. The Clearing house on Supervised Visitation was created in 1996 to provide statewide technical assistance on issues related to the delivery of supervised visitation services to providers. *Id*. at 3.
[9] *Id*. at 7.
[10] *Id*. at 6.

In an attempt to create program uniformity in certain areas, the Florida Supreme Court's Family Court Steering Committee began developing a minimum set of standards for supervised visitation programs in 1998. Chief Justice Harding endorsed the standards and issued an administrative order mandating that the chief judge of each circuit enter into an agreement with local programs that agreed to comply with the standards.[11] Seven years later, the Legislature amended ch. 753, F.S., to provide for the development of new standards, procedures for a certification process, and development of an advisory board, known as the Supervised Visitation Standards Committee (committee).[12] The committee prepared a report to the Legislature explaining the four overarching principles – safety, training, dignity and diversity, and community – and the standards through which the principles are implemented.

Keeping Children Safe Act

In 2007, the Legislature created the Keeping Children Safe Act (Act)[13] to keep children in the custody of the Department of Children and Family Services (DCF or department) or its contractors safe during visitation or other contact with an individual who is alleged to have committed sexual abuse or some related criminal conduct. The Act creates a rebuttable presumption that visitation with a parent or caregiver will be detrimental to the child if the parent or caregiver has been reported to the child abuse hotline for sexual abuse of a child or has been convicted of certain crimes involving children.[14] If the presumption is not rebutted, visitation must be prohibited or allowed only through a supervised visitation program.[15]

In *In re: The Interest of Helen Potts*, the circuit court in Pasco County held that s. 39.0139(3)(a)(1), F.S., the section of law finding a presumption of detriment if a parent or caregiver has been reported to the child abuse hotline, was unconstitutional.[16] The court explained that because the statute impinges a fundamental liberty interest – the right to parent[17] – the statute must serve a compelling state interest and use the least intrusive means possible to achieve its compelling interest. Although the court found that s. 39.0139(3)(a)(1), F.S., serves a compelling state interest – to protect children from acts of sexual abuse and exploitation committed by a parent or caregiver – the statute did not do so in the least restrictive means possible. The statute does provide for an evidentiary hearing for those parents or caregivers who fall within the statute; however, those persons are deprived of visitation and contact with their child until the hearing is held. Additionally, the court stated that "there is no other place in the Florida Statutes that permits interference with a fundamental right based solely on an anonymous tip."[18] Accordingly, the court found s. 39.0139(3)(a)(1), F.S., unconstitutional because:

[11] Nat Stern et al., *supra* note 4, at 117. The Minimum Standards for Supervised Visitation Program Agreements can be found at http://www.flcourts.org/gen_public/family/bin/svnstandard.pdf (last visited Mar. 16, 2011).
[12] Nat Stern and Karen Oehme, *A Comprehensive Blueprint for a Crucial Service: Florida's New Supervised Visitation Strategy*, 12 J.L. & FAM. STUD. 199, 206 (2010).
[13] Ch. 2007-109, s. 1, Laws of Fla.
[14] Section 39.0139(3), F.S.
[15] Section 39.0139(5), F.S.
[16] *In re: The Interest of Helen Potts*, case no. 07-00742DPAWS (Fla. 6th Jud. Cir. 2007).
[17] *See Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *Troxel v. Granville*, 530 U.S. 57, 72-73 (2000).
[18] *In re*, *supra* note 16, at 7.

> The statute creates a rebuttable presumption that visitation of a dependent child by a parent or caregiver who has been reported to the child abuse hotline for sexual abuse, is detrimental to the child. The parent is not entitled to notice or entitled to be heard before his or her rights are eliminated. If a hearing is held at some future undetermined time, the onus is on the parent to rebut the presumption by clear and convincing evidence. Any and all evidence is permitted and the rules of evidence simply do not apply. . . . There is no other place in Chapter 39 that shifts the burden to the parent.[19]

The Keeping Children Safe Act also permits a court to immediately suspend visitation or other contact with a person who attempts to influence the testimony of a child.[20] Moreover, the Act requires a court to convene a hearing within seven business days to evaluate a report from the child's therapist that visitation is impeding the child's therapeutic process.[21]

III. Effect of Proposed Changes:

This bill amends s. 39.0139, F.S., the Keeping Children Safe Act, by requiring a court to find probable cause that a parent or caregiver has sexually abused a child before creating a rebuttable presumption of detriment to the child. The bill provides that if a person meets certain criteria as set out in law, that person may not visit or have contact with a child without a hearing and order by the court. If visitation or contact is denied and the person wishes to begin or resume contact with the child victim, there must be an evidentiary hearing to determine whether contact is appropriate. The bill clarifies that *prior* to the hearing, the court shall appoint a guardian ad litem or attorney ad litem for the child.

The bill also provides that at the hearing, the court may receive evidence, to the extent of its probative value, such as recommendations from the child protective team, the child's therapist, or the child's guardian ad litem or attorney ad litem, even if the evidence may not be admissible under the rules of evidence. Regardless of whether the court finds that the person did or did not rebut the presumption of detriment, the court must enter a written order setting forth findings of fact.

The bill provides that once a rebuttable presumption of detriment has arisen or if visitation has already been ordered and a party or participant informs the court that a person is attempting to influence the testimony of the child, the court must hold a hearing within seven business days to determine whether it is in the best interests of the child to prohibit or restrict visitation with the person who is alleged to have influenced the testimony of the child.

The bill also amends the legislative intent of the Act to provide that it is the intent to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in *any* proceeding under the laws of this state.

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[19] *Id*.
[20] Section 39.0139(6)(a), F.S.
[21] Section 39.0139(6)(b), F.S.

The bill makes technical and conforming changes.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Keeping Children Safe Act (Act) creates a rebuttable presumption that visitation with a parent or caregiver will be detrimental to the child if the parent or caregiver has been reported to the child abuse hotline for sexual abuse of a child or has been convicted of certain crimes involving children. If the person meets certain criteria, the person may not visit or have contact with the child until a hearing is held. At the hearing, all evidence is admissible, even if it is not generally admissible under the rules of evidence, and the person must try and overcome the presumption by clear and convincing evidence.

In *In re: The Interest of Helen Potts*,[22] the circuit court in Pasco County held that certain portions of the Act unconstitutionally infringed on the fundamental right to parent because the Act created a presumption of detriment based on an anonymous tip and did not provide notice or a time frame in which a hearing must be held. Also, the court raised issue with the fact that all evidence is permitted and the rules of evidence do not apply and that the burden is placed on the parent to rebut the presumption by clear and convincing evidence.

Although this bill addresses the issue that a presumption of detriment could arise based on an anonymous call, it does not address the other issues mentioned in the court's opinion. Accordingly, it is unclear how a court will rule in the future.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[22] *In re: The Interest of Helen Potts*, case no. 07-00742DPAWS (Fla. 6th Jud. Cir. 2007).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

After the Keeping Children Safe Act (Act) was created, there was debate on whether it applied only to children with cases under ch. 39, F.S., or whether it applied to all judicial determinations relating to visitation and contact with children.[23] This bill amends the legislative intent of the Act to provide that it is the intent to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in *any* proceeding under the laws of this state. It appears that with this change, the provisions of s. 39.0139, F.S., may be applied to all judicial determinations relating to visitation and contact with children, regardless of whether the case is under ch. 39, F.S.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[23] *See* Alex Caballero and Ingrid Anderson, *Florida Statute Section 39.0139: Protecting Children from Sexual Abuse from Those Entrusted with Their Care*, 83 FLA. B.J. 59 (Mar. 2008); Judge Sue Robbins, *Florida Statute Section 39.0139: Limiting the Risk of Serious Harm to Children*, 82 FLA. B.J. 45 (May 2008).

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 Children, Families, and Elder Affairs Committee

BILL:	SM 954
INTRODUCER:	Senator Flores and others
SUBJECT:	Parental Rights Amendment
DATE:	March 18, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Boland	Maclure	JU	**Favorable**
2.	Preston	Walsh	CF	**Pre-meeting**
3.			GO	
4.				
5.				
6.				

I. Summary:

This Senate Memorial petitions the United States Congress present to the states for ratification an amendment to the United States Constitution establishing an enumerated fundamental parental right.

Although the right of parents to direct the upbringing and education of their children has long been recognized by the United States Supreme Court, this memorial, if the amendment therein proposed were to be enacted, would solidify the fundamental parental right as a constitutionally enumerated right. By enumerating a fundamental parental right, rather than relying on doctrine of the United States Supreme Court, this amendment seeks to ensure that the fundamental parental right is preserved as it now stands and protected from future revision or interpretation due to shifting ideologies of the United States Supreme Court.

Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

II. Present Situation:

Fundamental Rights, Penumbras, and Non-Enumerated Rights

There are certain rights that the United States Supreme Court has deemed "fundamental" to every American citizen. In the broadest view, those fundamental rights are enumerated in the Bill of Rights. However, the Court has found that fundamental rights are not limited to those specifically enumerated in the United States Constitution. There are other, non-enumerated,

fundamental rights that emanate from the "penumbras" of the enumerated rights. In *Griswold v. Connecticut*, the Court held that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance."[1] Many long-established and highly regarded fundamental rights are founded in penumbras formed by emanations from enumerated rights, and the Court, generally, treats these like any other fundamental rights.

The association of people, the right to educate a child in a school of the parents' choice, and the right to study any subject that one chooses are all rights not mentioned in the Constitution or the Bill of Rights. However, the First Amendment has been interpreted to include those rights. Likewise, the right to educate one's child as one chooses is not specifically enumerated in the Constitution or Bill of Rights. Rather, it stems from the force of the First and Fourteenth Amendments.[2] In *Griswold*, the Court stated, "Without those peripheral rights the specific rights would be less secure."[3]

These penumbral rights are often derived from history and tradition. This derivation from history and tradition, while logical, creates a more malleable right than could be achieved by enumeration. Because of these characteristics, non-enumerated rights, by their very nature, are subject to revision based on the ebb and flow of differing American and legal ideologies.

Case Law Concerning Parental Rights

In *Wisconsin v. Yoder*, the United States Supreme Court first recognized a fundamental right to parent one's child.[4] There, the Court stated:

> this case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.[5]

The Court recognized the state's role as *parens patriae* ("parent of his or her country") to save children from abusive or unfit parents, but recognized that this state interest must be balanced with an understanding that, absent such abuse or danger, parents do traditionally retain certain fundamental rights to direct the upbringing of their children.[6] However, the Court's decision in *Yoder* was somewhat limited by the fact that the Court based its holding on a combination of a fundamental parental right and the right to free exercise of religion.

[1] *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).
[2] *Id*. at 482.
[3] *Id*. at 482-83.
[4] *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).
[5] *Id*.
[6] *Id*. at 230.

In *Troxel v. Granville*, the Court further defined, and definitively established, a fundamental parental right.[7] The Court stated, "The liberty interest at issue in this case-the interest of parents in the care, custody, and control of their children-is perhaps the oldest of the fundamental liberty interests recognized by this Court."[8] The Court recognized a cardinal tenant that the parents' function and freedom "include preparation for obligations the state can neither supply nor hinder."[9] In defining the extent and boundaries of the fundamental parental right, the *Troxel* Court noted that as long as a parent is fit and sufficiently cares for his or her children, the state will have no reason to inject itself into the private realm, nor shall it further question a parent's ability to make decisions in the best interest of the child.[10]

Yet, even with such seemingly established precedent, Justice Souter noted in his concurrence to the *Troxel* decision, "Our cases, it is true, have not set out exact metes and bounds to the protected interest of a parent in the relationship with his child."[11] The lack of exact boundaries pointed to by Justice Souter highlights the possibility that the fundamental parental right, as it now stands, is subject to shifting views, legal interpretations, and ideologies. Currently, there exists a fundamental parental right; however, it may be argued that the right and its exact parameters have not been solidified as firmly as they might be if the fundamental parental right were to become an enumerated right.

Methods of Proposing Amendments to the U.S. Constitution

The Constitution of the United States prescribes two methods for proposing amendments to the document. Under the first method, Congress – upon the agreement of two-thirds of both houses – may propose an amendment itself. Under the second, Congress – upon application from legislatures in two-thirds of the states – "shall call a convention for proposing Amendments."[12] Under either method, Congress is authorized to specify whether the amendment must be ratified by the legislatures of three-fourths of the states or by convention in three-fourths of the states.[13]

III. Effect of Proposed Changes:

This Senate Memorial petitions the United States Congress to propose and submit to the states for ratification an amendment to the United States Constitution enumerating a fundamental parental right. In accompanying "whereas clauses," the memorial expresses an intent to ensure that the fundamental parental right recognized in case law by the United States Supreme Court is preserved as it now stands and protected from future revision or interpretation due to shifting ideologies of the United States Supreme Court. The memorial contemplates the creation of a new article of the United States Constitution.

Section 1 of the proposed amendment states that the liberty of parents to direct the upbringing and education of their children is a fundamental right. This provision would have the effect of

[7] See *Troxel v. Granville*, 530 U.S. 57 (2000).
[8] *Id*. at 65.
[9] *Id*. at 65-66.
[10] *Id*. at 68-69.
[11] *Id*. at 78.
[12] U.S. CONST. art. V.
[13] *Id*.

making the fundamental parental right a constitutionally enumerated right. This designation would afford the right the greatest degree of protection from infringement and put the fundamental parental right on the same level with rights such as freedom of speech and the right to bear arms.

Section 2 of the proposed amendment provides that no state, nor the United States itself, may infringe on this right without a showing that such infringement is the only way of achieving a governmental interest of the highest order. This section essentially codifies the standard of strict scrutiny that courts impose when determining whether or not a law that infringes on a fundamental right is constitutional. As a matter of course, most laws or governmental actions analyzed under strict scrutiny will fail on constitutional grounds and be struck down by the courts.

Section 3 of the proposed amendment further solidifies the sanctity of the fundamental parental right. It ensures that no court can apply any international law, nor may the United States adopt any treaty, which would supersede, modify, interpret, or apply to the rights guaranteed by this article. Courts will sometimes interpret the Constitution or laws of the United States by looking to the traditions and laws of other countries as the applicable "history or tradition" on which the United States' Constitution or law is based. This final provision of the proposed amendment would ensure that the above practice is not permitted.

Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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. Additional Information:

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

None.

B. Amendments:

None.

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 Children, Families, and Elder Affairs Committee

BILL:	SB 1992
INTRODUCER:	Senator Storms
SUBJECT:	Background Screening
DATE:	March 18, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill makes a number of changes to background screening requirements, primarily pertaining to individuals who work with Florida's seniors. Those changes include:

- Exempting, from the definition of "direct service provider;" individuals who are related to the client, and volunteers who assist on an intermittent basis for less than 20 hours of direct, face-to-face contact with a client per month
- Exempting, from any additional Level 2 background screening requirements, an individual who was background screened pursuant to an Agency for Health Care Administration (AHCA) licensure requirement if they are providing a service within the scope of their licensed practice;
- Allowing the Department of Elder Affairs (DOEA) to adopt rules to implement a schedule to phase in the background screening of individuals serving as direct service providers on July 1, 2010. The phase in must be completed by July 1, 2012;
- Specifying that employers of direct service providers previously qualified for employment or volunteer work under Level 1 screening standards, and individuals required to be screened according to the Level 2 screening standards, shall be rescreened every five years, except in cases where fingerprints are electronically retained; and
- Removing a provision relating to criminal offenses that was inadvertently applied to DOEA.

This bill substantially amends s. 430.0402 of the Florida Statutes.

II. Present Situation:

The Florida Legislature in 1995 created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons, including children, the elderly, and the disabled. Over time, implementation and coordination issues arose as technology changed and agencies were reorganized.

To address these issues, the legislature enacted legislation in 2010 that substantially rewrote the requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations.[1] The bill provided that a "vulnerable person" includes minors and vulnerable adults as defined in s. 415.102(26), F.S. That section defines "vulnerable adult" as an adult "whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.[2] Primary changes made by the bill included:

- Requiring that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified;
- Increasing all Level 1 screening to Level 2 screening. This did not require existing employees to be rescreened until they otherwise come up for rescreening pursuant to existing law;
- Requiring all fingerprint submissions to be done electronically by August 1, 2012, or sooner, should an agency decide to do so by rule. However, for those applying under AHCA, electronic prints were required as of August 1, 2010;
- Requiring certain personnel who deal substantially with vulnerable persons and who are not presently being screened, including persons who volunteer for more than 10 hours a month, to begin Level 2 screening. This includes homes for special services, transitional living facilities, prescribed pediatric extended care centers, and certain direct service providers under DOEA;
- Adding additional serious crimes to the list of disqualifying offenses for Level 1 and Level 2 screening;
- Authorizing agencies to request the retention of fingerprints by FDLE. The bill also provided for rulemaking and related implementation provisions for retention of fingerprints;
- Providing that an exemption for a disqualifying felony may not be granted until after at least three years from the completion of all sentencing sanctions for that felony;
- Requiring that all exemptions from disqualification be granted only by the agency head; and
- Rewriting all screening provisions for clarity and consistency.[3]

To implement these new requirements, DOEA adopted an emergency rule which required that all persons who come into direct contact with individuals receiving services provided through the department, whether as employee or volunteer, must undergo a level 2 background screening

[1] *See* Chapter 2010-114, L.O.F.
[2] *Id.*
[3] *Id.*

prior to employment or volunteerism.[4] Level 2 background screenings cost $43.25 (the $24 state fee, plus an additional $19.25 for electronic fingerprints) or $30.25 ($24 plus $6.25 for hard copy fingerprints).[5] The department did not make additional funds available to its service providers for this purpose, and most providers have passed this cost on to their prospective employees and volunteers.

It has been reported that the expansion of Level 2 background screening on volunteers and Area Agency and service provider staff resulting from the 2010 legislation has dramatically impacted these types of service providers. These individuals would include Aging Resource Center staff and Meals on Wheels program volunteers who do not enter a senior's home.

The Meals on Wheels program is dependent on volunteers, and the program is currently losing volunteers who cannot afford to pay for the cost of a level 2 background screening. If this trend continues, and the program continues to lose volunteers or is unable to recruit new volunteers, frail, homebound seniors will not receive needed meals and their nutrition will suffer.

- Many service provider agencies have relationships with churches whose volunteers deliver several hundred meals during the holiday season. Under the new background screening requirements, these churches and civic organizations were unable to continue providing volunteers for holiday meal delivery.
- Senior centers, congregate meal sites, and health and wellness programs are also dependent on volunteer labor. It is feared that programs and activities will be curtailed or lost entirely if the volunteer force is further diminished.

The provisions of the 2010 legislation are also impacting the Home Care for the Elderly (HCE) caregivers. Many HCE caregivers are family members. These family members receive a small monthly stipend of $106 to help care for a frail, aging family member at home, and many of these caregivers have been providing this care for years. The stipend is used to pay for a number of things, including, but not limited to, incontinence products, nutritional supplements, respite care, etc. The new Level 2 background screening requirement is applicable to these family members/caregivers as well.[6]

III. Effect of Proposed Changes:

The bill makes changes to the law related to background screening that include:

- Exempting, from the definition of "direct service provider;" individuals who are related to the client, and volunteers who assist on an intermittent basis for less than 20 hours of direct, face-to-face contact with a client per month
- Exempting, from any additional Level 2 background screening requirements, an individual who was background screened pursuant to an Agency for Health Care

[4] *See* Rule 58ER10-1, *F.A.C.*, effective August 1, 2010.
[5] *Criminal History Record Checks/Background Checks Fact Sheet* January 4, 2011. Available at http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx (last visited March 3, 2011).
[6] Meeting with representatives from the Area Agencies on Aging and the Community Care for the Elderly program. November 18, 2010.

Administration (AHCA) licensure requirement if they are providing a service within the scope of their licensed practice;

- Allowing the Department of Elder Affairs (DOEA) to adopt rules to implement a schedule to phase in the background screening of individuals serving as direct service providers on July 1, 2010. The phase in must be completed by July 1, 2012;
- Specifying that employers of direct service providers previously qualified for employment or volunteer work under Level 1 screening standards, and individuals required to be screened according to the Level 2 screening standards, shall be rescreened every five years, except in cases where fingerprints are electronically retained; and
- Removing a provision relating to criminal offenses that was inadvertently applied to DOEA.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will reduce the number of persons who will need to undergo background screening prior to working with vulnerable persons. The Level 2 screenings cost $43.25 (the $24 state fee, plus an additional $19.25 for electronic fingerprints) or $30.25 ($24 plus $6.25 for hard copy fingerprints).[7] By decreasing the number of persons subject to screening, there will be less of a financial impact on employers and employees.

[7]Criminal History Record Checks / Background Checks Fact Sheet January 4, 2011. Available at: http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx. (Last visited March 3, 1011).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

669302

LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment

Delete line 86

and insert:

contracted to conduct child protective investigations, the Guardian ad Litem Program, Florida Youth SHINE, third-

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 Children, Families, and Elder Affairs Committee

BILL:	SB 1994
INTRODUCER:	Senator Storms
SUBJECT:	Differential Response
DATE:	March 18, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill requires the Department of Children and Family Services (DCF or department) to establish the Child Protective Response Workgroup (workgroup). The workgroup will develop a plan to allow the department to fully implement a differential response system for responding to reports of child abuse or neglect. The bill provides a minimum set of tasks for the workgroup, requires a report to the legislature by December 31, 2011, and specifies what must be included in the report.

The bill also requires the department to establish the Child Welfare Professional Advisory Council (council). The council will review and make recommendations relating to the education and qualifications of child welfare staff employed with the department, the sheriff's offices contracted to conduct child protective investigations, and the community-based care lead agencies and their contracted providers. The bill specifies a scope of work for the council, provides for members to be appointed by the secretary, specifies the entities that must be represented in the membership, and requires the department to provide administrative support. The bill specifies that the council members serve without compensation, but may be reimbursed for per diem if funds are available, and provides for an annual report to the legislature by December of each year, with the first report due by December 31, 2011.

II. Present Situation:

Differential Response

Differential response is a child protection services practice that allows more than one type of initial response to reports of child abuse and neglect. Also called "dual track," "multiple track," or "alternative response," this approach recognizes variation in the types of reports and the value of responding differently to different types of cases. This approach is guided by the assumption that the use of a differential response system would allow agencies to protect children and support families in a less adversarial manner, while reserving agency resources for the more intensive, high-risk cases.[1]

While definitions and approaches vary from state to state, a differential response system typically consists of two major types of response to reports of child abuse and neglect. The type of response chosen for each report begins with some entity determining how a call to the hotline will be handled. The report will either rise to the level of severe maltreatment or maltreatment that is potentially criminal and will receive an investigation response, or the report will involve low or moderate risk to the child and receive an assessment response.[2]

The Child Welfare League of America (CWLA) and The American Humane Association (AHA) identified core elements in a differential response system in an attempt to achieve definitional clarity and distinguish among the multitude of child protection reforms across state and county child welfare systems.[3] These core elements include:

- The use of two or more discrete responses for intervention.
- The creation of multiple responses for reports of maltreatment that are screened in and accepted for response.
- The determination of the response assignment by the presence of imminent danger, level of risk, the number of previous reports, the source of the report, and/or presenting case characteristics such as type of alleged maltreatment and the age of the alleged victim.
- The ability to change the original response assignment based on additional information gathered during the investigation or assessment phase.

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[1] Zielewski, E.H., Macomber, J., Bess, R. and Murray, J. (2006). Families' Connections to Services in an Alternative Response System. The Urban Institute: Washington, D.C. Available at: http://www.americanhumane.org/assets/docs/protecting-children/PC-AR-families-connections_ui.pdf. (Last visited March 3, 2011.)

[2] Child Information Gateway. (2008). Differential Response to Reports of Child Abuse and Neglect. Washington, D.C.: U.S. Department of Health and Human Services. Available at: http://www.childwelfare.gov/pubs/issue_briefs/differential_response/differential_response.pdf. (Last visited March 3, 2011.) However, not all jurisdictions that employ a differential response system focus simply on choosing an assessment or investigation response. In some areas, there is more variation in types of response. Additional responses may include a resource referral/prevention response for reports that do not meet screening criteria for child protective services but suggest a need for community services, or a law enforcement response for cases that may require criminal charges.

[3] Merkel-Holguin, L., Kaplan, C. and Kwak. A. (2006). National Study on Differential Response in Child Welfare, American Humane Association and Child Welfare League of America. Available at: http://www.americanhumane.org/assets/docs/protecting-children/PC-DR-national-study2006.pdf. (Last visited May 3, 2011).

- The establishment of multiple responses is codified in statute, policy and/or protocols.
- The ability of families who receive a non-investigatory response to accept or refuse the offered services after an assessment without consequence.
- No identification of perpetrators and victims when alleged reports of maltreatment receive a non-investigation response and services are offered without a formal determination of child maltreatment.[4]

While the use of a differential response system promises to better enable child protection agencies to protect children and strengthen families, implementing a differential response system poses many challenges. Crucial considerations for an efficient and successful differential response system include use of the most promising standardized tools; training and reinforcing the worker's use of a strength-based and non-adversarial model; and the availability of an adequate network of community services providers.[5]

In 1993, Florida was one of the first two states to implement a differential response system.[6] The provisions in Florida law relating to the Family Service Response System (FSRS) constitute the assessment response of a differential response system. The approach provided for a nonadversarial response to reports of abuse and neglect by assessing for and delivering services to remove any determined risk, while providing support for the family.

The legislation allowed local HRS service districts the flexibility to design the FSRS to meet local community needs[7] and required an ongoing community planning effort to include the approval of the recently established Health and Human Service Boards.[8] The department began steps toward the implementation of FSRS in districts statewide. Despite positive findings reported in the 1996 outcome evaluation[9] in some districts, difficulties identified during the course of the evaluation had a negative effect on the viability and support for FSRS.[10]

In addition to problems identified in the outcome evaluation, an assessment of dependency cases by Florida's Dependency Court Improvement Program (DCIP)[11] revealed enough judicial concern with the inconsistent implementation of the FSRS, and compromised child safety as a

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[4] *Id.*
[5] Richardson, J. Differential Response: Literature Review, University of Illinois School of Social Work, Children and Family Research Center. November 2008.
[6] The other state was Missouri. Missouri decided to expand its approach statewide after trying a pilot program in 14 counties. The approach has served as a model for differential response in other states. Crane, K. In Brief: Taking a Different Approach. National Conference of State Legislatures, January 2010. Available at: http://www.ncsl.org/?tabid=19395. (Last visited March 2, 2011.)
[7] Section 415.5018, F.S. (1993).
[8] *Id.*
[9] Hernandez, M. and Barrett, B. Evaluation of Florida's Family Services Response System, Florida Mental Health Institute, University of South Florida, December 1996.
[10] Alternative Response System Design Report, Prepared for the Florida Department of Children and Family Services by the Child Welfare Institute, December 2006.
[11] Florida's Dependency Court Improvement Program (DCIP) was established in 1995 when Congress funded a comprehensive research initiative to assess judicial management of foster care and adoption proceedings. The mandate to the highest court in every state was to assess the court's management of dependency cases to determine the level of compliance with the Adoption Assistance and Child Welfare Act and to develop an action plan to effect positive change in legislation, policy, judicial oversight, representation, and practice and procedure.

result of decisions being made by the HRS/DCF staff, that the DCIP recommended that Florida return to the use of a traditional protective investigation for all reports.[12]
During the 1998 session, legislation was enacted that incorporated all of the recommendations of the DCIP, as well as the mandated provisions of the newly enacted federal Adoption and Safe Families Act (ASFA), and Florida's version of a differential response system was repealed.[13] As a result, all districts returned to the investigation of all child protective reports culminating in a finding associated with a child victim and perpetrator. Currently, Florida law does not allow for the use of a differential response system.

Child Welfare Staff

Experience in other states has shown that the need for a skilled workforce trained in strength-based and collaborative interventions with manageable workloads is central to the successful implementation of a differential response system. Because much of family assessment work depends on the ability to engage with families on an individual basis, workers are left with broad discretion in determining what services best fit the families' needs and how to link families to those services. Workers must have the appropriate skill set, support, and confidence to effectively do the work that a differential response system requires.[14]

According to the department, the minimum education and background requirements for child protective investigators are not specified in statute or rule.[15] DCF's internal hiring practices have set educational requirements for new protective investigators, with candidates having any Bachelor's Degree and one year of child welfare related experience, or any Master's degree, which can substitute for the one year of child welfare experience. Preference is given to candidates with a human services related degree. The department is not involved in the hiring practices or standards established by the sheriff's offices.[16]

Currently, the department reports that they do not track the educational experience of protective investigators or community-based care (CBC) staff, but will be including that information in a future build of their learning management system. Anecdotally, the department believes that less than 25 percent of line staff have either BSWs or MSWs and less than 10 percent of supervisors have MSWs. CBCs report that they give preference to applicants who have social work degrees.[17] There are, however, minimum training requirements that must be met in order to become Certified as a Child Welfare Professional, which is a requirement for being a protective

[12] Conversation with Kathleen Kearney, Chair of the Dependency Court Improvement Program (1996-1997), September 7, 2010.
[13] Chapter 98-403, L.O.F. CS/HB 1019. Part III of chapter 39, F.S., entitled Protective Investigations, was created and all calls accepted by the hotline as reports were required to be investigated.
[14] Richardson, J. Differential Response: Literature Review, University of Illinois School of Social Work, Children and Family Research Center. November 2008.
[15] Rule does, however, require that personnel working in child placing agencies are required to have either a BSW, an MSW, or a degree in a related area of study depending on their job responsibilities. 65C-15.001, F.A.C.
[16] Communication from the Department of Children and Family Services, Family Safety Office, September 16, 2010. Copy on file with the Committee on Children, Families, and Elder Affairs.
[17] *Id.*

investigator, regardless of whether the protective investigator is an employee of the department or of a sheriff's office.[18]

A number of recent events would make it appear that in spite of the department's training and certification programs, the qualifications of child protective personnel to appropriately and adequately work with families may remain questionable:

- In the days following the death of Nubia Docter Barahona, DCF Secretary David Wilkins appointed a three- member panel to investigate the girl's death and her brother's severe abuse. During the three hearings held to date, panel members recounted all the warnings child welfare workers had received that Nubia was in jeopardy in her foster home.

  The warnings began in 2004, when a nurse told a caseworker: "foster parent does not care for the child's well being," and continued for the next six years. DCF's top Miami administrator, Jacqui Colyer responded by saying, "We were getting signs early on, but we didn't tie it all together."[19]

  Panel members have directed a series of assignments, including a review of the education, pay scale and training of caseworkers, investigators and supervisors.[20]

- In a case from Charlotte County, a crime scene technician found a 10-year-old boy (T.M.B.) asleep inside the bathroom vanity and removed him from his home. His stepmother told detectives she had smeared feces and urine in his face, "like you would a dog," and slid peanut butter sandwiches under his door so she wouldn't have to see him.[21]

  The boy had been seen by child welfare, school, medical and mental health officials, and law enforcement officers long before the arrests of his stepmother and father. The department's quality assurance report outlines many shortcomings:

  - The child protective investigator, Gordon Smith failed to gauge the risk to the child, especially given his parent's admission they confined him for long periods to punish him.

  - Smith said he had social services come to the home to provide such things as counseling. He blamed the system's bureaucracy for a communication gap. "If you don't hear anything back from the services, you assume everything is OK,

[18] This training represents approximately 25 percent of the hours spent by a student in a BSW program with and Child Welfare Certificate. Information obtained from the College of Social Work, Florida State University, September 14, 2010. Copy on file with the Committee on Children, Families, and Elder Affairs.

[19] Miami Herald, Before adoption, Nubia, brother told psychologist of morbid fears. Available at: http://www.miamiherald.com/2011/03/03/2095922/nubia-brother-told-psychologist.html# (Last visited March 3, 2011).

[20] Department of Children and Family Services. Minutes from Department of Children and Families Barahona Investigative Team Meeting, Friday, February 25, 2011. Available at: http://www.dcf.state.fl.us/initiatives/barahona/docs/meetings/MeetingSummary02-25-11.pdf. (Last visited March 3, 2011).

[21] The News Press. Exclusive: DCF missed clues of Port Charlotte boy's captivity. As father, stepmother await trial, questions linger for Florida agency. Available at: http://www.news-press.com/article/20110301/SS08/110227018/Exclusive-DCF-missed-clues-Port-Charlotte-boy-s-captivity?odyssey=mod_sectionstories. (Last visited March 3, 2011).

and that's the problem," he said. "I was relying on other people to tell me what was going on."

- Among other failings listed in the report: Smith neglected to question explanations for documented scratches on the boy's neck and thoroughly investigate a head injury. He failed to take the boy for mandatory interviews with a child protection team and asked for an exception to the process that would have brought an independent opinion.

- Smith did not remove the child in spite of the fact that the child continually expressed fear of his stepmother and stated he was afraid to be alone with her.[22,23]

III. Effect of Proposed Changes:

The bill requires the department to establish a task force and an advisory council to address two issues raised in a Senate interim project report relating to differential response systems.[24]

The bill requires the department to establish the Child Protective Response Workgroup (workgroup) for the purpose of developing a plan that will allow the department to fully implement a differential response system for responding to reports of child abuse or neglect. The bill provides minimum tasks for the workgroup that, at a minimum, include:

- An examination of best practices developed by other states that have successfully implemented a similar response system;
- An update and finalization of the work plan that was designed for the department by the Child Welfare Institute in 2006; and
- Consideration of the outcomes of the 2008 differential response pilots implemented by the department.

The bill requires a report to the legislature by December 31, 2011, that includes:

- A detailed list of tasks and a timeline for future implementation of a differential response system;
- The requirements and expectations for participation by community-based-care lead agencies;
- A plan to integrate the use of the sheriff's offices to conduct child protective investigations within the differential response system; and;
- A statewide survey of services available to families.

The bill also requires the department to establish the Child Welfare Professional Advisory Council (council) for the purpose of reviewing and making recommendations relating to the education and qualifications of child welfare staff employed with the department, the sheriff's

[22] *Id.*
[23] Department of Children and Family Services. Quality Assurance Review, Suncoast Region Quality Assurance Unit. June 29, 2010.
[24] Senate Interim Project 2011-105. Differential Response To Reports Of Child Abuse And Neglect. Committee on Children, Families, and Elder Affairs. October 2010.

offices contracted to conduct child protective investigations, and the community-based care lead agencies and their contracted providers. The bill specifies a scope of work for the council that includes:

- Incentives necessary to hire and retain employees with bachelor's or master's degrees in social work;
- Incentives necessary to enable current staff to obtain a bachelor's or master's degree while continuing employment;
- An examination of child welfare certifications issued by either schools of social work, the department, or third party credentialing entities;
- An examination of hiring practices in other states that require all child welfare staff to hold degrees in social work, particularly those states that have privatized the provision of child welfare services, such as Kansas;
- An analysis of the benefits, including cost benefits, of having all child welfare staff hold a bachelor's or master's degree in social work from a degree program certified by the Council on Social Work Education or a degree from an accredited human services degree program; and
- An examination of ways to increase the amount of federal Title IV-E Child Welfare Program funding for social work education available to Florida.

The bill provides for members to be appointed by the secretary and specifies the entities that must be represented in the membership, to include representatives from:

- The headquarters and circuit offices of the department;
- Community-based care lead agencies;
- The sheriff's offices contracted to conduct child protective investigations;
- Third-party credentialing entities;
- State schools that are members of the Florida Association of the Deans and Directors of the Schools of Social Work; and
- Faculty members from those schools whose duties include working with Title IV-E child welfare program stipend students and teaching specialized child welfare courses.

The bill requires the department to provide administrative support to the council, specifies that the council members serve without compensation, but may be reimbursed for per diem if funds are available, and provides for an annual report to the legislature by December of each year, with the first report due by December 31, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Members of the Child Welfare Professional Advisory Council may incur per diem expenses associated with attendance at meetings, but the amount is expected to be *de minimus*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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 Children, Families, and Elder Affairs Committee

BILL:	SB 166
INTRODUCER:	Senator Hill
SUBJECT:	Forensic Services
DATE:	March 21, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	**Pre-meeting**
2.			CJ	
3.			JU	
4.			BC	
5.				
6.				

I. Summary:

This bill amends Florida's laws relating to mentally deficient and mentally ill defendants to provide that forensic services must also be provided to a person charged with a misdemeanor, in addition to felony offenders.

This bill substantially amends following sections of the Florida Statutes: 916.105, 916.106, 916.107, 916.13, and 916.302.

II. Present Situation:

Forensic Mental Health[1]

On any given day in Florida, there are approximately 17,000 prison inmates, 15,000 local jail detainees, and 40,000 individuals under correctional supervision in the community who experience serious mental illnesses. Annually, as many as 125,000 adults with mental illnesses or substance use disorders requiring immediate treatment are placed in a Florida jail.

Over the past nine years, the population of inmates with mental illnesses or substance use disorders in Florida prisons increased from 8,000 to nearly 17, 000 individuals. In the next nine years, this number is projected to reach more than 35,000 individuals, with an average annual

[1] Information contained in this portion of the analysis is from an interim report by the Senate Committee on Children, Families, and Elder Affairs. See Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Forensic Hospital Diversion Pilot Program* (Interim Report 2011-106) (Oct. 2010), *available at* http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-106cf.pdf (last visited Mar. 15, 2011).

increase of 1,700 individuals. Forensic mental health services cost the state a quarter-billion dollars a year and are now the fastest growing segment of Florida's public mental health system.

Forensic Services

Chapter 916, F.S., called the "Forensic Client Services Act," addresses the treatment and training of individuals who have been charged with felonies and found incompetent to proceed to trial due to mental illness, mental retardation, or autism, or are acquitted by reason of insanity.

Department of Children and Family Services

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed to trial due to mental illness or who have been adjudicated not guilty by reason of insanity. Persons committed under ch. 916, F.S., are committed to the custody of the Department of Children and Family Services (DCF or department).

Section 916.12(3), F.S., authorizes the court to appoint experts to evaluate a criminal defendant's mental condition. In determining whether a defendant is competent to proceed, the examining expert must report to the court regarding the defendant's capacity to appreciate the charges or allegations against him, appreciate the range and nature of possible penalties, understand the adversarial nature of the legal process, consult with counsel, behave appropriately in court, and testify relevantly. A defendant must be evaluated by at least two experts prior to being involuntarily committed.[2] Any defendant charged with a felony and found incompetent to proceed may be involuntarily committed if the court finds by clear and convincing evidence that the defendant is mentally ill; all available, least restrictive alternatives are inadequate; and there is a substantial probability that the mental illness will respond to treatment.[3]

Under the authority of ch. 916, F.S., DCF provides mental health assessment, evaluation, and treatment of individuals committed to DCF following adjudication as incompetent to proceed or not guilty by reason of insanity. These individuals are charged with a felony offense and must be admitted to a treatment facility within 15 days of the department's receipt of the commitment packet from the court.[4] Persons committed to the custody of DCF are treated in one of three forensic mental health treatment facilities throughout the state. These facilities contain a total of 1,700 beds and serve approximately 3,000 people each year. The cost to fund these beds is more than $210 million annually.[5]

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD or agency) provides forensic services to defendants charged with a felony who have been found incompetent to proceed due to mental retardation or autism. Defendants with retardation or autism must be evaluated by at least one

[2] Section 916.12(2), F.S.
[3] Section 916.13(1), F.S. *See also*, s. 916.302, F.S.
[4] *See* s. 916.107(1)(a), F.S.
[5] Comm. on Children, Families, and Elder Affairs, *supra* note 1.

expert with expertise in evaluating persons with retardation or autism in order to evaluate the mental condition of the defendant.[6] A defendant is considered incompetent to proceed if the expert finds that the defendant:

- Meets the definition of retardation or autism;
- Does not have the sufficient present ability to consult with the defendant's attorney; and
- Has no rational, or factual, understanding of the proceedings against the defendant.[7]

If the expert finds that the defendant is incompetent to proceed due to the defendant's retardation or autism, the expert must prepare a report for the court recommending training for the defendant in order to attain competency.[8] Individuals charged with a felony and found incompetent to proceed due to retardation or autism are committed to APD for appropriate training.[9] In certain circumstances, the court may order the conditional release of a defendant found incompetent to proceed due to retardation or autism based on an approved plan for providing community-based training.[10]

Section 916.303, F.S., requires that the charges against a defendant found incompetent to proceed due to retardation or autism be dismissed if the defendant remains incompetent to proceed for a reasonable period of time, not to exceed two years.

Onwu v. State of Florida[11]

In 1995, the Fourth District Court of Appeal affirmed an order directing the release of a defendant because the county court had found the defendant incompetent to proceed and had entered an order for commitment. According to the order, although the county court had the authority to determine issues of competency, it did not have the authority to commit the defendant. Accordingly, the chief judge of the circuit (Seventeenth) issued an administrative order which authorized county judges in the circuit to act as circuit judges for the purposes of determining competency of a person and entering an order of commitment.

Thereafter, a county judge in the Seventeenth Judicial Circuit found Charles Onwu incompetent to proceed on his misdemeanor charge and set a commitment hearing. Onwu filed a motion to have the administrative order declared unconstitutional. The case came before the Florida Supreme Court, which found that despite the administrative order, county court judges cannot order commitments under ch. 916, F.S., because the word "court" in s. 916.106, F.S., is defined to mean the "circuit court." Accordingly, the Court found that only the circuit court can forensically commit a defendant under ch. 916, F.S.

[6] Section 916.301, F.S.
[7] Section 916.3012, F.S.
[8] Section 916.3012(4), F.S.
[9] Section 916.302, F.S.
[10] Section 916.304, F.S.
[11] *Onwu v. State of Fla.*, 692 So. 2d 881 (Fla. 1997).

III. Effect of Proposed Changes:

This bill amends provisions of ch. 916, F.S., relating to mentally deficient and mentally ill defendants, to provide that forensic services must also be provided to a person charged with a misdemeanor, in addition to felony offenders. Specifically, the bill amends s. 916.105, F.S., to provide legislative intent that forensic services be provided to a person charged with a misdemeanor. Additionally, the bill amends the definitions of "defendant" and "department," as well as provisions relating to the rights of forensic clients and the involuntary commitment of a defendant adjudicated incompetent, to include misdemeanor crimes to the list of offenses that could result in civil commitment of criminal defendants.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill amends ch. 916, F.S., to provide that forensic services must also be provided to persons charged with misdemeanor offenses. Accordingly, individuals who are charged with a misdemeanor but found incompetent to proceed to trial may be involuntarily committed by the court for treatment and services.

C. Government Sector Impact:

This bill will create additional workload for many agencies and groups, such as the Florida court system, law enforcement, state attorneys and public defenders, psychologists, and particularly the Agency for Persons with Disabilities (APD or agency) and the Department of Children and Family Services (DCF or department).

Current law requires DCF and APD to place defendants committed under ch. 916, F.S., in a mental health treatment facility within 15 days after receiving a completed copy of the

commitment packet from the court. Expanding the commitments authorized under ch. 916, F.S., to include misdemeanor offenders is estimated – on the low end – to increase commitments by 320 commitments annually.[12] The department predicted that by August 2011, the number of felony and misdemeanor commitments will reach such a level that the department will not have the capabilities to admit individuals within the 15 day statutory requirement.[13]

Both APD and DCF have indicated that implementation of this bill will require additional space to house misdemeanor defendants who are committed. For example, DCF estimates that it will need an additional 400 secure forensic beds, at an annual operating cost of $52,457,440.[14] In order to accommodate the additional 400 beds, DCF would have to utilize 25 beds at the Treasure Coast Forensic Treatment Center,[15] reopen 100 beds at the South Florida Evaluation and Treatment Center Annex, renovate a closed unit at Florida State Hospital, and construct a new secure forensic facility.[16] According to DCF, renovations would take a minimum of six months and construction of the new facility would take a minimum of two years.[17]

Also, according to APD, implementation of this bill could affect APD's strategic plan. First, because of the prevalence of misdemeanor offenders, APD would have to increase its ability to service committed residents in state facilities, which would be contrary to the measures APD has taken to reduce reliance on state operated facilities.[18] Also, according to APD, "there are often increased community service costs for defendants upon exit from forensic programs, since the private providers are reluctant to serve individuals with criminal charges in their history for fear of liability concerns. When the post forensic resident is served in community based settings, intensive behavioral services at significantly higher costs occur more frequently."[19]

VI. Technical Deficiencies:

Section 616.106(5), F.S., defines "court" to mean the circuit court; however, misdemeanor cases are usually heard in county court. According to the Florida Supreme Court, county courts do not have the authority to commit misdemeanor defendants to the Department of Children and Family Services under ch. 916, F.S.[20]

[12] Dep't of Children and Families, *Staff Analysis and Economic Impact SB 166* (Dec. 16, 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs). The Agency for Persons with Disabilities estimated that implementation of this bill could result in an additional 1,200 commitments per year. Agency for Persons with Disabilities, *2011 Bill Analysis SB 166* (Jan. 14, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[13] Dep't of Children and Families, *supra* note 12.
[14] *Id*.
[15] Funding for these beds is currently being used to fund the Miami-Dade Forensic Alternative Center diversion program. *Id.*
[16] *Id*.
[17] *Id*.
[18] Agency for Persons with Disabilities, *supra* note 12.
[19] *Id*.
[20] *Onwu*, 692 So. 2d at 883.

VII. Related Issues:

In cases of misdemeanor defendants, rule 3.213(a) of the Florida Rules of Criminal Procedure requires dismissal of charges at any time after one year if, after a hearing, the court finds that the defendant is determined to remain incompetent to stand trial and there is no substantial probability that the defendant will become competent to stand trial in the future. Section 916.145, F.S., provides that charges against a defendant shall be dismissed if the defendant remains incompetent to proceed for a period of five years. Currently, ch. 916, F.S., relates only to defendants charged with felonies; however, if this bill is implemented, ch. 916, F.S., will apply to both misdemeanor and felony offenders. Accordingly, rule 3.213(a) of the Florida Rules of Criminal Procedure may need to be amended to comply with the changes made by this bill.

VIII. Additional Information:

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

None.

B. Amendments:

None.

923366

LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 182 - 196.

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

And the title is amended as follows:

Delete lines 37 - 41

and insert:

submit such list to the Governor; providing an effective date.


108786

LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 149 - 156
and insert:
(b) Ensure that:

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 24 - 27
and insert:
contractor; requiring a contract to

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 Children, Families, and Elder Affairs Committee

BILL:	SB 226
INTRODUCER:	Senator Smith
SUBJECT:	Human Services Contracting
DATE:	March 18, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	**Pre-meeting**
2.			CJ	
3.			GO	
4.			BC	
5.				
6.				

I. Summary:

The bill creates s. 287.0576, F.S., relating to outsourced human services, and provides definitions. The bill requires that private accreditation standards be accepted in lieu of agency licensure requirements and requires a single agency to take the lead in developing policies and monitoring requirements for specified human services. The bill specifies duties for each lead agency, addresses material changes to contracts and corresponding contract amendments, provides that unexpended but disbursed funds carry over to the next year as cash flow, and requires agencies to accept and maintain electronic versions of mandated reports.

The bill requires the Department of Management Services (DMS) to recognize established electronic storage vaults and to promote the development, implementation, and maintenance of such vaults.

In addition, the bill requires the Social Services Estimating Conference to add to the information it develops to include information that is related to mental health, substance abuse, child welfare, or juvenile justice services needs.

This bill substantially amends s. 216.136 and creates s. 287.0576, Florida Statutes.

II. Present Situation:

Contracting and Outsourcing

Background

Privatization involves the provision of publicly funded services by nongovernmental entities. Privatization can take several forms, including the cessation of services by government, the outsourcing of services by government, the divestiture of government assets, and the use of public-private partnerships. Outsourcing has become a common approach to providing human services as states and localities face budget crises and struggle to ensure the same level of services with limited resources. Government is increasingly turning to nonprofit groups, community-based organizations, faith-based organizations, charitable agencies, and private-sector companies to provide human services.[1]

Although the terms "privatization" and "outsourcing" are often used interchangeably, the two service structures are different. With privatization, program infrastructure is transferred entirely from the government to another service provider. The government ceases to provide those services. With outsourcing, the government competitively contracts with a vendor to provide specific services. Most outsourced functions involve transferring responsibilities for the management, operation, upgrade, and maintenance of some infrastructure to the contracted vendor, with the government agency retaining a central role in program oversight.[2,] The Florida Statutes define "outsource" as the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(f), in whole or in part, or an activity as defined in s. 216.011(1)(rr), while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources.[3]

Many factors drive government to outsource the delivery of human services, including the desire to improve service, increase efficiency, and ensure cost-effectiveness. State agency procurement contracts typically include oversight mechanisms for contract management and program monitoring. Contract monitors ensure that contractually required services are delivered in accordance with the terms of the contract, approve corrective action plans for non-compliant providers, and withhold payment when services are not delivered or do not meet quality standards.

Agency for Health Care Administration (AHCA)

The Agency for Health Care Administration does not contract with providers of human services related to mental health, substance abuse, child welfare, or juvenile justice. The agency purchases and reimburses providers and managed care plans for these services. Currently, AHCA contracts with Medicaid managed care organizations (MCO) to offer plans that cover Medicaid mental health services for Medicaid eligible recipients. The MCOs then subcontract with mental health service providers to deliver these services.[4]

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[1] Bandoh, E. *Outsourcing the Delivery of Human Services*, Welfare Information Network, Issue Notes. Vol. 7, No. 12 October 2003. Available at: http://76.12.61.196/publications/outsourcinghumanservicesIN.htm (Last visited March 16, 2011.)
[2] *Id*.
[3] Section 287.05721(2), F.S.
[4] Agency for Health Care Administration. 2011 Bill Analysis and Economic Impact Statement, SB 226.

For Medicaid providers who are reimbursed on a fee-for-service basis, specialists in each Medicaid area office conduct the administrative monitoring. In addition, AHCA and the MCOs also monitor many providers to ensure quality of services.[5]

Department of Children and Family Services (DCF)

Section 20.19, and Chapters 287 and 402, F.S., require DCF whenever possible, in accordance with established program objectives and performance criteria, to contract for the provision of services by counties, municipalities, not-for-profit corporations, for-profit corporations, and other entities capable of providing needed services, if services so provided are more cost-efficient than those provided by the department.[6] In addition, the department conducts competitive procurements for child welfare services that have been outsourced pursuant to s. 409.1671, F.S.[7]

Agency for Persons with Disabilities (APD)

The Agency for Persons with Disabilities works in partnership with local communities and private providers to assist people who have developmental disabilities and their families. APD also provides assistance in identifying the needs of people with developmental disabilities for supports and services, and manages various Medicaid waivers.[8] While it is a provider of human services, APD is not included in the bill among the human services agencies.[9]

Department of Health (DOH)

The Department of Health currently interprets child welfare services as being those services associated with adoption and foster care. The only service that DOH has in this area is child protective services within the Division of Children's Medical Services (CMS).[10] Currently CMS performs the programmatic monitoring of approximately 23 child protection team contracts at an annual cost of $31 million.[11]

Payment Issues

Current law provides payment procedures for invoices submitted to a state agency. Invoices must be filed with the Chief Financial Officer (CFO), recorded in the financial systems of the state, approved for payment by the agency, and filed with the CFO not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services. In the case of a

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[5] *Id*.

[6] Department of Children and Family Services, *Procurement and Contract Management, Contract Management System For Contractual Services*. CFOP 75-2. Available at: http://www.dcf.state.fl.us/admin/publications/policies/075-2.pdf . (Last visited March 16, 2011).

[7] Department of Children and Family Services. Staff Analysis and Economic Impact, SB 226, December 20, 2010.

[8] Prior to October, 2004, APD was the Developmental Disabilities Program Office within the Department of Children and Families.

[9] However, the background screening requirements and the reporting requirements of the bill will affect APD. Agency for Persons with Disabilities. 2011 Bill Analysis, SB 226, February 11, 2011.

[10] Section 39.303, F.S. provides that the Children's Medical Services Program at DOH shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the service districts of DCF to supplement the assessment and protective supervision activities of DCF's family safety program. Such teams may be composed of appropriate representatives of school districts and appropriate health, mental health, social service, legal service, and law enforcement agencies. The two departments are required to maintain an interagency agreement that establishes protocols for oversight and operations of child protection teams and sexual abuse treatment programs.

[11] Department of Health. 2011 Bill Analysis, Economic Statement and Fiscal Note, SB 226, January 7, 2011.

dispute, the invoice recorded in the financial systems of the state shall contain a statement of the dispute and authorize payment only in the amount not disputed.[12]

Estimating Conferences

Economic, demographic, caseload and revenue forecasts are essential for a variety of governmental planning and budgeting functions. Most importantly, revenue and caseload estimates are needed to ensure that the state meets the constitutional balanced budget requirement. The various forecasts are primarily used in the development of the constitutionally required Long-Range Financial Outlook, the Governor's budget recommendations, and the General Appropriations Act. Economic and demographic forecasts are also used to support estimates of revenues and demands for state services.[13]

Each state agency and the judicial branch must use the official results of the conference in carrying out their duties under the state planning and budgeting system. While the Legislature is not bound to use the official consensus forecasts, it has consistently used the results of these conferences in its official duties since 1970.[14]

Document Vaults

Section 287.0585, F.S., relating to the coordination of contracted services, establishes duties and responsibilities for DCF, APD, DOH, the Department of Elderly Affairs (DOEA), and the Department of Veterans' Affairs (DVA), and service providers under contract to those agencies. A single lead administrative coordinator for each contract service provider must be designated and the lead coordinator is required to maintain an accessible electronic file of up-to-date administrative and fiscal documents, including, but not limited to, corporate documents, membership records, audits, and monitoring reports. DCF reports that agencies are in the process of implementing this "document vault" for providers that would fall within "health and human services."[15]

Background Screening

The Florida Legislature in 1995 created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons, including children, the elderly, and the disabled. Over time, implementation and coordination issues arose as technology changed and agencies were reorganized.

To address these issues, the legislature enacted legislation in 2010 that substantially rewrote the requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations.[16] Background screening requirements vary depending upon job classifications and populations of clients served.

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[12] s. 215.422, F.S.
[13] Office of Economic and Demographic Research, The Florida Legislature. Available at: http://edr.state.fl.us/Content/conferences/index.cfm (Last visited March 16, 2011).
[14] *Id*.
[15] Department of Children and Family Services. Staff Analysis and Economic Impact, SB 226, December 20, 2010.
[16] Chapter 2010-114, L.O.F.

The Federal Bureau of Investigation (FBI) has only authorized Florida agencies to share FBI screening information with other Florida agencies if both agencies are using the information for the same purpose. For example, the FBI has authorized DCF to share information with APD, but has refused to allow these agencies to share their screening information with AHCA.[17]

III. Effect of Proposed Changes:

Definitions

The bill defines the term "financial impact" as an increase in reasonable costs of 5 percent or more in the annual aggregate payment to a contractor performing a contract for the outsourcing of human services.

The bill defines the term "human services" to mean services related to mental health, substance abuse, child welfare, or juvenile justice.

The bill also defines the term "new governmental mandate" as a statutory requirement, administrative rule, regulation, assessment, executive order, judicial order, or other governmental requirement, or an agency policy, that was not in effect when a contract for the outsourcing of human services was originally entered into and that directly imposes an obligation on the contractor to take, or to refrain from taking, an action in order to fulfill its contractual obligation.

Outsourced Human Services

The bill contains provisions that intend to create a more stable business environment for contractors providing outsourced human services related to mental health, substance abuse, child welfare, or juvenile justice and to ensure accountability, eliminate duplication, and improve efficiency with respect to the provision of such services.

The bill provides that accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JACHO), the Commission on Accreditation of Rehabilitation Facilities (CARF), and the Council on Accreditation shall be accepted by state agencies in lieu of the agency's facility licensure onsite review and administrative requirements, and as a substitute for the state agency's licensure, administrative, and program monitoring requirements. The bill provides that accreditation for administrative requirements satisfies the administrative requirements for licensure during the period of time that the accreditation is effective.

The bill also provides that an agency may continue to inspect and monitor the contractor as necessary with respect to reimbursement issues, complaints investigations and suspected problems, and compliance with federal and state laws not covered by accreditation.

The bill requires each state agency that has been designated by the federal government or state law as the authorized state entity with respect to the provision of a defined human service population to be the lead agency for the provision of all related human services. By October 1, 2011, each lead agency is required to:

[17] Agency for Persons with Disabilities. 2011 Bill Analysis, SB 226, February 11, 2011.

- Develop a common monitoring protocol that must be used by all agencies serving the same population;
- Implement a plan to coordinate monitoring activities related to the delivery of services to the populations being served by multiple state agencies;
- Adopt rules that guide the delivery of service across the jurisdictions of multiple state agencies serving the same population and coordinate all monitoring activities;
- Provide for a master list of core required documents for contract monitoring purposes and provide for the submission or posting of such documents by each contractor, and
- If the same information or documentation is required by more than one agency, develop a common form to be used by all agencies requesting that information or documentation.

The bill requires that a department or agency must accept all mandated reports and invoices from human services contractors electronically, and allow all required core documents required to be posted in secure electronic storage. The Department of Management Services (DMS) is required to recognize electronic document vaults established for the purpose of storing, delivering, and retrieving documents required in monitoring and regulatory review processes. To the greatest extent possible, the department shall promote the development, implementation, and maintenance of such vaults by service providers or provider trade associations. If a contractor uses such storage, the department or agency must have access to the electronic storage in order to monitor required documents, and shall by rule or contract require the contractor to deposit documents requested by the agency in such storage.

The bill also requires that contracts to outsource human services related to mental health, substance abuse, child welfare, and juvenile justice must:

- Provide that if a material change to the scope of the contract is imposed upon a service provider and compliance with such change will have a material adverse financial impact on the service provider, the contracting agency shall negotiate a contract amendment with the service provider to increase the maximum obligation amount or unit price of the contract to offset the material adverse financial impact of the change if the service provider furnishes evidence to the contracting agency of such material adverse financial impact along with a request to renegotiate the contract based on the proposed change;
- Provide for an annual cost of living adjustment that reflects increases in the cost of living index, subject to appropriation;
- Ensure that payment will be made on all items not under dispute and that payment will not be withheld on undisputed issues pending the resolution of disputed issues; and
- Provide that any disbursed funds that remain unexpended during the contract term be considered as authorized revenue for the purposes of cash flow and continuation of the contract.

The bill also provides:

- When a contractor is aggrieved by the refusal or failure of a governmental unit to negotiate a contract amendment to remedy a material adverse financial impact of a new

governmental mandate pursuant to this section, this constitutes an agency action for the purposes of chapter 120, F.S.

- Each agency that contracts for the provision of specified human services must prepare a comprehensive list of all contract requirements, mandated reports, outcome measures, and other requirements of a provider and submit the list annually to the Governor.
- State agencies shall provide an analysis of every new governmental mandate, form, or procedure required of a service provider under a contract for the outsourcing of human services which was not in effect when the contract was originally entered into. The analysis must identify the cost to the provider of any new requirements and must be transmitted to the provider before any new mandate, form, or procedure may be used or implemented. The analysis must also include a fiscal impact statement with respect to each new form, procedure, or mandate required or imposed.

Background Screening

The bill provides that Level 2 background screening conducted for one lead agency shall satisfy the screening requirements for all agencies requiring such screening.

Estimating Conferences

In addition, the bill requires the Social Services Estimating Conference to add to the information it develops to include information that is related to mental health, substance abuse, child welfare, or juvenile justice services needs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article II, section 3 of the Florida Constitution creates the three branches of Florida's government, and prohibits one branch from exercising the powers of another branch. This separation of powers doctrine includes a prohibition on one branch delegating its constitutionally assigned powers to another branch.[18] Therefore, statutes granting power to the executive branch "must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated

[18] *Chiles v. Children* A, B, C, D, E & F, 589 So.2d 260, 264 (Fla.1991).

that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion."[19] The Legislature may delegate some discretion in the operation and enforcement of the law, but it cannot delegate the power to say what the law is.[20]

The bill requires agencies to accept "national accreditation of human services providers" notwithstanding any other provision of law, which appears to be a delegation problem on its face, since it requires the unfixed standards of a private entity to substitute for and supplant the Legislature's duty to determine the law.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

AHCA reports that a reduction in administrative monitoring may reduce provider costs.

DCF reports that there may be a fiscal impact on the private sector but it is impossible to measure that impact at this time.

APD reports that providers and some APD consumers may realize some savings if Level 2 background screenings for one lead agency will satisfy the requirements for all agency screenings.

C. Government Sector Impact:

Agency for Health Care Administration
ACHA reports that under the current definition of outsourced contracts, provisions of the bill would not impose a fiscal impact on the agency. If the intent of the bill is to apply the new provisions to all contracted health related services, then AHCA's existing contracts with Medicaid managed care plans would have to be amended to add the new requirements which may result in significant fiscal issues if the agency must comply with new mandates and funds have not been appropriated to cover the cost.

Department of Children and Family Services
DCF reports that the provisions of the bill will result in an increased workload and duplicative tasks for the department which will result in an unknown fiscal impact. DCF has not provided an estimate of how the bill will impact workload or duplicative tasks.

In addition, in relation to the Substance Abuse Program Office, the bill is unclear as to whether the exception for accredited agencies would also extend to the licensing fees

[19] *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So.2d 769, 770 (Fla. 2005), citing *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55-56 (Fla.1976).
[20] *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 363 (Fla. 1st DCA 1985).

collected as part of the licensing process. If the accreditation exception was approved, and licensing fees not collected as part of accreditation requirements, the state would lose licensure revenue each year.

Department of Health
DOH reports that requiring contracts to outsource human services to provide a cost of living adjustment would result in a fiscal impact on the department. For example, if the cost of living increased by 1 percent, then there would be a potential for the child protection team contracts to increase by $310,000. DOH reports that the cost increase not accompanied by an increase in services might be contrary to the provisions of s.215.425, F.S., relating to the prohibition of extra compensation claims.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The constitutional problem with delegating legislative authority as described in new s. 287.0575(2)(a), F.S., is discussed in Other Constitutional Issues, above, but this provision also presents practical issues. If the three private accreditation entities have different accreditation standards, there will be a lack of uniformity in standards. It is also unclear what "administrative requirements" are to be supplanted by the private accreditations.

Lines 101-103 of the bill give authority to a "lead agency" to "adopt rules that guide the delivery of service across the jurisdictions of multiple state agencies…." This provision may conflict with statutory grants of rulemaking authority to individual agencies, and may lead to uncertainty as to which agency has authority for what rule.

Lines 134-148 requires that a contract to outsource human services must have a provision that material changes that have a financial impact on a provider must result in a contract amendment to increase the payment to the contractor. This provision may be susceptible to differing interpretations, since "material change" is not defined, and though "financial impact" is defined in the bill, it includes a reference to "reasonable costs," which isn't defined.

The **Department of Children and Family Services** has raised a number of issues with the provisions of the bill including, but not limited to:

- Not every contracted service supplied by DCF necessarily falls within the category of "outsourced" and therefore the department would have considerable difficulty in providing clear operational instructions to employees. Examples of "outsourced" human services would be lead agencies under Section 409.1671, F.S., and managing entities under Section 394.9082, F.S. If the intent is to address only providers of outsourced services, then the number of affected providers is limited. On the other hand, if the intent is to address all providers of human services, then there are numerous types of providers that would be covered by the legislation.

- National accreditation typically only requires an onsite review every 3 years. In some cases the particular service purchased from a provider does not fall under national accreditation. The provider as an entity may not have accreditation over all programs for which it provides services to the DCF. The national accreditation would not provide assurance that the services paid for were delivered, and that the health, safety and welfare of the department's clients is not compromised.
- When considering the provisions of the bill related to substitution of accreditation for "programmatic monitoring", DCF is required to continue to operate a statewide quality assurance (QA) system pursuant to title IV-B and IV-E of the Social Security Act. In order for Florida to receive federal funding, regulations require the state to develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children. States must also implement standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children and operate an identifiable quality assurance system. The Federal Administration for Children and Families has confirmed that Florida will be out of compliance if there is not a QA system in place.
- Subsection (3) of the bill requires that the agency designated at the state or federal level as the authorized entity for a defined human service population be the "lead agency" for all human services to that population. While subsection (3) does not specifically duplicate the requirements of the statute that would immediately precede it in statutory order,[21] the requirements of the two sections overlap significantly. Section 287.0575, F.S., already contains a statutory scheme for designating a lead state agency when multiple agencies contract with a single provider for "health and human services" and makes that lead agency responsible for establishing a coordinated schedule for administrative and fiscal monitoring, and establishing and maintaining a unified set of documents to be used by the multiple agencies.
- DCF has had experience in consolidating monitoring coordination efforts, which have proven to be unsuccessful and time intensive. Ultimately, each agency defaults to its own monitoring. Specifically, the Substance Abuse Program Office worked with AHCA, DJJ, and the Department of Corrections to develop a Unified Substance Abuse Monitoring Tool. While progress was made, a considerable amount of staff effort is required to implement consolidating monitoring tools.[22]

Agency for Persons with Disabilities
APD reports potential issues with the background screening provisions in the bill. The bill does not specify how agencies should resolve disqualifying offenses that are unique to their individual screening requirements. Provisions of the bill also appear to conflict with federal requirements relating to the confidentiality of the screening results imposed by the FBI.[23]

The **Department of Health** has raised a number of concerns with provisions of the bill including:

[21] s. 287.0575, F.S.
[22] Department of Children and Family Services, Staff Analysis and Economic Impact, SB 226. December 10, 2010.
[23] Agency for Persons with Disabilities. 2011 Bill Analysis, SB 226, February 11, 2011.

- Section 287.001, F.S. provides that all contracts must be awarded equitably and economically. The bill would give preference to some providers due to the cost of living provision.
- The bill requires the lead agency to develop a common monitoring protocol and it is unclear whether this is in addition to, or it supplants, the requirements of s. 287.0575(4), F.S., relating to the coordination of contracted services.
- Provisions of the bill appear to conflict with s. 287.0575, F.S., relating to the coordination of contracted services due to the fact that the bill limits monitoring activities on providers of human services accredited by JAHCO, CARF, and COA. Section 287.0575 F.S., does not provide for exceptions.
- The bill provides that unexpended contract funds will carry forward to the next contract cycle, which may conflict with some federal grant directives that require all unexpended funds to be returned.

The **Department of Health** and **the Agency for Persons with Disabilities** report the potential for increased litigation against the departments and agencies as a result of the provision of the bill that gives contractors additional administrative hearing rights related to the negotiation of contracts.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Rich) recommended the following:

Senate Amendment

Delete line 95

and insert:

its findings to the commission by July 1, 2012.

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 Children, Families, and Elder Affairs Committee

BILL:	SB 578
INTRODUCER:	Senator Ring
SUBJECT:	Disability Awareness
DATE:	March 21, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	**Pre-meeting**
2.			ED	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill requires that district school boards provide disability history awareness and instruction during the first week in October in all K-12 public schools. The instruction must be provided by individuals who are certified to provide instruction in disability awareness or by teachers who specialize in exceptional student education.

The bill requires the Governor's Commission on Disabilities (commission) to initiate a study undertaken by a private nonprofit entity to evaluate and recommend standards and criteria necessary for providers to conduct disability awareness training, to establish guidelines and curriculum for a certification program, and to provide a summary of current trends in training in disability awareness.

The bill provides that beginning July 1, 2012, the commission shall oversee a statewide program for providers of training and certified instructors in disability awareness. The bill provides requirements for authorized training providers throughout the state, as well as requirements for individuals seeking certification to provide instruction in disability awareness. Both providers and instructors will pay a fee for application and renewal of their certification.

The bill authorizes the commission to adopt rules to implement the provisions of the bill.

This bill substantially amends section 1003.4205, Florida Statutes. The bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Disability History and Awareness

According to a U.S. Census Bureau report, one in five United States residents – or around 54 million Americans – reported some level of disability in 2005.[1] Approximately 13 percent of children age 6 to 14 have a disability,[2] and as of 2007, 95 percent of students age 6 to 21 were taught in a general education classroom.[3] According to the Museum for DisABILITY History, students:

> benefit from learning about the story of people with disabilities, including how they used to be viewed and treated, how conditions have changed over time and how individuals with disabilities are currently actively involved in self-advocacy and in their communities. Given the context of disability history, students will be equipped with the tools needed to engage in critical thinking and will be more likely to view individuals with disabilities as people deserving of dignity and respect just like everyone else.[4]

On this premise, disability advocates began a campaign to help create understanding and to celebrate the history of individuals with disabilities, and in 2006, West Virginia passed the first Disability History Week bill.[5] Fourteen other states, including Florida, have since passed similar legislation.[6]

In 2008, the Florida Legislature created s. 1003.4205, F.S.,[7] which authorizes each district school board to provide disability history and awareness instruction in all K-12 public schools during the first two weeks in October. During "Disability History and Awareness Weeks," students may be provided with instruction to expand their knowledge, understanding, and awareness of individuals with disabilities and the history of disability and the disability rights movement. The instruction of these things can be integrated into the existing school curriculum and may be taught by qualified school personnel or knowledgeable guest speakers.

The Bureau of Exceptional Education and Student Services, within the Department of Education (DOE), developed the Disability History and Awareness: A Resource Guide (guide) in order to help school districts promote Disability History and Awareness Weeks.[8] The guide includes, among other things:

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[1] Disabled World, *New Statistics 54.4 Million Americans with a Disability* (Dec. 20, 2008), http://www.disabled-world.com/disability/statistics/us-disability-stats.php (last visited Mar. 17, 2011).
[2] *Id*.
[3] Nat'l Ctr. for Education Statistics, *Fast Facts*, http://nces.ed.gov/fastfacts/display.asp?id=59 (last visited Mar. 17, 2011).
[4] Museum of DisABILITY History, *Disability History Week: Importance*, http://disabilityhistoryweek.org/pages/importance/ (last visited Mar. 17, 2011).
[5] Museum of DisABILITY History, *Disability History Week: National Disability History Week Initiative*, http://www.disabilityhistoryweek.org/blogs/read/9 (last visited Mar. 17, 2011).
[6] *Id*.
[7] Chapter 2008-156, s. 1, Laws of Fla.
[8] Bureau of Exceptional Education and Student Services, Dep't of Education, *Disability History and Awareness: A Resource Guide* (2010), *available at* http://www.fldoe.org/ese/pdf/DHA-Resource2010.pdf (last visited Mar. 17, 2011).

- Promotional ideas to help schools promote disability history and awareness;
- Flyers recognizing the contributions of various individuals with disabilities;
- Disability etiquette documents;
- Documents concerning "people first" language;
- A guide to differentiated instruction;
- A copy of "A Legislative History of Florida's Exceptional Student Education Program"; and
- A list of websites that contain a variety of games, activities, and lesson plans that can be integrated into a curriculum for students.[9]

In 2010, s. 1012.582, F.S., was created and directed the Commissioner of Education (commissioner) to develop recommendations to incorporate instruction regarding autism spectrum disorder, Down syndrome, and other developmental disabilities into continuing education for instructional personnel.[10] The commissioner was instructed to address:

- Early identification of, and intervention for, students who have autism spectrum disorder, Down syndrome, or other developmental disabilities;
- Curriculum planning and curricular and instructional modifications, adaptations, and specialized strategies and techniques;
- The use of available state and local resources;
- The use of positive behavioral supports to deescalate problem behaviors; and
- Appropriate use of manual physical restraint and seclusion techniques.[11]

The statute required DOE to incorporate the course curricula recommended by the commission in the 2010-2011 school year.

Governor's Commission on Disabilities

The Governor's Commission on Disabilities (commission) was created by Governor Crist on July 26, 2007, by Executive Order 07-148 to "advance public policy for Floridians with disabilities and to provide a forum for advocates representing Floridians with disabilities to develop and voice unified concerns and recommendations."[12] The commission was scheduled to sunset on July 26, 2008, unless its existence was extended by the Governor. Governor Crist maintained the commission by Executive Order 08-193, which authorized the commission to continue to work in the areas identified in its July 2008 Report to the Governor.[13] The Governor appoints the members of the commission and those members serve a one-year term.[14] The commission is located, for administrative purposes only, within the Department of Management Services.[15] Although the most recent executive order authorizing the existence of the

[9] *Id*. at 1.
[10] Chapter 2010-224, s. 6, Laws of Fla.
[11] Section 1012.582(1), F.S.
[12] Office of the Governor, State of Florida, *Executive Order Number 07-148* (July 26, 2007), *available at* http://fldisabilityinfo.com/LinkClick.aspx?fileticket=ylozTVSuCyo%3d&tabid=40 (last visited Mar. 18, 2011).
[13] Office of the Governor, State of Florida, *Executive Order Number 08-193* (Sept. 11, 2008), *available at* http://fldisabilityinfo.com/LinkClick.aspx?fileticket=PHh2VvO7jjE%3d&tabid=40 (last visited Mar. 18, 2011).
[14] *Executive Order Number 07-148*, *supra* note 12.
[15] *Id*.

commission was in 2008, it appears that the commission has continued its work to identify barriers that persons with disabilities face, and to provide recommendations to overcome those barriers.[16]

III. Effect of Proposed Changes:

This bill amends s. 1003.4205, F.S., to require that district school boards provide disability history awareness and instruction in all K-12 public schools during the first week in October, which is to be known as "Disability History and Awareness Week." This instruction is currently an optional activity which may be provided anytime during the first two weeks of October.

The bill requires that the instruction be provided by individuals who are certified to provide instruction in disability awareness or by teachers who specialize in exceptional student education, beginning in the 2012-2013 school year.

The bill requires the Governor's Commission on Disabilities (commission) to initiate a study beginning on July 1, 2011, to evaluate and recommend standards and criteria necessary for providers to conduct disability awareness training, to establish guidelines and curriculum for a certification program, and to provide a summary of current trends in training in disability awareness. The study is to be conducted by a private nonprofit entity that promotes disability awareness and provides training in disability awareness. The study shall:

- Recommend standards and criteria necessary for authorizing providers to conduct training in disability awareness;
- Establish guidelines and curriculum for a certification program for disability awareness instructors; and
- Summarize the current trends in training in disability awareness.

The bill states that the study is to be submitted to the commission by July 1, 2011.

Additionally, the bill provides that beginning July 1, 2012, the commission shall oversee a statewide program for providers of training and certified instructors in disability awareness.

Training Providers

All training providers must meet criteria established and published by the commission in order to be approved to conduct continuing education courses for certifying individuals to be instructors in disability awareness. In order to be approved, a provider must:

- Have a minimum of five years experience working in the field of disabilities;
- Submit an application to the commission;
- Pay an application or renewal fee, which cannot exceed $200; and

[16] *See* Governor's Comm'n on Disabilities, *2009 Report* (June 2009), *available at* http://fldisabilityinfo.com/LinkClick.aspx?fileticket=ZPVM9H8Yewg%3d&tabid=40 (last visited Mar. 18, 2011), and Governor's Comm'n on Disabilities, *2010 Governor's Report* (July 2010), *available at* http://fldisabilityinfo.com/LinkClick.aspx?fileticket=bS1I2Q2vNWI%3d&tabid=40 (last visited Mar. 18, 2011).

- Submit an annual report to the commission.

A provider must renew its approved status with the commission every three years and the commission must publish a list of providers approved to offer training.

Instructors

In order to provide instruction in disability awareness, an individual must be certified by a commission-approved provider. The individual must successfully complete specified continuing education courses in disability awareness and pay a certification fee, which is not to exceed $100. The individual must renew his or her certification every three years.

Finally, the bill provides that the commission shall adopt rules to administer the requirements of this bill.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill requires providers of disability training to be approved by the Governor's Commission on Disabilities (commission) in order to conduct training courses for certifying individuals as instructors. One requirement in order to be approved is that the provider must pay an application fee, which is to be set by the commission and cannot exceed $200. Additionally, an individual seeking certification to provide instruction in disability awareness must pay a certification fee, which is also to be set by the commission and cannot exceed $100. Both providers and instructors must renew their application or certification every three years.

In addition, instructors must complete continuing education courses, which must be paid for by the instructor.

C. Government Sector Impact:

The bill requires the Governor's Commission on Disabilities to oversee a statewide program for providers of training and certified instructors in disability awareness. The cost of overseeing this program, if any, is unknown at this time.

VI. Technical Deficiencies:

The bill requires the Governor's Commission on Disabilities (commission) to initiate a study regarding training in disability awareness beginning July 1, 2011 (line 78 of the bill). The bill then provides that the entity conducting the study shall submit its findings to the commission by July 1, 2011 (line 95 of the bill).

The commission was created by Governor Crist on July 26, 2007, by Executive Order 07-148. The commission was scheduled to sunset on July 26, 2008, unless its existence was extended by the Governor. Governor Crist issued Executive Order 08-193 in 2008 maintaining the commission, but there has not been another executive order authorizing the existence of the commission since. Accordingly, the status of the commission is currently unknown.

Additionally, it is unclear whether certification of persons would be considered the regulation of a profession and be subject to the Sunrise Act.[17] It is also unclear under what authority the commission can collect monies.

VII. Related Issues:

The bill provides that a study is to be conducted, beginning on July 1, 2011, by a private nonprofit entity that "promotes disability awareness in the classroom and the community at large and provides training in disability awareness." The bill does not provide additional criteria for how the nonprofit entity is to be selected, and it is unclear how many entities in the state promote and provide training in disability awareness. If there are many entities that provide these services, the July 1, 2011, timeline for beginning the study may not provide enough time for the Governor's Commission on Disabilities to select an entity.

VIII. Additional Information:

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

None.

B. Amendments:

None.

[17] See s. 11.62, F.S. The Sunrise Act provides for the legislative review of proposed regulation of unregulated functions.

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 Children, Families, and Elder Affairs Committee

BILL:	CS/SB 926
INTRODUCER:	Commerce and Tourism Committee and Senator Storms
SUBJECT:	Liability/Employers of Developmentally Disabled
DATE:	March 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	**Fav/CS**
2.	Daniell	Walsh	CF	**Pre-meeting**
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill creates a new section of the Florida Statutes providing an employer who employs an individual who has a developmental disability immunity from liability for negligent or intentional acts or omissions by that individual if:

- The employee receives or has received supported employment services through a supported employment service provider; and
- The employer does not have actual prior notice of the employee's actions that created the unsafe conditions in the workplace.

The bill also allows a supported employment service provider that has provided employment services to a person with a developmental disability to be immune from liability for the actions or conduct of the person that occur within the scope of the person's employment.

This bill creates section 768.0895, Florida Statutes.

II. Present Situation:

Section 393.063, F.S., defines "developmental disability" as "a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."

The Agency for Persons with Disabilities (APD or agency) has been tasked with serving the needs of Floridians with developmental disabilities.[1] The agency works in partnership with local communities and private providers to assist people who have developmental disabilities and their families. The agency also provides assistance in identifying the needs of people with developmental disabilities for supports and services.

Supported Employment Services

Supported employment services are services offered to help an individual gain or maintain a job. Generally services include job coaching, intensive job training, and follow-up services. The federal Department of Education State Supported Employment Services Program defines "supported employment services" as on-going support services provided by the designated state unit to achieve job stabilization.[2] Section 393.063, F.S., defines "supported employment" to mean employment located or provided in an integrated work setting, with earnings paid on a commensurate wage basis, and for which continued support is needed for job maintenance.

The Division of Vocational Rehabilitation (DVR), within the Department of Education, administers an employment program that assists individuals with disabilities, including those with the most severe disabilities, to pursue meaningful careers appropriate for their abilities and capabilities.[3] In 2009-10, DVR helped 3,874 people with severe disabilities find jobs.[4] Florida law defines "supported employment services" as "ongoing support services and other appropriate services needed to support and maintain a person who has a most significant disability in supported employment."[5] The service provided is based upon the needs of the eligible individual as specified in the person's individualized plan for employment. Generally, supported employment services are provided in such a way as to assist eligible individuals in entering or maintaining integrated, competitive employment.

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[1] Section 20.197, F.S.

[2] 34 C.F.R. s. 363.6(c)(2)(iii). "Under the State Supported Employment Services Program, the Secretary [of Education] provides grants to assist States in developing and implementing collaborative programs with appropriate entities to provide programs of supported employment services for individuals with the most severe disabilities who require supported employment services to enter or retain competitive employment." 34 C.F.R. s. 363.1; *see also*, U.S. Dep't of Education, *Supported Employment State Grants*, http://www.ed.gov/programs/rsasupemp/index.html (last visited Mar. 18, 2011).

[3] *See* Division of Vocational Rehabilitation, Florida Dep't of Education, http://www.rehabworks.org/ (last visited Mar. 18, 2011).

[4] Division of Vocational Rehabilitation, *2009-10 Performance Highlights*, 2, *available at* http://www.rehabworks.org/docs/AnnualReport10.pdf (last visited Mar. 18, 2011).

[5] Section 413.20(22), F.S. "Supported employment" is also defined in ch. 413, F.S., relating to vocational rehabilitation, to mean "competitive work in integrated working settings for persons who have most significant disabilities and for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or is intermittent as a result of such a disability. Persons who have most significant disabilities requiring supported employment need intensive supported employment services or extended services in order to perform such work." Section 413.20(21), F.S.

Both DVR and APD provide supported employment services or connect individuals with private organizations that supply such services. There are several entities in Florida dedicated to providing these services. However, these entities do not share information about their customers with the employers that employ their customers. This is due to various reasons, including confidentiality concerns or contract agreements between the employer and the organization.

Employer Liability

Under common law principles, an employer is liable for acts of its employee that cause injury to another person if the wrongful act was done while the employee was acting within the apparent scope of employment, serving the interests of his employer.[6] An employee is not acting within the scope of his employment, and therefore the employer is not liable, if the employee is acting to accomplish his own purposes, and not serving the interests of the employer.[7] "The test for determining if the conduct complained of occurred within the scope of employment is whether the employee (1) was performing the kind of conduct he was employed to perform, (2) the conduct occurred within the time and space limits of the employment, and (3) the conduct was activated at least in part by a purpose to serve the employer."[8]

An employer may be held liable for an intentional act of an employee when that act is committed within the real or apparent scope of the employer's business.[9] An employer may be held liable for a negligent act of an employee committed within the scope of his employment even if the employer is without fault.[10] "This is based on the long-recognized public policy that victims injured by the negligence of employees acting within the scope of their employment should be compensated even though it means placing vicarious liability on an innocent employer."[11] An employer is liable for an employee's acts, intentional or negligent, if the employer had control over the employee at the time of the acts. "Absent control, there is no vicarious liability for the act of another, even for an employee. Florida courts do not use the label 'employer' to impose strict liability under a theory of respondeat superior[12] but instead look to the employer's control or right of control over the employee at the time of the negligent act."[13] Employer fault is not an element of vicarious liability claims.[14]

Employers may also be liable for the negligent hiring of an employee. Negligent hiring is defined as "an employer's lack of care in selecting an employee who the employer knew or should have known was unfit for the position, thereby creating an unreasonable risk that another person

[6] *Gowan v. Bay County*. 744 So. 2d 1136, 1138 (1st DCA 1999).
[7] *Id.*
[8] *Id.*
[9] *Garcy v. Broward Process Servers, Inc*. 583 So. 2d 714, 716 (4th DCA 1991). The term "intentional" means done with the aim of carrying out the act. BLACK'S LAW DICTIONARY (9th ed. 2009).
[10] *Makris v. Williams*. 426 So. 2d 1186, 1189 (4th DCA 1983). The term "negligent" is characterized by a person's failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstance. BLACK'S LAW DICTIONARY (9th ed. 2009). A negligent act is one that creates an unreasonable risk of harm to another. BLACK'S LAW DICTIONARY (9th ed. 2009).
[11] *Makris*, 426 So. 2d at 1189.
[12] "Respondeat superior" means the doctrine holding an employer or principal liable for the employee's or agent's wrongful acts committed within the scope of the employment or agency. BLACK'S LAW DICTIONARY (9th ed. 2009).
[13] *Vasquez v. United Enterprises of Southwest Florida, Inc*. 811 So. 2d 759, 761 (3rd DCA 2002).
[14] *Makris*, 426 So. 2d at 1189.

would be harmed."[15] An action for negligent hiring is based on the direct negligence of the employer.[16] However, in order to be liable for an employee's act based upon a theory of negligent hiring, the plaintiff must show that the employee committed a wrongful act that caused the injury.[17] "The reason that negligent hiring is not a form of vicarious liability is that unlike vicarious liability which requires that the negligent act of the employee be committed within the course and scope of the employment, negligent hiring may encompass liability for negligent acts that are outside the scope of the employment."[18]

In *Williams v. Feather Sound, Inc.*, the Second District Court of Appeal discussed the responsibility of the employer to be aware of an employee's propensity to commit an act at issue:

> Many of these cases involve situations in which the employer was aware of the employee's propensity for violence prior to the time that he committed the tortious assault. The more difficult question, which this case presents, is what, if any, responsibility does the employer have to try to learn pertinent facts concerning his employee's character. Some courts hold the employer chargeable with the knowledge that he could have obtained upon reasonable investigation, while others seem to hold that an employer is only responsible for his actual prior knowledge of the employee's propensity for violence. The latter view appears to put a premium upon failing to make any inquiry whatsoever.[19]

Section 768.096, F.S., creates an employer presumption against negligent hiring if "before hiring the employee, the employer conducted a background investigation of the prospective employee and the investigation did not reveal any information that reasonably demonstrated the unsuitability of the prospective employee for the particular work to be performed or for the employment in general."[20]

There does not appear to be any existing provision in Florida law that would limit the liability of an employer if the employer has hired an individual with disabilities. Additionally, there do not appear to be any Florida cases which discuss employer liability for the negligent or intentional omissions of employees. An omission is defined as the "failure to do something; esp., a neglect of duty."[21] Generally, there must be a duty to disclose or to act for an individual to be held liable for an omission.

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[15] BLACK'S LAW DICTIONARY (9th ed. 2009).
[16] *Anderson Trucking Service, Inc. v. Gibson*. 884 So. 2d 1046, 1052 (5th DCA 2004).
[17] *Id*.
[18] *Id*. at n.1.
[19] *Williams v. Feather Sound, Inc.*, 386 So. 2d 1238, 1240 (2d DCA 1980) (internal citations omitted).
[20] Section 768.096(1), F.S. This section provides that a background investigation must include contacting references, interviewing the employee, and obtaining a criminal background check from the Florida Department of Law Enforcement. However, the election by an employer not to conduct the investigation is not a presumption that the employer failed to use reasonable care in hiring an employee.
[21] BLACK'S LAW DICTIONARY (9th ed. 2009).

III. Effect of Proposed Changes:

This bill creates s. 768.0895, F.S., providing an employer who employs an individual who has a developmental disability immunity from liability for negligent or intentional acts or omissions by that individual if:

- The employee receives or has received supported employment services through a supported employment service provider; and
- The employer does not have actual prior notice of the employee's actions that created the unsafe conditions in the workplace.

The bill also allows a supported employment service provider that has provided employment services to a person with a developmental disability to be immune from liability for the actions or conduct of the person that occur within the scope of the person's employment.

The bill provides definitions for "developmental disability" and "supported employment service provider" within the newly created s. 768.0895, F.S. Specifically:

- "Developmental disability" has the same meaning as provided in s. 393.063, F.S.;[22] and
- "Supported employment service provider" means a not-for-profit public or private organization or agency that provides services for persons in supported employment, as defined in s. 393.063, F.S.

The bill provides an effective date of July 1, 2011, and specifies that the bill only applies to causes of action occurring on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill possibly implicates the right of access to the courts under article I, section 21 of the Florida Constitution by eliminating or circumscribing an individual's right of action

[22] Section 393.063, F.S., defines "developmental disability" as "a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."

against an employer of a person with developmental disabilities. Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Constitution protects "only rights that existed at common law or by statute prior to the enactment of the Declaration of Rights of the Florida Constitution."[23] Constitutional limitations were placed on the Legislature's right to abolish a cause of action in the Florida Supreme Court case *Kluger v. White*, 281 So. 2d 1 (Fla. 1973). The Court held:

> [W]here a right of access … has been provided … the Legislature is without power to abolish such a right without providing a reasonable alternative … unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.[24]

To the extent that this bill is seen as depriving a person who is injured of the right to go to court to pursue a claim against an employer of a person with developmental disabilities, the bill may face constitutional scrutiny.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An employer's liability in hiring individuals with disabilities through supported employment service providers may be reduced. This may help employers feel more comfortable hiring individuals with disabilities.[25] In turn, more individuals using supported employment services may find employment opportunities available to them. An individual's liability for negligent or intentional acts or omissions will not change.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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[23] 10A FLA. JUR 2D *Constitutional Law* s. 360. When analyzing an access to courts issue, the Florida Supreme Court clarified that 1968 is the relevant year in deciding whether a common law cause of action existed. *Eller v. Shova*, 630 So. 2d 537, 542 n. 4 (Fla. 1993).

[24] *Kluger*, 281 So. 2d at 4.

[25] *See* Agency for Persons with Disabilities, *2011 Bill Analysis, SB 926* (Mar. 10, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Commerce and Tourism on March 16, 2011:
The committee substitute made four clarifying changes from the bill as originally filed:

- Defines "supported employment service provider;"
- Simplifies the definition of the term "person with a developmental disability" to "developmental disability;"
- Simplifies the reference to the person/employee by using the term "person" throughout; and
- Clarifies that the bill only applies to causes of action arising on or after the effective date of the bill.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Hays) recommended the following:

Senate Amendment

Delete line 48
and insert:

Section 2. This act shall take effect July 1, 2011, and applies to causes of action accruing on or after that date.

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 Children, Families, and Elder Affairs Committee

BILL:	CS/SB 930
INTRODUCER:	Judiciary Committee and Senators Lynn and Rich
SUBJECT:	Protection of Volunteers
DATE:	March 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Maclure	JU	**Fav/CS**
2.	Daniell	Walsh	CF	**Pre-meeting**
3.			GO	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill amends the Florida Volunteer Protection Act (Act) to specify that, as long as a volunteer is not being compensated by the nonprofit organization for whom he or she is volunteering, liability for the volunteer's acts still may be shifted to the nonprofit organization, provided the other criteria of the Act are satisfied. In addition, if the volunteer is being compensated by another source, both the liability of the volunteer and any liability imputed to the source of the compensation may be shifted to the nonprofit organization if the volunteer is not an agent of the source of the compensation.

Specifically, under the bill, any person who volunteers for any nonprofit organization, including an officer or director of such organization, without compensation *from the nonprofit organization, regardless of whether the person is receiving compensation from another source*, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services.

The bill also provides that the volunteer and *the source that provides compensation, if the volunteer is not acting as an agent of the source*, may not incur any civil liability for any act or

omission by the volunteer which results in personal injury or property damage if other specified criteria in the Act are also met.

This bill amends section 768.1355, Florida Statutes.

II. Present Situation:

The "Florida Volunteer Protection Act" (Act) provides that any person who volunteers to perform any service for any nonprofit organization, including an officer or director of such organization, without compensation, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under the volunteer services.[1] Such person may not incur civil liability for any act or omission by the person which results in personal injury or property damage under specified circumstances. The volunteer is immune from civil liability for acts or omissions he or she performed without compensation and that were performed within his or her official duties for any nonprofit organization which result in personal injury or property damage if:

- The volunteer was acting in good faith within the scope of any official duties performed under such volunteer service and the volunteer was acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances; and
- The injury or damage was not caused by any wanton or willful misconduct on the part of the volunteer in the performance of such duties.

For purposes of the Act, "nonprofit organization" means any organization that is exempt from federal taxation under federal law[2] or any federal, state, or local governmental entity.[3] "Compensation," for purposes of the act, does not include a stipend as provided by the Domestic Service Volunteer Act of 1973 or other financial assistance, valued at less than two-thirds of the federal hourly minimum wage standard, paid to a person who would otherwise be financially unable to provide the volunteer service.[4]

The intent of the Act is not to immunize volunteers from liability but to shift liability from the volunteer to the nonprofit organization only in circumstances where the volunteer is *exercising ordinary reasonably prudent care and meets the other criteria* specified in s. 768.1355, F.S.[5] The Act is written in the conjunctive, not disjunctive, so that each requirement in the statute must be present for the volunteer to be afforded immunity.[6]

III. Effect of Proposed Changes:

The bill revises the statutory criteria under the Florida Volunteer Protection Act (Act) applicable to compensation that a volunteer receives and the source of the volunteer's compensation in

[1] Section 768.1355, F.S.
[2] 26 U.S.C. s. 501.
[3] Section 768.1355(1)(b)1., F.S.
[4] Section 768.1355(1)(b)2., F.S.
[5] *Campbell v. Kessler as Personal Representative of the Estate of Reuben D. Berger*, 848 So. 2d 369, 371-72 (Fla. 4th DCA 2003).
[6] *Id.*

order to shift liability from the volunteer, and under certain circumstances, any liability imputed to the source that provides compensation to volunteer under the bill, to the nonprofit organization.

Under the bill, any person who volunteers any service for any nonprofit organization, including an officer or director of such organization, without compensation *from the nonprofit organization, regardless of whether the person is receiving compensation from another source*, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services.

The bill also provides that the volunteer and *the source that provides compensation, if the volunteer is not acting as an agent of the source,* may not incur any civil liability for any act or omission by the volunteer which results in personal injury or property damage if other specified criteria in Act are also met.

Other Potential Implications:

In some situations, a volunteer who receives compensation from another may create an agency relationship between the source of the compensation and the volunteer so that source of the compensation may be held vicariously liable, or liable under some other theory, for imputed negligence for the acts of the volunteer. "Vicarious liability" allows an injured party to seek redress from another who is not the party primarily responsible.[7]

The factors required to establish an agency relationship are: (1) acknowledgement by the principal that the agent will act for the principal; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent.[8] If an agency relationship is created between the volunteer and the source that provides the compensation, on a case-by-case basis, it may be unclear, for purposes of the Florida Volunteer Protection Act, whether the volunteer will be acting as agent of the nonprofit organization or the source that provides the compensation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[7] See *American Home Assurance Co. v. National Railroad Passenger Corp.*, 908 So. 2d 459 (Fla. 2005).
[8] See *Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A volunteer who receives compensation from another source, and the "source that provides compensation, if the volunteer is not acting as an agent of the source," may shift liability from the volunteer and any liability imputed to the source of the compensation received by the volunteer to the nonprofit organization, if the volunteer otherwise meets the statutory criteria for immunity under the Florida Volunteer Protection Act.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 14, 2011:
The committee substitute provides that the source of the compensation for the volunteer of a nonprofit organization will not incur any civil liability if the volunteer is not acting as an agent of the source and other specified criteria in the Florida Volunteer Protection Act are satisfied. The criteria are applicable to the volunteer's conduct when performing official duties for the nonprofit organization.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Rich) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 39.013, Florida Statutes, is amended to read:

39.013 Procedures and jurisdiction; right to counsel.—

(2) The circuit court has exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this

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chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was in the physical or legal custody of no person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age. However, if a young adult chooses to participate in the Foundations First Program, the court shall retain jurisdiction until the young adult leaves the program as provided for in s. 409.1451(4). The court shall review the status of the young adult at least every 12 months or more frequently if the court deems it necessary ~~youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the youth's 18th birthday~~ for the purpose of determining whether appropriate ~~aftercare support~~, Road-to-Independence Program~~, transitional support, mental health, and developmental disability~~ services~~, to the extent otherwise authorized by law,~~ have been provided ~~to the formerly dependent child who was in the legal custody of the department immediately before his or her 18th birthday~~. If a petition for special immigrant juvenile status and an application for adjustment of

status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

Section 2. Subsections (2) and (3) of section 39.6012, Florida Statutes, are amended to read:

39.6012 Case plan tasks; services.—

(2) The case plan must include all available information that is relevant to the child's care including, at a minimum:

(a) A description of the identified needs of the child while in care.

(b) A description of the plan for ensuring that the child receives safe and proper care and that services are provided to the child in order to address the child's needs. To the extent available and accessible, the following health, mental health, and education information and records of the child must be attached to the case plan and updated throughout the judicial review process:

1. The names and addresses of the child's health, mental health, and educational providers;


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2. The child's grade level performance;

3. The child's school record;

4. Assurances that the child's placement takes into account proximity to the school in which the child is enrolled at the time of placement and that efforts were made to allow the child to remain in that school if it is in the best interest of the child;

5. A record of the child's immunizations;

6. The child's known medical history, including any known problems;

7. The child's medications, if any; and

8. Any other relevant health, mental health, and education information concerning the child.

(3) In addition to any other requirement, if the child is in an out-of-home placement, the case plan must include:

(a) A description of the type of placement in which the child is to be living.

(b) A description of the parent's visitation rights and obligations and the plan for sibling visitation if the child has siblings and is separated from them.

(c) When appropriate, for a child who is in middle school or high school ~~13 years of age or older~~, a written description of the programs and services that will help the child prepare for the transition from ~~foster~~ care to independent living.

(d) A discussion of the safety and the appropriateness of the child's placement, which placement is intended to be safe, and the least restrictive and the most family-like setting available consistent with the best interest and special needs of the child and in as close proximity as possible to the child's

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home.

Section 3. Section 39.6015, Florida Statutes, is created to read:

39.6015 Services for older children in licensed care.—

(1) PURPOSE AND INTENT.—The Legislature recognizes that education and the other positive experiences of a child are key to a successful future as an adult and that it is particularly important for a child in care to be provided with opportunities to succeed. The Legislature intends that individuals and communities become involved in the education of a child in care, address issues that will improve the educational outcomes for the child, and find ways to ensure that the child values and receives a high-quality education. Many professionals in the local community understand these issues, and it is the intent of the Legislature that, in fulfilling their responsibilities to the child, biological parents, caregivers, educators, advocates, the department and its community-based care providers, guardians ad litem, and judges work together to ensure that an older child in care has access to the same academic resources, services, and extracurricular and enrichment activities that are available to all children. Engaging an older child in a broad range of the usual activities of family, school, and community life during adolescence will help to empower the child in his or her transition into adulthood and in living independently. The Legislature intends for services to be delivered in an age-appropriate and developmentally appropriate manner, along with modifications or accommodations as may be necessary to include every child, specifically including a child with a disability. It is also the intent of the Legislature that while services to

prepare an older child for life on his or her own are important, these services will not diminish efforts to achieve permanency goals of reunification, adoption, or permanent guardianship.

(2) EDUCATION PROVISIONS.—Perhaps more than any other population, an older child in care is in need of a quality education. The child depends on the school to provide positive role models, to provide a network of relationships and friendships that will help the child gain social and personal skills, and to provide the educational opportunities and other activities that are needed for a successful transition into adulthood.

(a) *School stability.*—The mobility of a child in care can disrupt the educational experience. Whenever a child enters care, or is moved from one home to another, the proximity of the new home to the child's school of origin shall be considered. If the child is relocated outside the area of the school of origin, the department and its community-based providers shall provide the necessary support to the caregiver so that the child can continue enrollment in the school of origin if it is in the best interest of the child. As used in this paragraph, the term "school of origin" means the school that the child attended before coming into care or the school in which the child was last enrolled. The case plan shall include tasks or a plan for ensuring the child's educational stability while in care. As part of this plan, the community-based care provider shall document assurances that:

1. When an child comes into care, the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of coming into care

have been taken into consideration.

2. The community-based care provider has coordinated with appropriate local school districts to determine if the child can remain in the school in which he or she is enrolled.

3. The child in care has been asked about his or her educational preferences and needs, including his or her view on whether to change schools when the living situation changes.

4. A child with a disability is allowed to continue in an appropriate educational setting, regardless of changes to the location of the home, and transportation is addressed and provided in accordance with the child's individualized education program. A children with a disability shall receive the protections provided in federal and state law, including timelines for evaluations, implementation of an individualized education plan or an individual family service plan, and placement in the least restrictive environment, even when the child changes school districts.

5. If the school district does not provide transportation, or the individualized education plan does not include transportation as a service, the department and its community-based providers shall provide special reimbursement for expenses associated with transporting a child to his or her school of origin. Transportation arrangements shall follow a route that is as direct and expedient for the child as is reasonably possible.

(b) *School transitions.*—When a change in schools is necessary, it shall be as least disruptive as possible and the support necessary for a successful transition shall be provided by the department, the community-based provider, and the caregiver. The department and the community-based providers

shall work with school districts to develop and implement procedures to will ensure that a child in care:

1. Is enrolled immediately in a new school and can begin classes promptly.

2. Does not experience a delay in enrollment and delivery of appropriate services due to school or record requirements as required by s. 1003.22.

3. Has education records that are comprehensive and accurate and promptly follow the child to a new school.

4. Is allowed to participate in all academic and extracurricular programs when arriving at a new school in the middle of a school term, even if normal timelines have passed or programs are full.

5. Receives credit and partial credit for coursework completed at the prior school.

6. Has the ability to receive a high school diploma even when the child has attended multiple schools that have varying graduation requirements.

(c) *School attendance.*—A child in care shall attend school as required by s. 1003.26.

1. The community-based care provider and caregiver shall eliminate any barriers to attendance such as required school uniforms or school supplies.

2. Appointments and court appearances for a child in care shall be scheduled to minimize the impact on the child's education and to ensure that the child is not penalized for school time or work missed because of court or child-welfare-case-related activities.

3. A caregiver who refuses or fails to ensure that a child

who is in his or her care attends school regularly shall be subject to the same procedures and penalties as a parent under s. 1003.27.

(d) *Education advocacy.*—

1. A child in care should have an adult who is knowledgeable about schools and children in care and who serves as an education advocate to reinforce the value of the child's investment in education, to ensure that the child receives a high-quality education, and to help the child plan for middle school, high school, and postschool training, employment, or college. The advocate may be a caregiver, care manager, guardian ad litem, educator, or individual hired and trained for the specific purpose of serving as an educational advocate.

2. A child in care with disabilities who is eligible for the appointment of a surrogate parent, as required in s. 39.0016, shall be assigned a surrogate in a timely manner, but no later than 30 days after a determination that a surrogate is needed.

3. The community-based provider shall document in the child's case plan that an education advocate has been identified for each child in care or that a surrogate parent has been appointed for each child in care with a disability.

(e) *Academic requirements and support; middle school students.*—In order to be promoted from a state school composed of middle grades 6, 7, and 8, a child must complete the required courses that include mathematics, English, social studies, and science.

1. In addition to other academic requirements, a child must complete one course in career and education planning in 7th or

8th grade. As required by s. 1003.4156, the course must include career exploration using Florida CHOICES Explorer or Florida CHOICES Planner and must include educational planning using the online student advising system known as Florida Academic Counseling and Tracking for Students at the Internet website FACTS.org.

a. Each child shall complete an electronic personal academic and career plan that must be signed by the child, the child's teacher, guidance counselor, or academic advisor, and the child's parent, caregiver, or other designated education advocate.

b. The required personalized academic and career plan must inform students of high school graduation requirements, high school assessment and college entrance test requirements, Florida Bright Futures Scholarship Program requirements, state university and Florida college admission requirements, and programs through which a high school student may earn college credit, including Advanced Placement, International Baccalaureate, Advanced International Certificate of Education, dual enrollment, career academy opportunities, and courses that lead to national industry certification.

c. A caregiver shall attend the parent meeting held by the school to inform parents about the career and education planning course curriculum and activities associated with it.

2. For a child with disabilities, the decision whether to work toward a standard diploma or a special diploma shall be addressed at the transition individual education plan meeting conducted during the child's 8th grade year or the year the child turns 14 years of age, whichever occurs first. The child

shall be invited to participate in this and each subsequent transition individual education plan meeting. At this meeting, the transition individual education plan team, including the child, the caregiver, or other designated education advocate, shall determine whether a standard or special diploma best prepares the child for his or her education and career goals after high school.

a. The team shall plan the appropriate course of study, which may include basic education courses, career education courses, and exceptional student education courses.

b. The team shall identify any special accommodations and modifications needed to help the child participate fully in the educational program.

c. All decisions shall be documented on the transition individual education plan, and this information shall be used to guide the child's educational program as he or she enters high school.

3. A caregiver or the community-based care provider shall provide the child with all information related to the Road-to-Independence Program as provided in s. 409.1451.

4. A caregiver or another designated education advocate shall attend parent-teacher conferences and monitor each child's academic progress.

5. Each district school board, as required by s. 1002.23, shall develop and implement a well-planned, inclusive, and comprehensive program to assist parents and families in effectively participating in their child's education. A school district shall have available resources and services for parents and their children, such as family literacy services; mentoring,

tutorial, and other academic reinforcement programs; college planning, academic advisement, and student counseling services; and after-school programs. A caregiver shall access these resources as necessary to enable the child in their care to achieve educational success.

6. A child in care, particularly a child with a disability, shall be involved and engaged in all aspects of his or her education and educational planning and must be empowered to be an advocate for his or her education needs. Community-based care providers shall enter into partnerships with school districts to deliver curriculum on self-determination or self-advocacy to engage and empower the child to be his or her own advocate, along with support from the caregiver, community-based care provider, guardian ad litem, teacher, school guidance counselor, or other designated education advocate.

7. The community-based care provider shall document in the case plan evidence of the child's progress toward, and achievement of, academic, life, social, and vocational skills. The case plan shall be amended to fully and accurately reflect the child's academic and career plan, identify the services and tasks needed to support that plan, and identify the party responsible for accomplishing the tasks or providing the needed services.

(f) *Academic requirements and support; high school students.*—Graduation from high school is essential for a child to be able to succeed and live independently as an adult. In Florida, 70 percent of children in care reach 18 years of age without having obtained a high school diploma. It is the responsibility of the department, its community-based providers,

and caregivers to ensure that a child in care is able to take full advantage of every resource and opportunity in order to be able to graduate from high school and be adequately prepared to pursue postsecondary education at a college or university or to acquire the education and skills necessary to enter the workplace. In preparation for accomplishing education and career goals after high school, the child must select the appropriate course of study that best meets his or her needs.

1. An older child who plans to attend a college or university after graduation must take certain courses to meet state university admission requirements. The course requirements for state university admission are the same for two Bright Futures Scholarship awards, the Florida Academic Scholars, and Florida Medallion Scholars. By following this course of study, which is required for state university admission and recommended if the child intends to pursue an associate in arts degree at a state college and transfer to a college or university to complete a bachelor's degree, the child will meet the course requirements for high school graduation, state university admission, and two Bright Futures Scholarship awards.

2. Older children who plan to focus on a career technical program in high school in order to gain skills for work or continue after graduation at a state college, technical center, or registered apprenticeship program should choose a course of study that will meet the course requirements for high school graduation, the third Bright Futures Scholarship award, and the Gold Seal Vocational Scholars. This course of study is recommended if the child intends to pursue a technical certificate or license, associate's degree, or bachelor's

degree, or wishes to gain specific career training.

3. Older children with disabilities may choose to work toward a standard diploma, a special diploma, or a certificate of completion. The child shall be assisted in choosing a diploma option by school and district staff through the development of the individual educational plan. The diploma choice shall be reviewed each year at the child's individual education plan meeting.

a. Older children or young adults with disabilities who have not earned a standard diploma or who have been awarded a special diploma, certificate of completion, or special certificate of completion before reaching 22 years of age may stay in school until they reach 22 years of age.

b. The school district shall continue to offer services until the young adult reaches 22 years of age or until he or she earns a standard diploma, whichever occurs first, as required by the Individuals with Disabilities Education Act.

4. The provisions of this paragraph do not preclude an older child from seeking the International Baccalaureate Diploma or the Advanced International Certificate of Education Diploma.

5. Educational guidance and planning for high school shall be based upon the decisions made during middle school. Caregivers shall remain actively involved in the child's academic life by attending parent-teacher conferences and taking advantage of available resources to enable the child to achieve academic success.

6. The community-based care provider shall document in the case plan evidence of the child's progress toward, and achievement of, academic, life, social, and vocational skills.

The case plan shall be amended to completely reflect the child's academic and career plan, identify the services and tasks needed to support that plan, and identify the party responsible for accomplishing the tasks or providing the needed services.

7. At the high school level, participation in workforce readiness activities is essential to help a child in care prepare himself or herself to be a self-supporting and productive adult. The caregiver and the community-based care provider shall ensure that each child:

a. Who is interested in pursuing a career after high school graduation is exposed to job-preparatory instruction in the competencies that prepare students for effective entry into an occupation, including diversified cooperative education, work experience, and job-entry programs that coordinate directed study and on-the-job training.

b. Is provided with the opportunity to participate in enrichment activities that are designed to increase the child's understanding of the workplace, to explore careers, and to develop goal-setting, decisionmaking, and time-management skills.

c. Is provided with volunteer and service learning opportunities in order to begin developing workplace and planning skills, self esteem, and personal leadership skills.

d. Is provided with an opportunity to participate in activities and services provided by the Agency for Workforce innovation and its regional workforce boards which are designed to prepare all young adults, including those with disabilities, for the workforce.

(3) EXTRA CURRICULAR ACTIVITIES.—An older child in care

shall be accorded to the fullest extent possible the opportunity to participate in the activities of community, school, and family life.

(a) A caregiver shall encourage and support participation in age-appropriate extracurricular and social activities for an older child, including a child with a disability.

(b) A caregiver shall be expected to provide transportation for such activities and community-based care providers shall provide special reimbursement for expenses for such activities, including mileage reimbursement.

(c) The department and its community-based providers may not place an older child in a home if the caregiver does not encourage and facilitate participation in and provide transportation to the extracurricular activities of the child's choice, unless other arrangements can be made by the community-based care provider to enable the child's participation in such activities.

(d) A caregiver is not responsible under administrative rules or laws pertaining to state licensure, and a caregiver's licensure status is not subject to jeopardy in any manner, for the actions of a child in their care who engages in age-appropriate activities.

(4) DEVELOPMENT OF THE TRANSITION PLAN.—If a child is planning to leave care upon reaching 18 years of age, during the 90-day period before the child reaches 18 years of age, the department and community-based care provider, in collaboration with the caregiver, any other designated education advocate, and any other individual whom the child would like to have included, shall assist and support the older child in developing a

transition plan. The transition plan must take into account all of the education and other skills achieved by the child in middle and high school, include specific options for the child on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce support and employment services, and must be reviewed by the court during the last review hearing before the child reaches 18 years of age. In developing the plan, the department and community-based provider shall:

(a) Provide the child with the documentation required in s. 39.701(7);

(b) Coordinate with local public and private entities in designing the transition plan as appropriate;

(c) Coordinate the transition plan with the independent living provisions in the case plan and the Individuals with Disabilities Education Act transition plan for a child with a disability; and

(d) Create a clear and developmentally appropriate notice specifying the options available for a young adult who chooses to remain in care for a longer period. The notice must include information about what services the child is eligible for and how such services may be obtained.

(5) ACCOUNTABILITY.—

(a) The community-based care lead agencies and its contracted providers shall report to the department the following information:

1. The total number of children in care who are enrolled in middle school or high school and, in a breakdown by age, how many had their living arrangements change one time and how many

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were moved two or more times. For the children who were moved, how many had to change schools and how many of those changes were due to a lack of transportation.

2. For those children for whom transportation was provided, how many children were provided transportation, how was it provided, how was the transportation paid for, and the amount of the total expenditure by the lead agency.

3. The same information required in subparagraphs 1. and 2., specific to children in care with a disability.

4. In a breakdown by age, for those children who change schools at least once, how many children experienced problems in the transition, what kinds of problems were encountered, and what steps did the lead agency and the caregiver take to remedy those problems.

5. In a breakdown by age, out of the total number of children in care, the number of children who were absent from school more than 10 days in a semester and the steps taken by the lead agency and the caregiver to reduce absences.

6. Evidence that the lead agency has established a working relationship with each school district in which a child in care attends school.

7. In a breakdown by age, out of the total number of children in care, the number who have documentation in the case plan that either an education advocate or a surrogate parent has been designated or appointed.

8. In a breakdown by age, out of the total number of children in care, the number of children who have documentation in the case plan that they have an education advocate who regularly participates in parent-teacher meetings and other

school-related activities.

9. For those children in care who have finished 8th grade, the number of children who have documentation in the case plan that they have completed the academic and career plan required by s. 1003.4156 and that the child and the caregiver have signed the plan.

10. For those children in care who have a disability and have finished 8th grade, the number of children who have documentation in the case plan that they have had a transition individual education plan meeting.

11. The total number of children in care who are in middle school or high school, with a breakdown by age. For each age, the number of children who are reading at or above grade level, the number of children who have successfully completed the FCAT and end-of-course assessments, the number of children who have dropped out of school, the number of children who have enrolled in any dual enrollment or advanced placement courses, and the number of children completing the required number of courses, assessments, and hours needed to be promoted to the next grade level.

12. The total number of children in care who are in middle school or high school, with a breakdown by age. For each age, the number of children who have documentation in the case plan that they are involved in at least one extracurricular activity, whether it is a school-based or community-based activity, whether they are involved in at least one service or volunteer activity, and who provides the transportation.

13. The total number of children in care who are 17 years of age and who are obtaining services from the lead agency or

its contracted providers and how many of that total number have indicated that they plan to remain in care after turning 18 years of age, and for those children who plan to leave care, how many children have a transition plan.

14. A breakdown of documented expenses for children in middle and high school.

(b) Each community-based care lead agency shall provided its report to the department by September 31 of each year. The department shall compile the reports from each community-based care lead agency and provide them to the Legislature by December 31 of each year, with the first report due to the Legislature on December 31, 2011.

Section 4. Subsections (7), (8), and (9) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(7)(a) In addition to paragraphs (1)(a) and (2)(a), the court shall hold a judicial review hearing within 90 days after a child's ~~youth's~~ 17th birthday. The court shall also issue an order, separate from the order on judicial review, that the disability of nonage of the child ~~youth~~ has been removed pursuant to s. 743.045. The court shall continue to hold timely judicial review hearings thereafter. In addition, the court may review the status of the child more frequently during the year prior to the child's ~~youth's~~ 18th birthday if necessary. At each review held under this subsection, in addition to any information or report provided to the court, the caregiver ~~foster parent~~, legal custodian, guardian ad litem, and the child shall be given the opportunity to address the court with any information relevant to the child's best interests, particularly


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as it relates to the requirements of s. 39.6015 and the Road-to-Independence Program under s. 409.1451 ~~independent living transition services~~. In addition to any information or report provided to the court, the department shall include in its judicial review social study report written verification that the child has been provided with:

1. ~~Has been provided with~~ A current Medicaid card and ~~has been provided~~ all necessary information concerning the Medicaid program sufficient to prepare the child ~~youth~~ to apply for coverage upon reaching age 18, if such application would be appropriate.

2. ~~Has been provided with~~ A certified copy of his or her birth certificate and, if the child does not have a valid driver's license, a Florida identification card issued under s. 322.051.

3. A social security card and ~~Has been provided~~ information relating to Social Security Insurance benefits if the child is eligible for these benefits. If the child has received these benefits and they are being held in trust for the child, a full accounting of those funds must be provided and the child must be informed about how to access those funds.

~~4. Has been provided with information and training related to budgeting skills, interviewing skills, and parenting skills.~~

4.~~5.~~ ~~Has been provided with~~ All relevant information related to the Road-to-Independence Program, including, but not limited to, eligibility requirements, information on how ~~forms necessary~~ to participate ~~apply~~, and assistance in gaining admission to the program ~~completing the forms~~. The child shall also be informed that, if he or she is eligible for the Road-to-


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Independence Program, he or she may reside with the licensed ~~foster~~ family or group care provider with whom the child was residing at the time of attaining his or her 18th birthday or may reside in another licensed ~~foster~~ home or with a group care provider arranged by the department.

5.~~6.~~ An opportunity to ~~Has an~~ open a bank account, or obtain ~~has~~ identification necessary to open an account, and has been provided with essential banking and budgeting skills.

6.~~7.~~ ~~Has been provided with~~ Information on public assistance and how to apply.

7.~~8.~~ ~~Has been provided~~ A clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and what educational program or school he or she will be enrolled in.

8.~~9.~~ Information related to the ability ~~Has been provided with notice~~ of the child ~~youth's right~~ to remain in care until he or she reaches 21 years of age ~~petition for the court's continuing jurisdiction for 1 year after the youth's 18th birthday~~ as specified in s. 39.013(2) and ~~with~~ information on how to participate in the Road-to-Independence Program ~~obtain access to the court~~.

9. A letter providing the dates that the child was under the jurisdiction of the court.

10. A letter stating that the child was in care, in compliance with financial aid documentation requirements.

11. His or her entire educational records.

12. His or her entire health and mental health records.

13. The process for accessing his or her case file.

14.~~10.~~ Encouragement ~~Has been encouraged~~ to attend all


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judicial review hearings occurring after his or her 17th birthday.

(b) At the first judicial review hearing held subsequent to the child's 17th birthday, in addition to the requirements of subsection (8), the department shall provide the court with an updated case plan that includes specific information related to the provisions of s. 39.6015, ~~independent living services that have been provided~~ since the child entered middle school ~~child's 13th birthday~~, or since the date the child came into ~~foster~~ care, whichever came later.

(c) At the last judicial review hearing held before the child's 18th birthday, in addition of the requirements of subsection (8), the department shall provide for the court to review the transition plan for a child who is planning to leave care after reaching his or her 18th birthday.

(d) ~~(c)~~ At the time of a judicial review hearing held pursuant to this subsection, if, in the opinion of the court, the department has not complied with its obligations as specified in the written case plan or in the provision of ~~independent living~~ services as required by s. 39.6015, s. 409.1451, and this subsection, the court shall issue a show cause order. If cause is shown for failure to comply, the court shall give the department 30 days within which to comply and, on failure to comply with this or any subsequent order, the department may be held in contempt.

(8)(a) Before every judicial review hearing or citizen review panel hearing, the social service agency shall make an investigation and social study concerning all pertinent details relating to the child and shall furnish to the court or citizen

review panel a written report that includes, but is not limited to:

1. A description of the type of placement the child is in at the time of the hearing, including the safety of the child and the continuing necessity for and appropriateness of the placement.

2. Documentation of the diligent efforts made by all parties to the case plan to comply with each applicable provision of the plan.

3. The amount of fees assessed and collected during the period of time being reported.

4. The services provided to the caregiver ~~foster family~~ or legal custodian in an effort to address the needs of the child as indicated in the case plan.

5. A statement that either:

a. The parent, though able to do so, did not comply substantially with the case plan, and the agency recommendations;

b. The parent did substantially comply with the case plan; or

c. The parent has partially complied with the case plan, with a summary of additional progress needed and the agency recommendations.

6. A statement from the caregiver ~~foster parent~~ or legal custodian providing any material evidence concerning the return of the child to the parent or parents.

7. A statement concerning the frequency, duration, and results of the parent-child visitation, if any, and the agency recommendations for an expansion or restriction of future

visitation.

8. The number of times a child has been removed from his or her home and placed elsewhere, the number and types of placements that have occurred, and the reason for the changes in placement.

9. The number of times a child's educational placement has been changed, the number and types of educational placements which have occurred, and the reason for any change in placement.

10. If the child has entered middle school ~~reached 13 years of age~~ but is not yet 18 years of age, the specific information contained in the case plan related to the provisions of s. 39.6015 ~~results of the preindependent living, life skills, or independent living assessment~~; the specific services needed; and the status of the delivery of the identified services.

11. Copies of all medical, psychological, and educational records that support the terms of the case plan and that have been produced concerning the parents or any caregiver since the last judicial review hearing.

12. Copies of the child's current health, mental health, and education records as identified in s. 39.6012.

(b) A copy of the social service agency's written report and the written report of the guardian ad litem must be served on all parties whose whereabouts are known; to the caregivers ~~foster parents~~ or legal custodians; and to the citizen review panel, at least 72 hours before the judicial review hearing or citizen review panel hearing. The requirement for providing parents with a copy of the written report does not apply to those parents who have voluntarily surrendered their child for adoption or who have had their parental rights to the child

terminated.

(c) In a case in which the child has been permanently placed with the social service agency, the agency shall furnish to the court a written report concerning the progress being made to place the child for adoption. If the child cannot be placed for adoption, a report on the progress made by the child towards alternative permanency goals or placements, including, but not limited to, guardianship, long-term custody, long-term licensed custody, or independent living, must be submitted to the court. The report must be submitted to the court at least 72 hours before each scheduled judicial review.

(d) In addition to or in lieu of any written statement provided to the court, the caregiver ~~foster parent~~ or legal custodian, or any preadoptive parent, shall be given the opportunity to address the court with any information relevant to the best interests of the child at any judicial review hearing.

(9) The court and any citizen review panel shall take into consideration the information contained in the social services study and investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the caregiver ~~foster parent~~ or legal custodian, the guardian ad litem or surrogate parent for educational decisionmaking if one has been appointed for the child, and any other person deemed appropriate; and any relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value. These reports and evidence may be received by the court in its effort to determine the action to

be taken with regard to the child and may be relied upon to the extent of their probative value, even though not competent in an adjudicatory hearing. In its deliberations, the court and any citizen review panel shall seek to determine:

(a) If the parent was advised of the right to receive assistance from any person or social service agency in the preparation of the case plan.

(b) If the parent has been advised of the right to have counsel present at the judicial review or citizen review hearings. If not so advised, the court or citizen review panel shall advise the parent of such right.

(c) If a guardian ad litem needs to be appointed for the child in a case in which a guardian ad litem has not previously been appointed or if there is a need to continue a guardian ad litem in a case in which a guardian ad litem has been appointed.

(d) Who holds the rights to make educational decisions for the child. If appropriate, the court may refer the child to the district school superintendent for appointment of a surrogate parent or may itself appoint a surrogate parent under the Individuals with Disabilities Education Act and s. 39.0016.

(e) The compliance or lack of compliance of all parties with applicable items of the case plan, including the parents' compliance with child support orders.

(f) The compliance or lack of compliance with a visitation contract between the parent and the social service agency for contact with the child, including the frequency, duration, and results of the parent-child visitation and the reason for any noncompliance.

(g) The compliance or lack of compliance of the parent in

meeting specified financial obligations pertaining to the care of the child, including the reason for failure to comply if such is the case.

(h) Whether the child is receiving safe and proper care according to s. 39.6012, including, but not limited to, the appropriateness of the child's current placement, including whether the child is in a setting that is as family-like and as close to the parent's home as possible, consistent with the child's best interests and special needs, and including maintaining stability in the child's educational placement, as documented by assurances from the community-based care provider that:

1. The placement of the child takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.

2. The community-based care agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement.

(i) A projected date likely for the child's return home or other permanent placement.

(j) When appropriate, the basis for the unwillingness or inability of the parent to become a party to a case plan. The court and the citizen review panel shall determine if the efforts of the social service agency to secure party participation in a case plan were sufficient.

(k) For a child who has entered middle school ~~reached 13 years of age~~ but is not yet 18 years of age, the progress the

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child has made in achieving the goals outlined in s. 39.6015 ~~adequacy of the child's preparation for adulthood and independent living~~.

Section 5. Section 409.1451, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 409.1451, F.S., for present text).

409.1451 The Road-to-Independence Program.—The Legislature recognizes that most children and young adults are resilient and, with adequate support, can expect to be successful as independent adults. Not unlike all young adults, some young adults who have lived in care need additional resources and support for a period of time after reaching 18 years of age. The Legislature intends for these young adults to receive the education, training, and health care services necessary for them to become self-sufficient through the Road-to-Independence Program. Young adults who participate in the Road-to-Independence Program may choose to remain in care until 21 years of age and receive help achieving their postsecondary goals by participating in the Foundations First Program, or they may choose to receive financial assistance to attend college through the College Bound Program.

(1) THE FOUNDATIONS FIRST PROGRAM.—The Foundations First Program is designed for young adults who have reached 18 years of age but are not yet 21 years of age, and who need to finish high school or who have a high school diploma, or its equivalent, and want to achieve additional goals. These young adults are ready to try postsecondary or vocational education, try working part-time or full-time, or need help with issues

that might stand in their way of becoming employed. Young adults who are unable to participate in any of these programs or activities full time due to an impairment, including behavioral, developmental, and cognitive disabilities, might also benefit from remaining in out-of-home care longer.

(a) *Eligibility; termination; and reentry.*—

1. A young adult in licensed care who spent at least 6 months in care before reaching 18 years of age and who is a resident of this state, as defined in s. 1009.40, is eligible for the Foundations First Program if he or she is:

a. Completing secondary education or a program leading to an equivalent credential;

b. Enrolled in an institution that provides postsecondary or vocational education;

c. Participating in a program or activity designed to promote, or eliminate barriers to, employment;

d. Employed for at least 80 hours per month; or

e. Unable to participate in these programs or activities full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation. Any such restriction to participation must be supported by information in the young adult's case file or school or medical records of a physical, intellectual, or psychiatric condition that impairs the young adult's ability to perform one or more life activities.

2. The young adult in care must leave the Foundations First Program on the earliest of the date the young adult:

a. Knowingly and voluntarily withdraws his or her consent to participate;

b. Leaves care to live in a permanent home consistent with his or her permanency plan;

c. Reaches 21 years of age;

d. Becomes incarcerated in an adult or juvenile justice facility; or

e. In the case of a young adult with a disability, reaches 22 years of age.

3. Notwithstanding the provisions of this paragraph, the department may not close a case and the court may not terminate its jurisdiction until it finds, following a hearing held after notice to all parties, that the following criteria have been met:

a. Attendance of the young adult at the hearing; or

b. Findings by the court that:

(I) The young adult has been informed by the department of his or her right to attend the hearing and has provided written consent to waive this right;

(II) The young adult has been informed of the potential negative effects of terminating care early, the option to reenter care before reaching 21 years of age, the procedure to, and limitations on, reentering care, the availability of alternative services, and that the young adult has signed a document attesting that he or she has been so informed and understands these provisions; and

(III) The department and the community-based care provider have complied with the case plan and any individual education plan. At the time of this judicial hearing, if, in the opinion of the court, the department and community-based provider have not complied with their obligations as specified in the case

plan and any individual education plan, the court shall issue a show cause order. If cause is shown for failure to comply, the court shall give the department and community-based provider 30 days within which to comply and, on failure to comply with this or any subsequent order, the department and community-based provider may be held in contempt.

4. A young adult who left care at or after reaching his or her 18th birthday, but before reaching age 21, may petition the court to resume jurisdiction and for the department to reopen its case. The court shall resume jurisdiction and the department shall reopen the case if the young adult is engaged in the programs or activities described in this paragraph. If the young adult comes back into the Foundations First Program, the department and community-based provider shall update the case plan within 30 days after reentry.

(b) *The transition plan.*—For all young adults during the 90-day period immediately before leaving care before reaching 21 years of age or after leaving care on or after reaching 21 years of age, the department and the community-based care provider, in collaboration with the caregiver, any other designated education advocate, and any other individual whom the young adult would like to have included, shall assist and support the young adult in developing a transition plan. The transition plan must take into account all of the education and other achievements of the young adult, include specific options for the young adult on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce support and employment services, and must be reviewed by the court during the last review hearing before the child leaves care. In


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developing the plan, the department and community-based provider shall:

1. Provide the young adult with the documentation required in s. 39.701(7);

2. Coordinate with local public and private entities in designing the transition plan as appropriate;

3. Coordinate the transition plan with the independent living provisions in the case plan and the Individuals with Disabilities Education Act transition plan for a young adult with disabilities; and

4. Create a clear and developmentally appropriate notice specifying the rights of a young adult who is leaving care. The notice must include information about what services the young adult may be eligible for and how such services may be obtained. The plan must clearly identify the young adult's goals and the work that will be required to achieve those goals.

(c) *Periodic reviews for young adults.*—

1. For any young adult who continues to remain in care on or after reaching 18 years of age, the department and community-based provider shall implement a case review system that requires:

a. A judicial review at least once a year;

b. That the court maintain oversight to ensure that the department is coordinating with the appropriate agencies, and, as otherwise permitted, maintains oversight of other agencies involved in implementing the young adult's case plan and individual education plan;

c. That the department prepare and present to the court a report, developed in collaboration with the young adult,

addressing the young adult's progress in meeting the goals in the case plan and individual education plan, and shall propose modifications as necessary to further those goals;

d. That the court determine whether the department and any service provider under contract with the department is providing the appropriate services as provided in the case plan and any individual education plan. If the court believes that the young adult is entitled to additional services in order to achieve the goals enumerated in the case plan, under the department's policies, or under a contract with a service provider, the court may order the department to take action to ensure that the young adult receives the identified services; and

e. That the young adult or any other party to the dependency case may request an additional hearing or review.

2. In all permanency hearings or hearings regarding the transition of the young adult from care to independent living, the court shall consult, in an age-appropriate manner, with the young adult regarding the proposed permanency, case plan, and individual education plan for the young adult.

(2) THE COLLEGE BOUND PROGRAM.—

(a) *Purpose.*—This program is designed for young adults who have reached 18 years of age but are not yet 23 years of age, have graduated from high school, have been accepted into college, and need a minimum of support from the state other than the financial resources to attend college.

(b) *Eligibility; termination; and reentry.*—

1. A young adult who has earned a standard high school diploma or its equivalent as described in s. 1003.43 or s. 1003.435, has earned a special diploma or special certificate of

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completion as described in s. 1003.438, or has been admitted for full-time enrollment in an eligible postsecondary educational institution as defined in s. 1009.533, and has reached 18 years of age but is not yet 23 years of age is eligible for the College Bound Program if he or she:

a. Was a dependent child, as provided under chapter 39, and was living in licensed care at the time of his or her 18th birthday or is currently living in licensed care, or, after reaching 16 years of age, was adopted from care or placed with a court-approved dependency guardian and has spent a minimum of 6 months in care immediately preceding such placement or adoption;

b. Spent at least 6 months in care before reaching his or her 18th birthday; and

c. Is a resident of this state as defined in s. 1009.40.

2. A young adult with a disability may attend school part time and be eligible for this program.

3. An eligible young adult may receive a stipend for the subsequent academic years if, for each subsequent academic year, the young adult meets the standards by which the approved institution measures a student’s satisfactory academic progress toward completion of a program of study for the purposes of determining eligibility for federal financial aid under the Higher Education Act. Any young adult who is placed on academic probation may continue to receive a stipend for one additional semester if the approved institution allows the student to continue in school. If the student fails to make satisfactory academic progress in the semester or term subsequent to the term in which he received academic probation, stipend assistance shall be discontinued for the period required for the young

adult to be reinstated by the college or university. Upon reinstatement, a young adult who has not yet reached 23 years of age may reapply for financial assistance.

(3) PORTABILITY.—The provision of services pursuant to this section must be portable across county and state lines.

(a) The services provided for in the original transition plan shall be provided by the county where the young adult resides but shall be funded by the county where the transition plan was initiated. The care managers of the county of residence and the county of origination must coordinate to ensure a smooth transition for the young adult.

(b) If a child in care under 18 years of age is placed in another state, the sending state is responsible for care maintenance payments, case planning, including a written description of the programs and services that will help a child 16 years of age or older prepare for the transition from care to independence, and a case review system as required by federal law. The sending state has placement and care responsibility for the child.

(c) If a young adult formerly in care moves to another state from the state in which he or she has left care due to age, the state shall certify that it will provide assistance and federally funded independent living services to the young adult who has left care because he or she has attained 18 years of age. The state in which the young adult resides is responsible for services if the state provides the services needed by the young adult.

(4) ACCOUNTABILITY.—

(a) The community-based care lead agencies and their

contracted providers shall report the following information to the department:

1. Out of the total number of young adults who decided to remain in care upon reaching 18 years of age, the number of young adults who do not have a high school diploma or its equivalent, a special diploma, or a certificate of completion. Out of those young adults without a diploma or its equivalent, a special diploma, or a certificate of completion, the number of young adults who are receiving assistance through tutoring and other types of support.

2. Out of the total number of young adults who decided to remain in care upon reaching 18 years of age, a breakdown of academic and career goals and type of living arrangement.

3. The same information required in subparagraphs 1. and 2., specific to young adults in care with a disability.

4. Out of the total number of young adults remaining in care, the number of young adults who are enrolled in an educational or vocational program and a breakdown of the types of programs.

5. Out of the total number of young adults remaining in care, the number of young adults who are working and a breakdown of the types of employment held.

6. Out of the total number of young adults remaining in care, the number of young adults who have a disability and a breakdown of how many young adults are in school, are training for employment, are employed, or are unable to participate in any of these activities.

7. Evidence that the lead agency has established a working relationship with the Agency for Workforce Innovation and its

regional workforce boards, the Able Trust, and other entities that provide services related to gaining employment.

8. Out of the total number of young adults in care upon reaching 18 years of age, the number of young adults who are in the Road-to-Independence Program and a breakdown by the schools or other programs they are attending.

9. Out of the total number of young adults who are in postsecondary institutions, a breakdown of the types and amounts of financial support received from sources other than the Road-to-Independence Program.

10. Out of the total number of young adults who are in postsecondary institutions, a breakdown of the types of living arrangements.

(b) Each community-based care lead agency shall provide its report to the department by September 31 of each year. The department shall compile the reports from each community-based care lead agency and provide them to the Legislature by December 31 of each year, with the first report due to the Legislature on December 31, 2011.

(5) INDEPENDENT LIVING SERVICES ADVISORY COUNCIL.—The secretary shall establish the Independent Living Services Advisory Council for the purpose of reviewing and making recommendations concerning the implementation and operation of the provisions of s. 39.6015 and the Road-to-Independence Program. This advisory council shall continue to function as specified in this subsection until the Legislature determines that the advisory council can no longer provide a valuable contribution to the department’s efforts to achieve the goals of the services designed to enable a young adult to live

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independently.

(a) Specifically, the advisory council shall assess the implementation and operation of the provisions of s. 39.6015 and the Road-to-Independence Program and advise the department on actions that would improve the ability of those Road-to-Independence Program services to meet the established goals. The advisory council shall keep the department informed of problems being experienced with the services, barriers to the effective and efficient integration of services and support across systems, and successes that the system of services has achieved. The department shall consider, but is not required to implement, the recommendations of the advisory council.

(b) The advisory council shall report to the secretary on the status of the implementation of the Road-To-Independence Program; efforts to publicize the availability of the Road-to-Independence Program; the success of the services; problems identified; recommendations for department or legislative action; and the department's implementation of the recommendations contained in the Independent Living Services Integration Workgroup Report submitted to the appropriate substantive committees of the Legislature by December 31, 2002. The department shall submit a report by December 31 of each year to the Governor and the Legislature which includes a summary of the factors reported on by the council and identifies the recommendations of the advisory council and either describes the department's actions to implement the recommendations or provides the department's rationale for not implementing the recommendations.

(c) Members of the advisory council shall be appointed by

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the secretary of the department. The membership of the advisory council must include, at a minimum, representatives from the headquarters and district offices of the Department of Children and Family Services, community-based care lead agencies, the Agency for Workforce Innovation, the Department of Education, the Agency for Health Care Administration, the State Youth Advisory Board, Workforce Florida, Inc., the Statewide Guardian Ad Litem Office, foster parents, recipients of services and funding through the Road-to-Independence Program, and advocates for children in care. The secretary shall determine the length of the term to be served by each member appointed to the advisory council, which may not exceed 4 years.

(d) The department shall provide administrative support to the Independent Living Services Advisory Council to accomplish its assigned tasks. The advisory council shall be afforded access to all appropriate data from the department, each community-based care lead agency, and other relevant agencies in order to accomplish the tasks set forth in this section. The data collected may not include any information that would identify a specific child or young adult.

(e) The advisory council report required under paragraph (b) to be submitted to the substantive committees of the Senate and the House of Representatives by December 31, 2008, shall include an analysis of the system of independent living transition services for young adults who attain 18 years of age while in care prior to completing high school or its equivalent and recommendations for department or legislative action. The council shall assess and report on the most effective method of assisting these young adults to complete high school or its

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equivalent by examining the practices of other states.

(6) PERSONAL PROPERTY.—Property acquired on behalf of clients of this program shall become the personal property of the clients and is not subject to the requirements of chapter 273 relating to state-owned tangible personal property. Such property continues to be subject to applicable federal laws.

(7) MEDICAL ASSISTANCE FOR YOUNG ADULTS FORMERLY IN CARE.—The department shall enroll in the Florida Kidcare program, outside the open enrollment period, each young adult who is eligible as described in paragraph (1)(a) and who has not yet reached his or her 19th birthday.

(a) A young adult who was formerly in care at the time of his or her 18th birthday and who is 18 years of age but not yet 19, shall pay the premium for the Florida Kidcare program as required in s. 409.814.

(b) A young adult who has health insurance coverage from a third party through his or her employer or who is eligible for Medicaid is not eligible for enrollment under this subsection.

(8) RULEMAKING.—The department shall adopt by rule procedures to administer this section. The rules shall describe the procedure and requirements necessary to administer the Road-to-Independence Program. The rules shall reflect that the program is for young adults who have chosen to remain in care for an extended period of time or who are planning to attain post secondary education and should be designed to accommodate a young adult's busy life and schedule. The rules shall make the program easy to access for a qualified young adult and facilitate and encourage his or her participation.

Section 6. The Department of Children and Family Services

shall amend the format of the case plan and the judicial review social service report to reflect the provisions of s. 39.6015, Florida Statutes, and the changes to s. 409.1451, Florida Statutes.

Section 7. Effective October 1, 2011, a child or young adult who is currently participating in the Road-to-Independence Program may continue in the program as it exists as of September 30, 2011. A child or young adult applying for the Road-to-Independence program on or after October 1, 2011, may apply for program services only as provided in this act.

Section 8. The Department of Children and Family Services shall develop a request for proposal for the purpose of establishing and operating a system to provide educational advocates for a child in care who is in middle and high school. Competitive proposals shall be solicited by the department pursuant to chapter 287, Florida Statutes. Entities responding to the request for proposal must have child advocacy as their primary focus, have an established statewide infrastructure, and have experience in working with paid staff and volunteers.

Section 9. The Department of Children and Family Services shall contract with a national nonprofit organization that advocates for and provides services to older children in care and young adults formerly in care for the purpose of administering the Road-to-Independence Program. The organization must have experience and expertise in administering scholarship programs, providing mentoring and academic coaching to help young adults at risk of failing or dropping out of school, and assisting young adults locate internship opportunities. The organization must also be able to report enrollment, attendance,

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academic progress, and financial data for each young adult to the state at an agreed-upon interval.

Section 10. This act shall take effect July 1, 2011.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to independent living; amending s. 39.013, F.S.; requiring the court to retain jurisdiction over a child until the child is 21 years of age if the child elects to receive Foundations First Program services; providing for an annual judicial review; amending s. 39.6012, F.S.; requiring assurance in a child's case plan that efforts were made to avoid a change in the child's school; creating s. 39.6015, F.S.; providing purpose and legislative intent with respect to the provision of services for older children who are in licensed care; requiring the documentation of assurances that school stability is considered when a child in care is moved; providing for the same assurances for children with disabilities; defining the term "school or origin"; requiring that the Department of Children and Family Services or the community-based provider provide reimbursement for the costs of transportation provided for a child in care; requiring changes in a child's school to be minimally disruptive; specifying criteria

to be considered by the department and community-based provider during the transition of a child to another school; requiring children in care to attend school; requiring scheduled appointments to consider the child's school attendance; providing penalties for caregivers who refuse or fail to ensure that the child attends school regularly; specifying who may serve as an education advocate; requiring documentation that an education advocate or surrogate parent has been designated or appointed for a child in care; requiring a child in middle school to complete an electronic personal academic and career plan; requiring caregivers to attend school meetings; specifying requirements for transition individual education plan meetings for children with disabilities; requiring that a child be provided with information relating to the Road-to-Independence Program; requiring that the caregiver or education advocate attend parent-teacher conferences; requiring that a caregiver be provided with access to school resources in order to enable a child to achieve educational success; requiring the delivery of a curriculum model relating to self-advocacy; requiring documentation of a child's progress, the services needed, and the party responsible for providing services; specifying choices for a child with respect to diplomas and certificates for high school graduation or completion; providing that a child with a disability may stay in school until 22 years of age under certain circumstances;

requiring caregivers to remain involved in the academic life of child in high school; requiring documentation of a child's progress, the services needed, and the party who is responsible for providing services; providing for a child to be exposed to job-preparatory instruction, enrichment activities, and volunteer and service opportunities, including activities and services offered by the Agency for Workforce Innovation; requiring that children in care be afforded opportunities to participate in the usual activities of school, community, and family life; requiring caregivers to encourage and support a child's participation in extracurricular activities; requiring that transportation be provided for a child; providing for the development of a transition plan; specifying the contents of a transition plan; requiring that the plan be reviewed by the court; requiring that a child be provided with specified documentation; requiring that the transition plan be coordinated with the case plan and a transition plan prepared pursuant to the Individuals with Disabilities Education Act for a child with disabilities; requiring the creation of a notice that specifies the options that are available to the child; requiring that community-based care lead agencies and contracted providers report specified data to the department and Legislature; amending s. 39.701, F.S.; conforming terminology; specifying the required considerations during judicial review of a child under the

jurisdiction of the court; specifying additional documents that must be provided to a child and that must be verified at the judicial review; requiring judicial review of a transition plan; conforming references; amending s. 409.1451, F.S., relating to the Road-to-Independence Program; creating the Foundations First Program for young adults who want to remain in care after reaching 18 years of age; providing eligibility, termination, and reentry requirements for the program; requiring a court hearing before termination; providing for the development of a transition plan; specifying the contents of the transition plan; requiring that a young adult be provided with specified documentation; requiring that the transition plan be coordinated with the case plan and a transition plan prepared pursuant to the Individuals with Disabilities Education Act for a young adult with disabilities; requiring the creation of a notice that specifies the options that are available to the young adult; requiring annual judicial reviews; creating the College Bound Program for young adults who have completed high school and have been admitted to an eligible postsecondary institution; providing eligibility requirements; providing for a stipend; requiring satisfactory academic progress for continuation of the stipend; providing for reinstatement of the stipend; providing for portability of services for a child or young adult who moves out of the county or out of state;


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specifying data required to be reported to the department and Legislature; conforming terminology relating to the Independent Living Services Advisory Council; providing rulemaking authority to the Department of Children and Family Services; requiring the department to amend the case plan and judicial social service review formats; providing for young adults receiving transition services to continue to receive existing services until their eligibility for that benefit program expires; requiring the department to develop a request for proposal for the creation of an education advocacy system; requiring the department to contract with a national nonprofit organization to administer the Road-to-Independence Program; providing an effective date.

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 Children, Families, and Elder Affairs Committee

BILL:	SB 1902
INTRODUCER:	Senator Rich
SUBJECT:	Independent Living
DATE:	March 18, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh		**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill makes significant changes to the Department of Children and Family Services independent living transition services program for children and young adults.

The bill removes the provision allowing a young adult to petition the court for continued jurisdiction for a period of time, not to exceed one year, after the young adult reached 18 years of age and provides that a young adult who is approved for Foundations for Success services will continue under court jurisdiction until he or she reaches 21 years of age or is terminated from the program. Court jurisdiction is extended for the purpose of reviewing the young adult's transition and permanency plans and the status of the services being provided.

The bill makes changes to, and restructures, the provisions relating to the delivery of services to children in care between the ages of 13 and 17 years and young adults who were formerly in care between the ages of 18 and 22 years. The bill creates the Pathways to Success, Foundations for Success, and Jumpstart to Success Programs.

The bill creates definitions for the terms "child," "Foundations for Success," "Jumpstart to Success," "needs assessment," "Pathways to Success," "qualifying residential facility," and "young adult."

The bill substantially amends, ss. 39.013 and 409.903, and creates ss. 39.605, 39.911 and 39.922, of the Florida Statutes.

II. Present Situation:

Independent Living Services

Background

Each year thousands of children leave state foster care systems because they reach the age of 18 and are no longer eligible for out-of-home care. Since the early 1980's, research and anecdotal evidence have indicated that many of these young adults experience numerous difficulties in their attempts to achieve self-sufficiency. When compared to young adults with no exposure to the child welfare system, former foster youth are less likely to earn a high school diploma or GED and subsequently, have lower rates of college attendance.[1] They suffer more from mental health problems; have a higher rate of involvement with the criminal justice system; are more likely to have a difficult time achieving financial independence, thus increasing their reliance on public assistance; and experience high rates of housing instability and homelessness.[2]

Federal Law

John H. Chafee Foster Care Independence Program

The federal government responded to the needs of foster care youth who age out by enacting the Foster Care Independence Act of 1999 (known as the CFCIP or the Chafee Act).[3] The Chafee Act provides states with flexible funding that enables programs to be designed and conducted to:

- Identify and assist youths who are likely to remain in foster care until 18 years of age;
- Provide education, training, and services necessary to obtain employment for those youths;
- Prepare those youths to enter postsecondary training and education institutions; and
- Provide support through mentors and the promotion of interactions with dedicated adults.[4]

Age restrictions were also eliminated, allowing states to offer independent living services to youth earlier than age 16.[5] The Chafee Act grants wide discretion to the states, allowing them to set their own criteria for foster care children to receive services.[6] However, states must use objective criteria for determining eligibility for benefits and services under the programs and for ensuring fair and equitable treatment of benefit recipients.[7]

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[1] Courtney, M.A. and Heuring, D.H. (2005). The Transition to Adulthood for Youth "Aging Out" of the Foster Care System. In Osgood, D.W., Foster, E.M., Flanagan, C. & Ruth G.R. (Eds.), *On Your Own Without a Net: The Transition to Adulthood for Vulnerable Populations*. (pp. 33-34). Chicago, Illinois: The University of Chicago Press

[2] *Id*. (pp.36-40).

[3] Public Law No. 106-169, 113 Stat. 1822 (1999). Federal funds for independent living initiatives were first made available under the Consolidated Omnibus Budget Reconciliation Act of 1985.

[4] 42 U.S.C. § 677(2002).

[5] 42 U.S.C. § 677(b)(2)(C) (2002).

[6] 42 U.S.C. § 677(b)(2).

[7] 42 U.S.C. § 677(b)(2)(E).

Education and Training Vouchers

The Educational and Training Vouchers Program (ETV) for children aging out of foster care was added to the CFCIP in 2002. ETV provides resources specifically to meet the education and training needs of youth aging out of foster care. Funding is provided for post secondary educational and training vouchers for children and young adults likely to experience difficulty as they transition to adulthood after reaching 18 years of age. The program makes available vouchers of up to $5,000 per year per young adult.[8]

Florida Law

With the enactment of federal legislation and increased available funding, the 2002 Florida Legislature established a new framework for the state's independent living transition services to be provided to older youth in foster care and young adults who were formerly in foster care.[9] Those service categories include:[10]

CATEGORIES OF SERVICES	SERVICES INCLUDED	ELIGIBILITY
PRE-INDEPENDENT LIVING SERVICES	Life skills training, educational field trips and conferences.	13 and 14 year olds in foster care.
LIFE SKILLS SERVICES	Training to develop banking and budgeting skills, parenting skills, and time management and organizational skills, educational support, employment training, and counseling.	15,16, and 17 year olds in foster care.
SUBSIDIZED INDEPENDENT LIVING SERVICES	Living arrangements that allow the child to live independently of the daily care and supervision of an adult in a setting that is not required to be licensed under s. 409.175, F.S.	16 and 17 year olds demonstrating independent living skills.
AFTERCARE SUPPORT SERVICES	Mentoring and tutoring. mental health services and substance abuse counseling, life skills classes, including credit management and preventive health activities, parenting classes, job and career skills training, counselor consultations, temporary financial assistance, and financial literacy skills training.	18 – 22 year olds
ROAD-TO-INDEPENDENCE PROGRAM	Stipend based on a needs assessment.	18 – 22 year olds who have or have to finished high school and want further education.
TRANSITIONAL SUPPORT SERVICES	Funding and services, which may include financial, housing, counseling, employment, education, mental health, and disability services.	18 – 22 year olds.

[8] U.S. Department of Health and Human Services, Administration for Children and Families, *The John H. Chafee Foster Care Independence Program*. Available at: http://www.acf.hhs.gov/programs/cb/programs_fund/state_tribal/jh_chafee.htm (Last visited March 18, 2011).

[9] The department provided independent living services to older youth in foster care prior to the creation of s. 409.1451, F.S., with provisions for those services appearing in a number of sections of Florida Statutes, including s. 409.145, F.S., relating to care of children (2001), and 409.165, F.S., relating to alternative care of children (2001).

[10] s. 409.1451, F.S.

Fostering Connections to Success and Increasing Adoptions Act

The Fostering Connections to Success and Increasing Adoptions Act[11] enacted in 2008, was designed to improve outcomes for children in foster care by promoting permanent families for them through relative guardianship and adoption and improving education and health care. Specifically, the Act:

- Promotes permanent families for children in care with relatives by providing notice to relatives when a child enters care, providing subsidized guardianship payments for relatives, and waiving certain licensing standards for relatives;
- Promotes permanent families for child with adoptive families by increasing opportunities for more children with special needs to receive federally-supported adoption assistance; and
- Improves outcomes for children in care by:
    - Allowing children who turn 18 in foster care without permanent families to remain in care, at state option, to age 19, 20, or 21 with continued federal support to increase their opportunities for success as they transition to adulthood;
    - Helping children in care achieve their educational goals by requiring that states ensure that they attend school and, when placed in care, they remain in their same school where appropriate, or, when a move is necessary, get help transferring promptly to a new school; and
    - Helping improve health care for children in care by requiring the state child welfare agency to work with the state Medicaid agency to create a plan to better coordinate health care for these children in order to ensure appropriate screenings and assessments and follow-up treatment and to assure sharing of critical information with appropriate providers and oversight of prescription medications.[12]

Outcomes in Florida

While attention to the needs of children in care and young adults formerly in care has increased significantly over the past decade, the services intended to help prepare them to live independently upon aging out of the system appear to remain limited and fragmented.[13] Concerns continue to be raised as to whether those services are adequate to prepare foster youth to live independently as adults, whether all eligible youth are being served, and whether the

[11] Public .Law 110-351.
[12] Center for Law and Social Policy. *Fostering Connections To Success And Increasing Adoptions Act*. Available at: http://www.clasp.org/admin/site/publications/files/FINAL-FCSAIAAct1-pager.pdf. (Last visited March 17, 2011).
[13] *Report of Independent Living Services for Florida's Foster Youth* (2008). Independent Living Services Advisory Council. (p. 6). Available at http://www.dcf.state.fl.us/indliving/docs/AdvisoryCouncil/2008%20ILSAC%20Report.pdf. (Last visited March 15, 2011); *Improved Fiscal and Quality Oversight Is Needed for the Independent Living Program*, Office of Program Policy Analysis and Government Accountability, Report No. 07-11. February 2007; and The Independent Living Transitional Services Critical Checklist (2008). A joint project by the Independent Living Services Advisory Council, the Community-Based Care lead agencies, and the Department of Children and Family Services. Available at: http://www.dcf.state.fl.us/indliving/docs/ILSurveyChartbook20090105_AdvanceCopy.pdf. (Last visited March 15, 2011).

direction and oversight of community-based care lead agencies and providers are sufficient to ensure that the goals of the program are being met.[14]

In a recent audit of the DCF independent living transition services program conducted by the Auditor General, preliminary and tentative audit findings revealed the following:

- The department and community-based care (CBC) lead agencies did not require that actual living and educational expenses be utilized as a basis for determining the amounts of the Road-to-Independence (RTI) awards made to high school students. Additionally, for post-secondary students, the department and CBCs were unable to provide documentation supporting the appropriateness of the amounts of the RTI awards;
- DCF rules and guidelines did not specifically address the type of documentation that would be sufficient to demonstrate appropriate progress by students in GED programs;
- The department and CBCs made payments for Aftercare Support Services to young adults in the same month during which the young adult received both RTI and Transitional Support Services payments. These payments in total were sometimes significant in amount, and in some cases, made to meet the same identified need. In addition, the department and CBCs did not always ensure that only eligible young adults received Aftercare and Transitional Support Services and that the payments for those services were documented by applications and properly coded;
- Federal funds totaling $641,913 from the CFCIP and ETV Programs were paid to ineligible young adults. In addition, administrative and support services costs were not properly allocated to State General Revenue and Chafee Program funds. CBCs also did not properly code payments for young adult services to the correct funding source;
- ETV Program, RTI, and Subsidized Independent Living (SIL) payments were made to young adults and adolescents in excess of established spending caps;
- Specific to adolescents in SIL, the Department and CBCs were unable to provide documentation to support the required number of services worker visitations. In addition, the Department and applicable CBCs were unable to provide documentation showing that staffings, assessments, and judicial reviews had been completed;
- The department and CBCs did not properly conduct or provide supporting documentation showing that staffings, assessments, and case plans for adolescents ages 13 to 17 had been completed;
- DCF did not require CBCs to fully utilize the functionality of the Florida Safe Families Network specific to the independent living (IL) program; and
- Department monitoring efforts were not sufficient to ensure IL program compliance.[15]

III. Effect of Proposed Changes:

The bill amends s. 39.013, F.S., to remove the provision allowing a young adult to petition the court for continued jurisdiction for a period of time not to exceed one year after the young adult reached 18 years of age and provides that a young adult who is approved for Foundations for Success services may continue under court jurisdiction until he or she reaches 21 years of age or

[14] *Id*.
[15] Preliminary And Tentative Audit Findings. Department Of Children And Family Services. Independent Living Transition Services Program. Office of the Auditor General. March 3, 2011.

is terminated from the program.[16] Court jurisdiction is extended for the purpose of reviewing the young adult's transition and permanency plans and the status of the services being provided. The court may not review the amount of the stipend provided to the young adult.

The bill creates s. 39.605, F.S., which restructures the current system for providing independent transition services to children under 18 years of age, including the following:

- Combining the categories of "preindependent living services" that provides services to children are 13 and 14 years of age, and "life skills services" that provides services to children who are 15-17 years of age, into one broader category that includes children who are 13-17 years of age.
- Creating provisions relating to "quality parenting services" to provide caregivers the training, support, and services needed to teach children in out-of-home care the necessary life skills and to assist the children to build a transition to independent, self-sufficient adulthood;
- Requiring the development of a transition plan during the 90-day period before the child turns 18 years of age. The transition plan must be included as part of the judicial review;
- Renaming the "subsidized independent living services" program as the "early entry into the Foundations for Success" program; and
- Providing rulemaking authority to the department to administer the section.

The bill creates s. 39.911, F.S., that provides definitions for the following terms:

- "Child" which means an individual younger than 21 years of age for purposes of participation in the Foundations for Success program;
- "Foundations for Success" which means a program of services for children who reach 18 years of age and opt to remain in out-of-home care for an extended period of time. These services include case work, support services, housing, and an annual judicial review;
- "Jumpstart to Success" which means a temporary support system that serves young adults between the ages of 18 and 20 who decide not to participate in the Foundations for Success program or do not meet the eligibility requirements for other services. Services under this program include limited cash assistance, access to an independent living counselor, and other supportive services;
- "Needs assessment" which means an assessment of the child's or young adult's need for cash assistance through any one of the independent living services programs;
- "Pathways to Success" which means an education program for eligible young adults between the ages of 18 and 22 who are fulltime students at a postsecondary institutions approved by the department;
- "Qualifying residential facility" which means a juvenile residential commitment or secure detention facility or an adult correctional facility; and
- "Young adult" which means an individual who is at least 21 years of age but not more than 23 years of age.

[16] The ability for states to receive federal funding to extend foster care beyond 18 years of age is an option under the Fostering Connections Act.

The bill creates s. 39.912, F.S., that specifies the provisions of the Pathways to Success, Foundations for Success, and Jumpstart to Success programs.[17]

Pathways to Success

This program appears to replace the Road-to-Independence Program and is intended to help eligible students who are former foster children receive the educational and vocational training needed to achieve independence. A young adult who has earned a standard high school diploma or its equivalent and who is attending a postsecondary or vocational school approved by the department full-time is eligible for the program. Young adults with a disability may be eligible to attend part-time. A stipend is provided based on a needs assessment which includes consideration of other grants, scholarships, waivers and earnings of the young adult. The young adult must meet certain specified progress requirements for continued eligibility.

Foundations for Success

This program is for eligible young adults who decide to voluntarily remain in out-of-home care up to their 21st birthday. The program provides:

- Two levels of services; one providing greater supervision and financial direction:
  - Basic services are provided to a young adult who has not completed high school;
  - More advanced services are provided to a young adult who decides to remain in the program after completing high school;
- Cash assistance paid directly to the child, with the amount to be determined by a needs assessment;
- Eligibility requirements which require the young adult to be engaged in the following activities to equal a full-time or 40-hour week:
  - Working to complete secondary education or a program leading to an equivalent credential, including high school or preparation for a general equivalency diploma exam;
  - Full-time enrollment in a university, college, or vocational or trade school that provides postsecondary or vocational education;
  - Part-time enrollment in an institution that provides postsecondary or vocational education or a program designed to promote or remove barriers to employment and part-time employment at one or more places of employment; or
  - Participation in a full-time program or activity designated to promote or remove barriers to employment;
- For an annual judicial review;
- For renewal of services and cash assistance and termination for cause.

Jumpstart to Success

This program is for young adults who have not yet reached 21 years of age, and benefits are limited to a total of 12 cumulative months between the ages of 18 and 21. The age and number

[17] This section and these programs restructure and replace the provisions of s. 409.1451, F.S., related to the Road-to-Independence Program.

of months for benefits may be extended in extenuating circumstances. Entry into the program requires development of a transition plan.

The bill provides for an appeals process for a child or young adult who is the subject of an adverse eligibility determination for services or termination of services made by the department. The bill requires the department to develop outcome and other performance measures for the independent living program. The bill provides for a transition period for young adults currently receiving services under s. 409.1451, F.S.

The bill makes no substantive changes to provisions related to the Independent Living Services Advisory Council, property acquired on behalf of clients in the program, or enrollment in Kidcare.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department has reported that the provisions of the bill will be revenue neutral.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There are a number of inconsistencies in the bill including, but not limited to:

- On lines 412-443, the bill creates a new paragraph titled, "Quality parenting services." Only one subparagraph contains provisions related to training for caregivers, while the other two subparagraphs are related to the department conducting assessments;
- The newly created definitions for the terms "Foundations for Success," "Jumpstart to Success," and "Pathways to Success," contain substantive law which should not be included in a definition. The definition of the term, "needs assessment" contains rulemaking authority for the department which should not appear in a definition. Also, while there is a definition for the term, "qualifying residential facility", the term is not used in the bill;
- On lines 682-684, the bill provides rulemaking authority to the department to define what constitutes full-time enrollment. It is unclear why the department would be making that determination;
- On lines 731-759, the bill refers to two levels of services in the Foundations for Success program, but the bill does not provide any information about what services are included in each level;
- On lines 830-832, the bill refers to "an eligible child may voluntarily opt into the Jumpstart program," but the bill does not specify the criteria that would make a child eligible.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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 Children, Families, and Elder Affairs Committee

BILL:	SPB 7078
INTRODUCER:	For consideration by the Children, Families, and Elder Affairs Committee
SUBJECT:	Mental Health and Substance Abuse Treatment
DATE:	March 21, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh		**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

This proposed committee bill stems from an interim report of the Florida Senate Committee on Children, Families, and Elder Affairs relating to a forensic hospital diversion pilot program. The bill creates the Forensic Hospital Diversion Pilot Program which is to be implemented in Escambia and Hillsborough counties by the Department of Children and Family Services (DCF or department), in conjunction with the First and Thirteenth Judicial Circuits.

The purpose of the pilot program is to serve individuals with mental illnesses or co-occurring mental illnesses and substance use disorders and who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities. Eligibility for the pilot program is limited to persons who:

- Are 18 years of age or older;
- Are charged with a nonviolent felony of the second or third degree;
- Are adjudicated incompetent to proceed to trial or not guilty by reason of insanity;
- Meet public safety and treatment criteria established by DCF; and
- Otherwise would be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court to develop educational training for judges in the pilot program areas and authorizes the department to adopt rules. The bill also requires the Office of Program Policy Analysis and Government Accountability to evaluate the pilot program and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012.

The bill also amends Florida's law relating to the involuntary commitment of a defendant who is adjudicated incompetent to provide that a defendant who is being discharged from a state treatment facility must be provided a seven day supply of the psychotropic medications he or she is receiving at the time of discharge. The bill requires that the most recent Florida State Hospital formulary approved by the department be used when filling prescriptions for psychotropic medications prescribed to defendants being discharged from state treatment facilities.

Finally, the bill amends the definition of "court" in ch. 916, F.S., to include county courts.

The bill makes conforming changes.

This bill substantially amends the following sections of the Florida Statues: 916.106, 916.13, and 951.23. The bill creates section 916.185, Florida Statutes.

II. Present Situation:[1]

Forensic Mental Health

On any given day in Florida, there are approximately 17,000 prison inmates, 15,000 local jail detainees, and 40,000 individuals under correctional supervision in the community who experience serious mental illnesses. Annually, as many as 125,000 adults with mental illnesses or substance use disorders requiring immediate treatment are placed in a Florida jail.

Over the past nine years, the population of inmates with mental illnesses or substance use disorders in Florida prisons increased from 8,000 to nearly 17, 000 individuals. In the next nine years, this number is projected to reach more than 35,000 individuals, with an average annual increase of 1,700 individuals. Forensic mental health services cost the state a quarter-billion dollars a year and are now the fastest growing segment of Florida's public mental health system.

Forensic Services

Chapter 916, F.S., called the "Forensic Client Services Act," addresses the treatment and training of individuals who have been charged with felonies and found incompetent to proceed to trial due to mental illness, mental retardation, or autism, or are acquitted by reason of insanity.

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed to trial due to mental illness or who have been adjudicated not guilty by reason of insanity. Persons committed under ch. 916, F.S., are committed to the custody of the Department of Children and Family Services (DCF or department).

[1] The information contained in the Present Situation of this bill analysis is from an interim report by the Committee on Children, Families, and Elder Affairs of the Florida Senate. See Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Forensic Hospital Diversion Pilot Program* (Interim Report 2011-106) (Oct. 2010), *available at* http://archive.flsenate.gov/data/Publications/2011/Senate/reports/interim_reports/pdf/2011-106cf.pdf (last visited Mar. 17, 2011).

Section 916.12(3), F.S., authorizes the court to appoint experts to evaluate a criminal defendant's mental condition. In determining whether a defendant is competent to proceed, the examining expert must report to the court regarding the defendant's capacity to appreciate the charges or allegations against him, appreciate the range and nature of possible penalties, understand the adversarial nature of the legal process, consult with counsel, behave appropriately in court, and testify relevantly. A defendant must be evaluated by at least two experts prior to being involuntarily committed.[2] Any defendant charged with a felony and found incompetent to proceed may be involuntarily committed if the court finds by clear and convincing evidence that the defendant is mentally ill; all available, least restrictive alternatives are inadequate; and there is a substantial probability that the mental illness will respond to treatment.[3]

Under the authority of ch. 916, F.S., DCF provides mental health assessment, evaluation, and treatment of individuals committed to DCF following adjudication as incompetent to proceed or not guilty by reason of insanity. These individuals are charged with a felony offense and must be admitted to a treatment facility within 15 days of the department's receipt of the commitment packet from the court.[4] Persons committed to the custody of DCF are treated in one of three forensic mental health treatment facilities throughout the state. These facilities contain a total of 1,700 beds and serve approximately 3,000 people each year. The cost to fund these beds is more than $210 million annually.[5]

Individuals admitted to state forensic treatment facilities for competency restoration receive services primarily focused on resolving legal issues, but not necessarily targeting long-term wellness and recovery from mental illnesses. Once competency is restored, individuals are discharged from state treatment facilities and generally returned to jails, where they are rebooked and incarcerated while waiting for their cases to be resolved. A sizable number of individuals experience a worsening of symptoms while waiting in jail, and some are readmitted to state facilities for additional treatment and competency restoration services.

The majority of individuals who enter the forensic treatment system do not go on to prison,[6] but return to court, and either have their charges dismissed for lack of prosecution or the defendant takes a plea such as conviction with credit for time served or probation.[7] Most are then released to the community, often with few or no community supports and services in place.[8] Many are subsequently rearrested and return to the justice and forensic mental health systems, either as the result of committing a new offense or failing to comply with the terms of probation or community control.[9]

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[2] Section 916.12(2), F.S.
[3] Section 916.13(1), F.S. *See also*, s. 916.302, F.S.
[4] *See* s. 916.107(1)(a), F.S.
[5] Comm. on Children, Families, and Elder Affairs, *supra* note 1.
[6] H. Richard Lamb et al., *Community Treatment of Severely Mentally Ill Offenders Under the Jurisdiction of the Criminal Justice System: A Review*, 50 PSYCHIATRIC SERV. 907-913 (July 1999), *available at* http://psychservices.psychiatryonline.org/cgi/content/full/50/7/907 (last visited Mar. 18, 2011).
[7] Interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (Aug. 20, 2010).
[8] *Id*.
[9] *Id.*

Diversion

"Diversion is the process of diverting individuals with severe mental illness and/or co-occurring substance abuse disorders away from the justice system and into the community mental health system, where they are more appropriately served."[10] By providing more appropriate community-based services, diversion programs prevent individuals with mental illness and substance abuse disorders from becoming unnecessarily involved in the criminal justice system.[11] There are numerous benefits to the community, criminal justice system and the diverted individual, including:

- Enhancing public safety by making jail space available for violent offenders.
- Providing judges and prosecutors with an alternative to incarceration.
- Reducing the social costs of providing inappropriate mental health services or no services at all.
- Providing an effective linkage to community-based services, enabling people with mental illness to live successfully in their communities, thus reducing the risk of homelessness, run-ins with the criminal justice system, and institutionalization.[12]

In Florida, this approach is being tested in the Miami-Dade Forensic Alternative Center (MD-FAC), a pilot program implemented in August 2009 by DCF, the Eleventh Judicial Circuit of Florida,[13] and the Bayview Center for Mental Health. The pilot program was established to demonstrate the feasibility of diverting individuals with mental illness adjudicated incompetent to proceed to trial from state hospital placement to placement in community-based treatment and competency restoration services."[14]

"Admission to MD-FAC is limited to individuals who otherwise would be committed to DCF and admitted to state forensic hospitals."[15] In order to be eligible for MD-FAC, an individual must be charged with a less serious offense, such as a second or third degree felony. Following admission, individuals are initially placed in a locked inpatient setting where they receive crisis stabilization, short-term residential treatment, and competency restoration services.[16] As of September 2010, twenty-four individuals have been admitted to the pilot program and diverted

[10] The Supreme Court, State of Florida, *Mental Health: Transforming Florida's Mental Health System*, *available at* http://www.floridasupremecourt.org/pub_info/documents/11-14-2007_Mental_Health_Report.pdf (last visited Mar. 18, 2011).
[11] *Id.*
[12] Nat'l Mental Health Ass'n, TAPA Ctr. for Jail Diversion, Nat'l GAINS Ctr., *Jail Diversion for People with Mental Illness: Developing Supportive Community Coalitions*, (Oct. 2003), *available at* http://www.gainscenter.samhsa.gov/pdfs/jail_diversion/NMHA.pdf (last visited Mar. 18, 2011).
[13] MD-FAC is part of Eleventh Judicial Circuit Criminal Mental Health Project (CMHP). This CMHP runs four diversion programs (Pre-Arrest Diversion, Post-Arrest Misdemeanor Diversion, Post-Arrest Felony Diversion, and Forensic Hospital Diversion). Interview with Judge Steven Leifman, *supra* note 7. The Eleventh Judicial Circuit includes Miami-Dade County, which has one of the nation's largest percentages of mentally ill residents. Abby Goodnough, *Officials Clash Over Mentally Ill in Florida Jails*, N.Y. TIMES, Nov. 15, 2006, *available at* http://www.nytimes.com/2006/11/15/us/15inmates.html (last visited Mar. 18, 2011).
[14] Miami-Dade Forensic Alternative Ctr., *Pilot Program Status Report* (Aug. 2010) (on file with the Senate Comm. on Children, Families, and Elder Affairs).
[15] *Id.*
[16] *Id.*

from admission to state forensic facilities.[17] To serve these 24 people, MD-FAC operates 10 beds, with an average bed per day cost of $274.00 for a total cost of $1,000,100.[18] MD-FAC reports that increasing the bed capacity will decrease the average bed per day cost at MD-FAC to less than $230, with the possibility of further decreasing costs in the future.[19]

As a result of the MD-FAC program:

- The average number of days to restore competency has been reduced, as compared to forensic treatment facilities.[20]
- The burden on local jails has been reduced, as individuals served by MD-FAC are not returned to jail upon restoration of competency.[21]
- Because individuals are not returned to jail, it prevents the individual's symptoms from worsening while incarcerated, possible requiring readmission to state treatment facilities.[22]
- Individuals access treatment more quickly and efficiently because of the ongoing assistance, support, and monitoring following discharge from inpatient treatment and community re-entry.
- Individuals in the program receive additional services not provided in the state treatment facilities, such as intensive services targeting competency restoration, as well as community-living and re-entry skills.
- It is standard practice at MD-FAC to provide assistance to all individuals in accessing federal entitlement benefits that pay for treatment and housing upon discharge.

[17] Additionally, three individuals who met criteria for admission to the program were subsequently admitted to a state hospital because of lack of bed availability at MD-FAC, i.e., the program was at or above capacity. On average, the program has diverted 2.2 individuals per month from admission to state forensic facilities. *Id.*

[18] *Id.*

[19] Staffing standards at MD-FAC allow for additional bed capacity without substantially increasing program staff or fixed costs. As a result, operations will become more efficient as program capacity is increased. *Id.*

[20]

Comparison of competency restoration services provided in forensic treatment facilities and MD-FAC (average number of days year to date, FY2009-10):	**Forensic facilities**	**MD-FAC**	**Difference***
Average days to restore competency (admission date to date court notified as competent)	138.9	99.3	39.6 days (-29%)
Average length of stay for individuals restored to competency (this includes the time it takes for counties to pick up individuals)	157.8	139.6	18.2 days (-12%)

"The diminishing advantage of MD-FAC over forensic facilities in terms of average number of days to restore competency (39.6 day reduction) and overall average length of stay for individuals restored to competency (18.2 day reduction) relates to the fact that individuals enrolled in MD-FAC are not rebooked into the jail following restoration of competency. Instead, they remain at the treatment program where they are re-evaluated by court appointed experts while the treatment team develops a comprehensive transition plan for eventual step-down into a less restrictive community placement. When court hearings are held to determine competency and/or authorize step-down into community placements, individuals are brought directly to court by MD-FAC staff. This not only reduces burdens on the county jail, but eliminates the possibility that individuals will decompensate while incarcerated and require subsequent readmission to state treatment facilities. It also ensures that individuals remain linked to the service provider through the community re-entry and re-integration process." *Id.*

[21] MD-FAC program staff provides ongoing assistance, support and monitoring following discharge from inpatient treatment and community re-entry. Additionally, individuals are less likely to return to state hospitals, emergency rooms, and other crisis settings. *Id*

[22] Of the 44 individuals referred to MD-FAC to date, 10 (23%) had one or more previous admissions a state forensic hospital for competency restoration and subsequent readmission to the Miami-Dade County Jail. *Id.*

County Court Authority

As described above, Chapter 916, F.S., allows the circuit court to order forensic commitment proceedings for a defendant adjudicated incompetent to proceed to trial. The Florida Supreme Court, in *Onwu v. State*, ruled that only the circuit court, and not the county court, has the authority to order forensic commitment of persons found incompetent to proceed to trial (ITP) through Chapter 916, F.S.[23] The Court noted that the county court may still commit misdemeanor defendants found ITP through the Baker Act.[24]

However, county court judges are without recourse when a misdemeanor defendant found ITP does not meet the criteria for Baker Act involuntary hospitalization, but may still pose a danger to himself or others in the future, and thus requires treatment. In this instance, the county court judge can conditionally release the defendant into the community, but has no authority to order any mental health treatment services. If the defendant receives mental health services while on conditional release, competency may be restored so that a plea can be entered within the year. It is reported that many misdemeanor defendant cases are dismissed by the end of the year because competency has not been restored. In other cases, by the end of the year, the individual has either disappeared or has been rearrested.[25]

Committee on Children, Families, and Elder Affair's Review of the Forensic Hospital Diversion Pilot Program

During the 2011 interim, the Florida Senate Committee on Children, Families, and Elder Affairs studied forensic mental health in Florida and the benefits of a Forensic Hospital Diversion Pilot Program.[26] The recommendations identified by the interim report include:

- Expanding the forensic hospital diversion pilot program to other areas of the state. The department and representatives from the Office of the State Courts Administrator suggested pilots be implemented in Hillsborough and Escambia counties because they have the largest forensic need in the state.
- Providing program-specific training to judges in the pilot areas.
- Authorizing county court judges to order involuntary outpatient treatment as a condition of release.

III. Effect of Proposed Changes:

This proposed committee bill stems from an interim report of the Florida Senate Committee on Children, Families, and Elder Affairs relating to a forensic hospital diversion pilot program. The bill creates the Forensic Hospital Diversion Pilot Program to be implemented in Escambia and Hillsborough counties by the Department of Children and Family Services (DCF or department), in conjunction with the First and Thirteenth Judicial Circuits. The program is to be implemented

[23] *Onwu v. State*, 692 So.2d 881 (Fla. 1997).
[24] *Id.* Baker Act procedures are found in part I, ch. 394, F.S.
[25] Telephone interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (Sep. 28, 2010).
[26] Comm. on Children, Families, and Elder Affairs, *supra* note 1.

within available resources and the bill authorizes DCF to reallocate resources from forensic mental health programs or other adult mental health programs serving individuals involved in the criminal justice system. The purpose of the pilot program is to serve individuals with mental illnesses or co-occurring mental illnesses and substance use disorders and who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities. In creating and implementing the program, DCF is directed to include a comprehensive continuum of care and services that use evidence-based practices and best practices to treat people who have mental health and co-occurring substance use disorders. The bill provides definitions for the terms "best practices," "community forensic system," and "evidence-based practices."

Eligibility for the pilot program is limited to persons who:

- Are 18 years of age or older;
- Are charged with a nonviolent felony of the second or third degree;
- Are adjudicated incompetent to proceed to trial or not guilty by reason of insanity;
- Meet public safety and treatment criteria established by DCF; and
- Otherwise would be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court, in consultation with the Supreme Court Mental Health and Substance Abuse Committee, to develop educational training for judges in the pilot program areas. The bill authorizes DCF to adopt rules to administer the program. The bill also requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to evaluate the pilot program and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012. The OPPAGA is directed to examine the efficiency and cost-effectiveness of providing forensic services in secure, outpatient, community-based settings in the report.

The bill amends s. 916.13, F.S., relating to the involuntary commitment of a defendant who is adjudicated incompetent, to provide that a defendant who is being discharged from a state treatment facility must be provided a seven day supply of the psychotropic medications he or she is receiving at the time of discharge. The bill requires that the most recent Florida State Hospital formulary approved by the department be used when filling prescriptions for psychotropic medications prescribed to defendants being discharged from state treatment facilities. The bill also amends s. 951.23, F.S., to require all county detention facilities, county residential probation centers, and municipal detention facilities filling prescriptions for psychotropic medications prescribed to defendants discharged from state treatment facilities to follow the Florida State Hospital formulary in order to conform to the changes made in s. 916.13, F.S.

Finally, the bill amends the definition of "court" in ch. 916, F.S., to include county courts.

The bill shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides that the Forensic Hospital Diversion Pilot Program is to be implemented by the Department of Children and Family Services (DCF or department), in conjunction with the First and Thirteenth Judicial Circuits in Escambia and Hillsborough counties, "within available resources." The department is also authorized to reallocate resources from forensic mental health programs or other adult mental health programs serving individuals involved in the criminal justice system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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 Children, Families, and Elder Affairs Committee

BILL: SPB 7080

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Persons with Developmental Disabilities

DATE: March 18, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh		**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Proposed Senate Bill 7080 prohibits the imposition of monitoring requirements that would mandate the availability of pornographic materials in residential facilities serving clients of the Agency for Persons with Disabilities (agency or APD).

The bill requires that in proceedings for involuntary placement or conditional release, the court must order the person to the agency for placement in an appropriate facility, and may not release the person to a residential service provider. The agency is authorized to move the person from one facility to another and must notify the court when it does so.

SPB 7080 requires the agency to ensure there are sufficient community-based placements for defendants who are charged with sex offenses.

The bill establishes a task force to provide input to APD for the creation of guidelines and procedures for providers of residential services relating to sexual activity among the residents of its facilities. The agency will provide administrative support for the task force, which will issue a report to the Legislature by November 1, 2011.

This bill substantially amends ss. 393.067, 393.11, 916.1093, 916.3025, 916.304, F.S., and creates an unnumbered section of Florida law.

II. Present Situation:

Background

In December 2010, the St. Petersburg Times reported[1] on the case of Kevin Rouse, a 42 year old mentally retarded client of the agency, who is involuntarily committed to the Human Development Center (HDC) in Seffner, Florida. Mr. Rouse was placed at the facility for developmentally disabled men by the court after he was accused of committing a sexual offense.

Mr. Rouse's mother alleges that HDC promotes sexual activity among its residents and that her son, as part of his treatment plan, was encouraged to participate — against his religious convictions and desires and hers.[2] HDC responds that their policy respects the rights of the developmentally disabled to safely engage in consensual sexual activity.[3] Others in the field express divergent opinions on the ability of residents living in group homes housing sexual offenders to consent to sexual activity. [4]

In addition, Mrs. Rouse's request to APD that he be transferred to another facility was not honored.[5] The agency indicated that the only other available facility was located even further from Mr. Rouse's family than HDC, and that HDC is one of the few facilities in the state that is willing to provide services to sex offenders.[6]

The New Horizons Group Home in Brandon was cited during a licensure inspection in 2005 for failure to allows its residents to watch movies that were R- or X-rated. The inspector felt that this house rule restricted the residents from fully exercising their rights.[7] The agency reports that the quality assurance tool now in use clarifies for inspectors that faith-based providers, such as New Horizons, have the authority to establish rules which prevent residents from viewing objectionable materials.[8] Concern exists, however, that absent specific direction, the agency's interpretation may change over time.

The ARC notes that community services for developmentally-disabled persons charged with sexual offenses are virtually nonexistent. [9] Further,

> Society is uncomfortable recognizing that people with disabilities are sexual beings and have the same needs for affection, intimacy and sexual gratification as those without disabilities. Providing good sex and relationship education and

[1] *Group home's unorthodox sex policy disquiets mother.* St. Petersburg Times, December 17, 2010.
[2] *Group home's unorthodox sex policy disquiets mother.*
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] Testimony by Jim DeBeaugrine, Director, Agency for Persons with Disabilities, before the Senate Committee on Children, Families, and Elder Affairs, February 8, 2011.
[7] E-mail from Logan McFaddin, Legislative Affairs Director, Agency for Persons with Disabilities, March 16, 2011 (on file with the Committee).
[8] *Id.*
[9] Q&A People with Intellectual Disabilities and Sexual Offenses. August 2009. The ARC. Available at http://www.thearc.org/page.aspx?pid=2456 (last visited March 18, 2011).

> ample opportunities for sexual expression should be a high priority for parents, disability advocates, community agencies and all those who know or work with people with intellectual disabilities.[10]

APD was to have promulgated guidelines relating to sexual activity among residents of its facilities over two years ago,[11] but has not yet done so.[12]

Monitoring Requirements

Section 393.067, F.S., requires APD to provide, through its licensing authority and by rule, requirements for monitoring foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs that serve agency clients.

Involuntary Admission to Residential Services
Pursuant to ss. 393.11 and 916.3025, F.S., a person may be involuntarily admitted to a residential facility for treatment after criminal proceedings against the individual are resolved and the court finds that the person needs continuing residential services. The need for services may be because (a) the person lacks ability to consent for voluntary admission and lacks sufficient basic self care skills to ensure he or she is not a danger to self; or (b) the person would be a danger to himself or others.

The statutes appear to allow a court to commit the person to [the custody of] a facility. It has been reported that this provision has made it difficult for the agency to transfer a resident to another facility should the need arise.[13]

Conditional Release
Pursuant to s. 916.304, F.S., a court may order the conditional release of any defendant found incompetent to proceed due to mental retardation or autism for community-based training based on an approved plan. The plan must include special provisions for residential care and supervision of the defendant and recommended auxiliary services. The court must enumerate the conditions of release, which is binding upon the defendant.

III. Effect of Proposed Changes:

Proposed Senate Bill 7080 prohibits the imposition of monitoring requirements that would mandate the availability of pornographic materials in residential facilities serving clients of the Agency for Persons with Disabilities.

SPB 7080 requires that when two or fewer community placements the agency to ensure there are sufficient community-based placements for defendants who are charged with sex offenses.

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[10] *Id.*
[11] *Group home's unorthodox sex policy disquiets mother.*
[12] Testimony by Jim DeBeaugrine, Director, Agency for Persons with Disabilities, before the Senate Committee on Children, Families, and Elder Affairs, February 8, 2011.
[13] *Id.*

The bill requires that in proceedings for involuntary admission pursuant to s. 393.11, F.S., involuntary commitment pursuant to s. 916.3025, F.S., or conditional release, pursuant to s. 916.304, F.S., the court must order the person to the agency for placement in an appropriate facility, and may not release the person to a residential service provider.

The agency is authorized to move the person from one facility to another and must notify the court when it does so.

The bill provides that the Legislature recognizes the rights of the developmentally disabled to lead full and rewarding lives, and its obligation to protect vulnerable adults from sexual abuse. In order to address these complexities, the bill establishes a task force to provide input to APD for the creation of guidelines and procedures for providers of residential services relating to sexual activity among the residents of its facilities.

The task force is composed of the following members:

- The director of the Agency for Persons with Disabilities or his or her designee.
- The director of Adult Protective Services in the Department of Children and Family Services.
- The executive director of The Arc of Florida.
- An Arc of Florida family board member appointed by the executive director of The Arc of Florida.
- The chair of the Family Care Council Florida.
- A parent representative from the Family Care Council Florida appointed by the chair of the Family Care Council Florida.
- A representative from the Developmental Disabilities Council, Inc.
- A representative from Disability Rights Florida.
- A representative from the Florida courts.
- A representative from the Florida Prosecuting Attorneys Association.
- A representative from the Florida Public Defender Association.

The members of the task force must hear from self-advocates, family members, experts at universities and colleges, and other entities with expertise pertinent to this issue.

Members of the task force serve without compensation, but are entitled to per diem and travel as provided in s. 112.061, F.S. The agency is to provide administrative support for the task force, and the task force must report its findings to the President of the Senate and the Speaker of the House of Representatives by November 1, 2011.

The act is effective July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The members of the task force are entitled to per diem and travel expenses related to their service, and the agency is to provide administrative support for the task force established in the bill. The fiscal impact to APD is expected to be minimal.

APD notes that there may be a fiscal impact associated with Section 5 of the bill. See "Technical Deficiencies."

VI. Technical Deficiencies:

The Agency for Persons with Disabilities notes as to Section 5 of the bill:[14]

> When a person is conditionally released to the community for competency training, the court imposes conditions on the "person" to comply with the court's requirements. If the person fails to comply with those conditions, the court may impose further conditions or make a finding that the person now meets the criteria for secure placement for competency training.
>
> However, if the court is required under a conditional release to release a person to the Agency for civil placement, then the court is imposing conditions on the Agency, instead of the person. While a criminal charge is pending, due process requires that the defendant comply with court orders. This language would shift due process requirements away from the defendant and force the Agency into a

[14] Agency for Persons with Disabilities 2011 Bill Analysis SB 7080, March 18, 2011 (on file with the Committee).

posture of sharing responsibility for compliance with criminal court conditional release orders with a criminal defendant.

In addition, a conditional release to the Agency would require the Agency to provide services to a criminal defendant beyond simply competency training, such as residential habilitation, behavioral services, medical services. These defendants may not qualify for APD services and may not be entitled to such services, and would, in essence, be receiving such services ahead of individuals who have been determined eligible and placed on the APD waiting list to receive them by the fact that they have committed a crime.

The fiscal impact is projected to be extensive if the Agency is required to serve persons who do not meet the criteria for a developmental disability. The proposed change will create expectations within the judicial system that APD will be required to fund placement of defendants to comply with orders, and the Agency currently has no additional funding for this purpose.

VII. Related Issues:

APD notes[15] that as relates to the requirement that it ensure sufficient facilities for defendants charged with sexual offenses (Section 3 of the bill):

> The term "sufficient" is not defined. The Agency also cannot force private group home providers to render specific services nor serve specific individuals. The proposed language could put the Agency at risk of failure to comply with a statutory requirement if new facilities are not able to be "procured."

VIII. Additional Information:

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

None.

B. Amendments:

None.

[15] *Id.*

794632

LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment

Delete lines 62 - 74

and insert:

(d)"Mental injury" means injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony. A person may not give expert testimony regarding mental injury unless that person is a physician licensed under chapter 458 or chapter 459, board certified in psychiatry, or a psychologist licensed under

794632

chapter 490, and, during the 3 years immediately preceding the date of the alleged injury, has devoted professional time to the active clinical practice of, or consulting with respect to, a specialty that includes the evaluation, diagnosis, or treatment of the condition that is the subject of the offense. The expert testimony requirements apply only to criminal court cases, not to family court or dependency court cases.

LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete lines 473 - 484
and insert:
(14) "Victim" means:
(a) A person who suffers personal physical injury or death as a direct result of a crime;
(b) A person younger than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured; ~~or~~
(c) A person less than 18 years of age who was the victim

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of a felony or misdemeanor offense which resulted in a psychiatric or psychological injury, but who was not physically injured; or

(d) ~~(c)~~ A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.

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

And the title is amended as follows:

Delete lines 1 - 20.

270098

LEGISLATIVE ACTION

Senate . House

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The Committee on Children, Families, and Elder Affairs (Detert) recommended the following:

Senate Amendment

Delete lines 110 - 134.

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 Children, Families, and Elder Affairs Committee

BILL:	SB 1088
INTRODUCER:	Senator Altman
SUBJECT:	Criminal Conduct
DATE:	March 18, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	**Pre-meeting**
2.			CJ	
3.			JU	
4.			BC	
5.				
6.				

I. Summary:

The bill amends the criminal child abuse statute, s. 827.03, F.S., providing a definition for the term "mental injury", and providing that an act does not violate the section if it is protected by the First Amendment. The bill provides that it is an affirmative defense to a prosecution for mental injury if the defendant is a victim of domestic violence who acted or failed to act in order to protect herself or her child, and provides that this affirmative defense can only be raised once.

The bill amends s. 960.03, F.S., changing the definition of "crime" and "victim" as used in the Florida Crimes Compensation Act (Compensation Act).

This bill substantially amends the following sections of the Florida Statutes: 827.03, 775.084, 775.0877, 782.07, 921.0022, 948.062, and 960.03.

II. Present Situation:

Criminal Child Abuse

Pursuant to s. 827.03, F.S., criminal child abuse is defined as:

- Intentional infliction of physical or mental injury upon a child;
- An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

Mental Injury

In recent years, the criminal child abuse statute has been challenged as unconstitutionally vague for its failure to define the term "mental injury." In 2002, in *DuFresne v. State*, the Florida Supreme Court considered this issue.

In *DuFresne*, the Court acknowledged that "in order to withstand a vagueness challenge, a statute must provide persons of common intelligence and understanding adequate notice of the proscribed conduct."[1] The Court noted, however, that

> . . . the legislature's failure to define a statutory term does not in and of itself render a penal provision unconstitutionally vague. In the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term . . .[internal citations omitted][2]

The Court found that the child protection provisions of ch. 39, F.S., were "plainly interrelated" with the provisions of the criminal child abuse statute and that, as such, the criminal child abuse statute was not unconstitutionally vague because the term "mental injury" was adequately defined in ch. 39, F.S.[3] The Court held, "While it may obviously be preferable for the Legislature to place the appropriate definition in the same statute, citizens should be on notice that controlling definitions may be contained in other related statutes."[4]

Section 39.01(41), F.S., defines the term "mental injury" as an "injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior."

Verbal Conduct

The criminal child abuse statute has also been challenged as being unconstitutionally overbroad. The overbreadth doctrine has been explained by the Florida Supreme Court as follows:

> [S]tatutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct . . . When legislation is drafted so that it may be applied to conduct that is protected by the First Amendment, it is said to be unconstitutionally overbroad . . . The [overbreadth] doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected expression . . .[internal citations omitted][5]

Thus, although the regulation of unprotected speech (e.g., fighting words and obscenity) is permissible, if a particular regulation proscribing unprotected speech also proscribes protected

[1] *DuFresne v. State*, 826 So.2d 272, 275 (Fla. 2002).
[2] *Id*. at 275.
[3] *Id*. at 278.
[4] *Id*. at 279.
[5] *Wyche v. State*, 619 So.2d 231, 235 (Fla. 1993).

speech, it is unconstitutionally overbroad.

In *State v. DuFresne*,[6] the state charged a teacher with several counts of child abuse under s. 827.03, F.S. Some of the counts were based solely on oral statements made by the teacher. The teacher argued that the criminal child abuse statute was overbroad because it was being used to prosecute conduct protected by the First Amendment. The 4th District Court of Appeals (DCA) held that the criminal child abuse statute "is not substantially overbroad and can be upheld against an overbreadth argument by narrowly construing it as not applicable to speech."[7]

In *Munao v. State*, the 4th DCA, relying on the DuFresne holding, held that the defendant, who repeatedly told his six year-old child to get a knife and stab his mother, could not be charged with criminal child abuse because the child abuse statute is not applicable to speech.[8] The *Munao* court admitted that it was troubled by the facts of the case before it, and "invite[d] the legislature to reconstruct the statutory language in a way that balances the strong interest in protecting children with the fundamental preservation of individual constitutional freedoms."[9]

Shortly after *Munao*, the 1st DCA decided *State v. Coleman*.[10] In *Coleman*, the state charged the defendant with felony child abuse, alleging that he caused mental injury by driving past young girls and asking them vulgar and offensive questions. The *Coleman* court held,

> We do not agree with *DuFresne I* and *Munao*, however, that, to withstand an overbreadth challenge to section 827.03(1), we must construe the statute to avoid its application to *all* speech. If section 827.03(1), can be construed to be applicable *only* to specifically described unprotected speech, it can withstand an overbreadth challenge . . . If in applying section 827.03(1) to speech, courts define the proscribed speech by construing the statute in *pari materia* with the definitions in chapter 39, constitutional speech will not be implicated . . .Thus, speech will constitute 'child abuse' under section 827.03(1)(a) only if it meets the definitions of abuse and mental injury in section 39.01, Florida Statutes (2004). [internal citations omitted][11]

The United States Supreme Court has long recognized that a few categories of speech are so harmful and so lacking in value that they are unworthy of First Amendment protection.[12] Under this line of cases, state legislatures may regulate, and even ban, unprotected speech that falls into the following categories: threats, fighting words, obscenity, child pornography, and speech that imminently incites illegal activity.[13]

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[6] 782 So.2d 888 (Fla. 4th DCA 2001). The Florida Supreme Court reviewed this case to answer the certified question of whether the term "mental injury" in the criminal child abuse statute was unconstitutionally vague (see discussion supra at p. 2). The Supreme Court did not address the issue of overbreadth, so the District Court's holding as to that issue remains relevant. The District Court case is sometimes referred to as *DuFresne I*, while the Supreme Court case is referred to as *DuFresne II*.

[7] *Id*. at 890.

[8] 939 So.2d 125 (Fla. 4th DCA 2006), *rev. denied*, 954 So.2d 28 (Fla. 2007)

[9] *Id*. at 128.

[10] 937 So.2d 1226 (Fla. 1st DCA 2006).

[11] *Id*. at 1229.

[12] Heidi Kitrosser, *Containing Unprotected Speech*, 57 Fla. L. Rev. 843, 844 (September 2005).

[13] *Id*. at 845.

Victim Assistance

The Compensation Act is established in ss. 960.01-960.28, F.S. For purposes of the Compensation Act, the term "victim" is defined to include:

- A person who suffers personal physical injury or death as a direct result of a crime;
- A person less than 16 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured; or
- A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.[14]

Also for purposes of the Compensation Act, the term "crime" is defined to include "a felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death . . ."[15]

The Compensation Act provides that the following persons are eligible for awards:

- Victim;
- Intervener;
- Surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervener; and
- Any other person who is dependent for his or her principal support upon a deceased victim or intervener.[16]

The Florida Attorney General's Division of Victim Services[17] serves as an advocate for crime victims and victims' rights and administers a compensation program to ensure financial assistance for innocent victims of crime.[18] Injured crime victims may be eligible for financial assistance for medical care, lost income, funeral expenses and other out-of-pocket expenses directly related to the injury.[19] Payment is made from the Crimes Compensation Trust Fund (Trust Fund),[20] and awards to eligible victims are limited as follows:

- No more than $10,000 for treatment;
- No more than $10,000 for continuing or periodic mental health care of a minor victim whose normal emotional development is adversely affected by being the victim of a crime;
- A total of $25,000 for all compensable costs; or

[14] Section 960.03(13), F.S.
[15] Section 960.03(3), F.S.
[16] Section 960.065(1), F.S.
[17] The Division of Victim Services is housed within the Office of Attorney General/Department of Legal Affairs.
[18] See http://myfloridalegal.com/victims (last visited March 15, 2011).
[19] *Id.*
[20] Section 960.21, F.S.

- $50,000 when there is a finding that a victim has suffered catastrophic injury.[21]

The Department of Legal Affairs has rulemaking authority to establish limits on awards within the statutory guidelines.

Pursuant to Rule 2A-2.002, F.A.C., application and benefit payment criteria, limitations, and procedures for victim assistance are provided in a publication entitled "Victim Compensation Assistance," which is incorporated into the rules by reference.[22] This publication provides that the following mental health benefits are available to eligible individuals, up to the statutory limits, when the treatment is directly related to the crime and when such services are rendered by a person licensed to provide mental health counseling services:

- Inpatient mental health care for adults and minors but only for acute, crisis stabilization up to a maximum of seven days, and not to exceed $10,000;
- Outpatient mental health care for adults (18 years of age or older), up to $2,500;
- Mental health care for minors under the age of 16 who saw or heard the crime incident, and who suffered a psychological or psychiatric injury as a result of the crime, but were not physically injured, up to $2,500;
- Mental health care for persons who suffer a psychiatric or psychological injury as a result of a forcible felony against the person, up to $2,500;[23]
- Mental health care (outpatient) for a surviving minor child of a deceased victim, or a minor victim who was physically injured, up to $10,000;[24] and
- Mental health care for a surviving spouse, parent, adult child or sibling of a deceased victim up to $2,500, provided total benefits do not exceed $10,000 per claim.[25]

When the Department of Legal Affairs determines that the monies available in the Trust Fund are insufficient to pay the program's anticipated expenditures, the department may limit the payment of benefits to a percentage of allowable benefits.[26]

III. Effect of Proposed Changes:

The bill changes the structure of s. 827.03, F.S., creating a definition section, followed by an "offenses" section that describes the conduct proscribed by the statute and the applicable penalties.

Substantively, the bill adds a definition of "mental injury" to s. 827.03, F.S.

[21] Section 960.13(9)(a), F.S.
[22] The publication is in fact entitled Victim Compensation (BVC P-001), Office of the Attorney General, Division of Victim Services and Criminal Justice Programs (effective January 1, 2000).
[23] This is the only benefit available to victims who do not suffer physical injury or death.
[24] When the child or victim reaches the age of 18, payment for outpatient services are limited to an additional $2,500 or three years, whichever comes first, provided total benefits do not exceed $10,000 per claim.
[25] Victim Compensation (BVC P-001), Office of the Attorney General, Division of Victim Services and Criminal Justice Programs (effective January 1, 2000).
[26] *Id.*

The bill further amends s. 827.03, F.S., by providing an exception to the criminal child abuse statute. Specifically, the bill states that an act does not violate the section if it is protected by the First Amendment. In relation to the cases discussed above, this language means that the criminal child abuse statute does not apply to constitutionally protected speech, but it may apply to unprotected speech. The bill provides that it is an affirmative defense to a prosecution for mental injury if the defendant is a victim of domestic violence who acted or failed to act in order to protect herself or her child, and provides that this affirmative defense can only be raised once.

The bill makes conforming changes to the following sections of the Florida Statutes:

- Section 775.084, F.S., relating to the definition of violent career criminals;
- Section 775.0877, F.S., relating to the criminal transmission of HIV;
- Section 782.07, F.S., relating to manslaughter;
- Section 921.0022, F.S., relating to the "Offense Severity Ranking Chart;" and
- Section 948.062, F.S., relating to the review of certain cases involving offenders on probation.

The bill amends s. 960.03, F.S., changing the definition of "crime" and "victim" as used in the Compensation Act. Specifically, the bill expands the definition to include any offense that results in psychiatric or psychological injury to a minor who was not physically injured by the criminal act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill, by expanding the definition of crime to include offenses that result in psychiatric or psychological injury to a minor, would expand the number of persons potentially eligible for compensation awards.

The bill limits the number of individuals who will qualify as expert witnesses to testify relating to "mental injury." Persons licensed as psychologists under chapter 490, F.S. and persons licensed as social workers, marriage and family therapists, and mental health counselors under chapter 491, F.S., are excluded by the bill from being able to qualify as expert witnesses.

C. Government Sector Impact:

The bill expands the number of persons eligible to receive compensation awards to include minors who suffer only psychiatric or psychological injury as the result of an offense. Because the compensable costs for a minor in these circumstances will typically include only treatment expenses, the fiscal impact will likely be limited to $10,000[27] times the number of minor victims who might become eligible.

VI. Technical Deficiencies:

The change to the definition of "victim" on lines 476-477 of the bill appears to exclude a victim of mental injury.

VII. Related Issues:

A criminal conviction can only be sustained if each element of the crime is established beyond a reasonable doubt.[28] It is possible that this bill could be interpreted to require a prosecutor in a child abuse case to prove, beyond a reasonable doubt, that an act does not violate the First Amendment, making it more difficult for the state to prosecute child abuse offenses.

The bill defines "mental injury" as requiring "multiple instances of injury caused by the same abuser to the intellectual or psychological capacity of a child…" Currently, there is no such statutory requirement for multiple instances. In fact, the statute specifically states that child abuse can be an intentional act reasonably expected to result in mental injury to a child. s. 827.03(1)(b), F.S. It also states that neglect may be based on a single incident resulting in serious mental injury. s. 827.03(a), F.S. The definition of "mental injury" in s. 39.01, F.S., provides, "an injury to the intellectual or psychological capacity" … [emphasis supplied] The bill appears to preclude being able to charge a person who inflicts mental injury on a child during one incident with a third degree felony offense of either child abuse or neglect.

[27] Section 960.13, F.S.
[28] *State v. Sigler*, 967 So.2d 835, 843 (Fla. 2007).

VIII. Additional Information:

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

None.

B. Amendments:

None.