Senate Committee On

JUDICIARY

J. Alex Villalobos, Chair
Dave Aronberg, Vice Chair

Meeting Packet

Monday, April 19, 2004
11:30 a.m. – 1:30 p.m.
110 Senate Office Building

(Please bring this packet to the committee meeting. Duplicate materials will not be available.)

E X P A N D E D A G E N D A

COMMITTEE ON JUDICIARY

Senator Villalobos, CHAIR
Senator Aronberg, VICE-CHAIR

DATE: Monday, April 19, 2004
TIME: 11:30 a.m. -- 1:30 p.m.
PLACE: Room 110 (EL), Senate Office Building

(MEMBERS: Senators Campbell, Carlton, Clary, Peaden, Smith and Webster)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1970 Campbell (Linked S 1972, Similar H 1765)	Mediation Confidentiality Act; creates "Mediation Confidentiality & Privilege Act"; provides that act applies to specified mediations; provides for durational time limits for mediations; provides that mediation participant has privilege to refuse to testify concerning communications made during mediation; provides immunity from liability for trainees in Supreme Court's mentorship program, etc. Creates 44.401-.406; amends 44.107. JU 04/19/04	
2	CS/SB 2054 Criminal Justice / Campbell (Similar H 1641)	Sexual Predators & Offenders; amends definition of term "conviction"; provides that offender who has been designated as sexually violent predator under civil commitment proceedings provided in specified provision, meets criteria for designation as sexual predator under Fla. Sexual Predators Act; clarifies circumstances re registration requirements applicable to sexual predators, etc. Amends FS. CJ 03/31/04 CS JU 04/19/04 ACJ AP	
3	CS/SB 0682 Transportation / Argenziano et al (Similar H 0065, S 2784)	Highway Safety; requires hearing for specified violations of traffic control signal devices resulting in crash; provides penalties for certain traffic infractions requiring mandatory hearing; provides for distribution of penalty proceeds; requires driver improvement course for second violation of specified provisions within specified time period; provides for distribution of funds to trauma centers, etc. Amends FS. TR 03/23/04 CS JU 04/19/04 FT ATD AP	

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COMMITTEE ON JUDICIARY

DATE: Monday, April 19, 2004 **TIME: 11:30 a.m. -- 1:30 p.m.**

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 2306 Lynn (Identical H 1087)	Radiologists/Mammograms/Tort; provides licensed radiologists with immunity from tort liability under certain circumstances; provides exceptions; provides for future repeal unless reviewed & reenacted by Legislature. HC 04/12/04 FAVORABLE JU 04/19/04	
5	SB 1074 Fasano (Similar H 1831)	Limitation of Action/Sexual Offenses; authorizes prosecution of specified sexual offenses within 1 year after identity of accused is established through analysis of DNA evidence, notwithstanding time limitations otherwise prescribed by law; provides for application. Amends 775.15. JU 04/19/04 CJ	
6	CS/SB 2188 Comprehensive Planning / Comprehensive Planning (Similar H 1593, Compare 1ST ENG/H 0293, CS/CS/S 1104)	Land Development; provides for issuance of escheatment tax deed that is free & clear of any tax certificates, accrued taxes, & liens of any nature for certain properties; provides immunity for county from environmental liability for certain properties that escheat to county; provides legislative findings re shortage of affordable rentals in state, etc. Amends 197.502, 163.3167,.3177,.3187, 288.107, 376.86. CP 03/23/04 CS JU 04/19/04 FT ATD AP	
7	CS/SB 2196 Banking and Insurance / Geller (Similar H 1297, Compare H 0557, CS/CS/S 2038)	Insurance Payments/Escrow Accounts; requires insurer to reinstate, under certain circumstances, insurance policy that is cancelled due to failure of lender to pay premium for which sufficient escrow funds are on deposit; requires that lender reimburse property owner for any penalties or fees paid for purposes of reinstating policy; requires property insurers to reinstate canceled policy as required by specified provision, etc. Amends 501.137, 627.4133. BI 03/17/04 CS JU 04/19/04	

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COMMITTEE ON JUDICIARY

DATE: Monday, April 19, 2004 **TIME: 11:30 a.m. -- 1:30 p.m.**

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 0444 Governmental Oversight and Productivity / Geller et al (Similar H 0505)	Abrogating Offensive Place Names; provides legislative findings that certain place names are offensive or derogatory; requires Fla. Historical Commission & Historic Resources Div. to aid state agencies & local governments in identifying geographic sites having offensive or derogatory place names; directs said agencies & governments to identify such sites by specified date; requires state & local governments to update maps & markers with new place names, etc. Creates 267.0625. GO 03/04/04 CS CP 03/15/04 FAVORABLE JU 04/19/04 ATD AP	
9	SB 1962 Wasserman Schultz et al (Similar H 0865)	Sex Trafficking; provides that it is felony of first degree for parent, legal guardian, or other person having custody or control of minor to offer to, or to actually, sell or otherwise transfer custody or control of such minor, with knowledge that such sale or transfer will result in force, fraud, or coercion being used to cause minor to engage in prostitution or otherwise participate in trade of sex trafficking, etc. Amends FS. CJ 04/13/04 FAVORABLE JU 04/19/04 ACJ AP	
10	SB 1596 Smith et al (Similar H 1153)	Frivolous Actions/Filed by Prisoner; provides that if court finds that prisoner brought frivolous or malicious collateral criminal proceeding that is filed after specified date, prisoner is subject to disciplinary procedures under rules of DOC. Amends 944.279. CJ 03/03/04 FAVORABLE JU 04/19/04	
11	CS/SB 2008 Transportation / Sebesta et al (Compare H 1737)	Motor Vehicle Records/Pub. Rec.; revises exemption from public-records requirements for personal information contained in motor vehicle record; removes requirement that exemption be conditioned on request for exemption by person who is subject of record; restricts release of social security numbers & medical & disability info.; revises certain conditions under which HSMV may release info. in connection with legal proceeding, etc. Amends 119.07. TR 03/03/04 CS JU 04/19/04 GO RC	

E X P A N D E D A G E N D A

COMMITTEE ON JUDICIARY

DATE: Monday, April 19, 2004 **TIME: 11:30 a.m. -- 1:30 p.m.**

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	CS/SB 0498 Children and Families / Lynn (Similar H 1329)	Children's Visitation Programs; repeals provisions re Florida Family Visitation Network; provides legislative intent re administering supervised visitation programs; provides for security of such programs; provides for use of funds generated from additional fee on requests for certification of birth to be used by supervised visitation programs to meet security standards; encourages said programs to develop partnerships with community organizations, etc. Amends FS. CF 01/21/04 CS ED 03/04/04 WITHDRAWN JU 04/19/04 CJ AHS AP	
13	CS/SB 2808 Children and Families / Lynn (Similar H 0721, H 1823, CS/S 1772, Compare H 1903, S 1466)	Children & Family Services Dept.; requires risk assessment of child & family to be commenced immediately upon receipt of abuse report; exempts hearings of AHCA from requirement of being conducted by administrative law judge; requires CFS Dept. to include employment history checks in employment screening of direct service providers; deletes requirement that CFS Dept. notify state attorney of report of institutional child abuse, etc. Amends FS. CF 03/30/04 CS JU 04/19/04 AHS AP	

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1970

SPONSOR: Senator Campbell

SUBJECT: Mediation Confidentiality Act

DATE: April 15, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Lang	JU	
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill creates the Mediation Confidentiality and Privilege Act. This bill provides for standardized proceedings, so that both court-ordered and non court-ordered mediation are entitled to the same confidentiality status.

This bill creates ss. 44.401, 44.402, 44.403, 44.404, 44.405, and 44.406, F.S. This bill substantially amends s. 44.107 of the Florida Statutes[1].

II. Present Situation:

Statutory Authority

Chapter 44, F.S., provides the statutory framework for mediation alternatives to judicial action. Its primary focus is on court-ordered mediation and arbitration, which occur after litigation has already begun. The Supreme Court currently establishes rules of practice and procedure, and maintains a certification process for mediators and arbitrators.[2]

Statutory confidentiality provisions encourage the flow of information and disclosure by parties in mediation proceedings and limit their use in subsequent legal proceedings.[3] Court referrals to mediation of certain contested family law issues are addressed in chapter 61, F.S, including provisions for the confidentiality of communications made during mediation.

Subsection (3) of s. 44.102, F.S., titled, "Court-ordered mediation", provides:

[1] SB 1972, a public records exemption bill, is linked and traveling with this bill.
[2] Section 44.102 (1) and (2), F.S.
[3] Section 44.102, F.S.

> Each party involved in a court-ordered mediation proceeding has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing, communications made during such proceeding. All oral or written communications in a mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of chapter 119 and shall be confidential and inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.

Current law does not grant confidentiality status to non court-ordered mediations. Therefore, an inconsistency exists as between court-ordered and non court-ordered mediation communications.

Case Law
Where a plaintiff knowingly and willfully violates confidentiality, pursuant to a court-ordered mediation, dismissal with prejudice is appropriate.[4] Confidentiality attaches to oral mediation proceedings, pursuant to a court-ordered mediation, and precludes compelling a mediator to testify.[5] Confidentiality is not absolute, however. Where there has been a mutual mistake made in the settlement agreement, mediation communications are admissible to determine intent.[6] Disclosing confidential information to real parties in interest, though they are not named parties, is not construed to constitute a violation of confidentiality.[7]

III. Effect of Proposed Changes:

This bill creates the Mediation Confidentiality and Privilege Act as a new section of the statutes, s. 44.401 through s. 44.406, F.S.

This bill specifies its application to the following types of mediation:

- Required by statute, court rule, agency rule or order, oral or written case-specific court order, or court administrative order;
- Conducted under this bill by express agreement of the mediation parties;
- Facilitated by a Supreme Court certified mediator, unless the parties expressly except themselves from the provisions or any part of the provisions of this bill.

This bill defines mediation communication, mediator, mediation party, mediation participant, and subsequent proceeding. This bill clarifies when a court ordered or non-court ordered mediation commences and when it ceases.

This bill makes all mediation communications confidential, and provides that a mediation participant may not disclose a mediation communication, and grants participants a privilege to refuse to testify regarding the communication. Under this bill, exemptions from confidentiality apply for certain signed written agreements.

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[4] *See Paranzino v. Barnett Bank*, 690 So.2d 725 (Fla. 4 DCA 1997); sanction upheld in *Spanish Broadcasting Systems of Florida, Inc., v. Grillone*, 731 So.2d 160 (Fla. 3d DCA 1999)
[5] *See Royal Caribbean Corporation v. Modesto*, 614 So.2d 517 (Fla. 3d DCA 1993)
[6] *See DR Lakes v. Brandsmart U.S.A.*, 819 So.2d 971 (Fla. 4 DCA 2002); *Feldman v. Kritch*, 824 So.2d 274 (Fla. 4 DCA 2002)
[7] *See Yacht Club Southeastern, Inc. v. Sunset Harbour North Condominium Association, Inc.*, 843 So.2d 917 (Fla. 3d DCA 2003)

This bill authorizes remedies for violations of mediation communications, to include equitable relief, compensatory damages, attorney's fees, mediator fees, costs, and reasonable attorney's fees and costs incurred in the remedy process. A statute of limitations is provided, ranging between two and four years.

Judicial immunity from liability is provided under this bill for certain arbitrators, mediators, and trainees, as well as mediators in non-court mediations required by statute, agency rule or order, conducted under this Act by express agreement, or facilitated by a Supreme Court certified mediator, unless the parties expressly except themselves. This bill clarifies that immunity is not provided, however, for acts of bad faith, with malicious purpose, or willful or wanton disregard.

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:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Under the rules of statutory construction, a section of law that cross-references another section or portion thereof that is subsequently amended does not incorporate those amendments unless the section containing the cross-reference is reenacted (republished). Otherwise, the statutory cross-

reference is linked to the version of the section that existed prior to the amendment. Section 44.107, F.S., as revised by this bill, is cross-referenced in s. 627.7015, F.S., relating to immunity for mediators.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. SB 1970

Amendment No. ___ 090626

CHAMBER ACTION

Senate | House

JUDICIARY

DATE: 4/16/04

TIME: 11:30 Am

Senator Campbell moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsections (3) and (4) of section 44.102, Florida Statutes, are amended, and subsections (5) and (6) of said section are renumbered as subsections (4) and (5), respectively, to read:

44.102 Court-ordered mediation.--

(3) ~~Each party involved in a court-ordered mediation proceeding has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing, communications made during such proceeding.~~ All ~~oral or~~ written communications in a mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of chapter 119 ~~and shall be confidential and inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise~~.

~~(4) There shall be no privilege and no restriction on~~

1 ~~any-disclosure-of-communications-made-confidential-in~~
2 ~~subsection-(3)-in-relation-to-disciplinary-proceedings-filed~~
3 ~~against-mediators-pursuant-to-s.-44.106-and-court-rules,-to~~
4 ~~the-extent-the-communication-is-used-for-the-purposes-of-such~~
5 ~~proceedings.-In-such-cases,-the-disclosure-of-an-otherwise~~
6 ~~privileged-communication-shall-be-used-only-for-the-internal~~
7 ~~use-of-the-body-conducting-the-investigation.-Prior-to-the~~
8 ~~release-of-any-disciplinary-files-to-the-public,-all~~
9 ~~references-to-otherwise-privileged-communications-shall-be~~
10 ~~deleted-from-the-record.-When-an-otherwise-confidential~~
11 ~~communication-is-used-in-a-mediator-disciplinary-proceeding,~~
12 ~~such-communication-shall-be-inadmissible-as-evidence-in-any~~
13 ~~subsequent-legal-proceeding.-"Subsequent-legal-proceeding"~~
14 ~~means-any-legal-proceeding-between-the-parties-to-the~~
15 ~~mediation-which-follows-the-court-ordered-mediation.~~
16 Section 2. Section 44.107, Florida Statutes, is
17 amended to read:
18 44.107 Immunity for arbitrators, ~~and~~ mediators, and
19 mediator trainees.--
20 (1) Arbitrators serving ~~An-Arbitrator-appointed~~ under
21 s. 44.103 or s. 44.104, mediators serving ~~or-a-mediator~~
22 ~~appointed~~ under s. 44.102, and trainees fulfilling the
23 mentorship requirements for certification by the Supreme Court
24 as a mediator shall have judicial immunity in the same manner
25 and to the same extent as a judge.
26 (2) A person serving as a mediator in any
27 noncourt-ordered mediation shall have immunity from liability
28 arising from the performance of that person's duties while
29 acting within the scope of the mediation function if such
30 mediation is:
31 (a) Required by statute or agency rule or order;

1 (b) Conducted under ss. 44.401-44.406 by express
2 agreement of the mediation parties; or
3 (c) Facilitated by a mediator certified by the Supreme
4 Court, unless the mediation parties expressly agree not to be
5 bound by ss. 44.401-44.406.
6 The mediator does not have immunity if he or she acts
7 in bad faith, with malicious purpose, or in a manner
8 exhibiting wanton and willful disregard of human rights,
9 safety, or property.
10 (3) A person serving ~~appointed~~ under s. 44.106 to
11 assist the Supreme Court in performing its disciplinary
12 function shall have absolute immunity from liability arising
13 from the performance of that person's duties while acting
14 within the scope of that person's appointed function.
15 Section 3. Subsection (5) of section 44.201, Florida
16 Statutes, is amended to read:
17 44.201 Citizen Dispute Settlement Centers;
18 establishment; operation; confidentiality.--
19 (5) Any information relating to a dispute obtained by
20 any person while performing any duties for the center from the
21 files, reports, case summaries, mediator's notes, or other
22 communications or materials~~,--oral-or-written,~~ is ~~confidential~~
23 ~~and~~ exempt from the provisions of s. 119.07(1) ~~and-shall-not~~
24 ~~be-publicly-disclosed-without-the-written-consent-of-all~~
25 ~~parties-to-the-dispute.--Any-research-or-evaluation-effort~~
26 ~~directed-at-assessing-program-activities-or-performance-shall~~
27 ~~protect-the-confidentiality-of-such-information.--Each-party-to~~
28 ~~a-Citizen-Dispute-Settlement-Center-proceeding-has-a-privilege~~
29 ~~during-and-after-those-proceedings-to-refuse-to-disclose-and~~
30 ~~to-prevent-another-from-disclosing-communications-made-during~~
31 ~~such-proceedings,--whether-or-not-the-dispute-was-successfully~~

1 ~~resolved.--This subsection shall not be construed to prevent or~~
2 ~~inhibit the discovery or admissibility of any information~~
3 ~~which is otherwise subject to discovery or which is admissible~~
4 ~~under applicable law or rules of court, except that any~~
5 ~~conduct or statements made during such mediation sessions or~~
6 ~~in negotiations concerning such sessions shall be inadmissible~~
7 ~~in any judicial proceeding.~~
8 Section 4. Sections 44.401, 44.402, 44.403, 44.404,
9 44.405, and 44.406, Florida Statutes, are created to read:
10 44.401 Mediation Confidentiality and Privilege
11 Act.--Sections 44.401-44.406 may be known by the popular name
12 the "Mediation Confidentiality and Privilege Act."
13 44.402 Scope.--
14 (1) Except as otherwise provided, ss. 44.401-44.406
15 apply to any mediation:
16 (a) Required by statute, court rule, agency rule or
17 order, oral or written case-specific court order, or court
18 administrative order;
19 (b) Conducted under ss. 44.401-44.406 by express
20 agreement of the mediation parties; or
21 (c) Facilitated by a mediator certified by the Supreme
22 Court, unless the mediation parties expressly agree not to be
23 bound by ss. 44.401-44.406.
24 (2) Notwithstanding any other provision, the mediation
25 parties may agree in writing that any or all of s. 44.405(1),
26 s. 44.405(2), or s. 44.406 will not apply to all or part of a
27 mediation proceeding.
28 44.403 Definitions.--As used in ss. 44.401-44.406, the
29 term:
30 (1) "Mediation communication" means an oral or written
31 statement, or nonverbal conduct intended to make an assertion,

1 by or to a mediation participant made during the course of a
2 mediation, or prior to mediation if made in furtherance of a
3 mediation. The commission of a crime during a mediation is not
4 a mediation communication.
5 (2) "Mediation participant" means a mediation party or
6 a person who attends a mediation in person or by telephone,
7 video conference, or other electronic means.
8 (3) "Mediation party" or "party" means a person
9 participating directly, or through a designated
10 representative, in a mediation and a person who:
11 (a) Is a named party;
12 (b) Is a real party in interest; or
13 (c) Would be a named party or real party in interest
14 if an action relating to the subject matter of the mediation
15 were brought in a court of law.
16 (4) "Mediator" means a neutral, impartial third person
17 who facilitates the mediation process. The mediator's role is
18 to reduce obstacles to communication, assist in identifying
19 issues, explore alternatives, and otherwise facilitate
20 voluntary agreements to resolve disputes, without prescribing
21 what the resolution must be.
22 (5) "Subsequent proceeding" means an adjudicative
23 process that follows a mediation, including related discovery.
24 44.404 Mediation; duration.--
25 (1) A court-ordered mediation begins when an order is
26 issued by the court and ends when:
27 (a) A partial or complete settlement agreement,
28 intended to resolve the dispute and end the mediation, is
29 signed by the parties and, if required by law, approved by the
30 court;
31 (b) The mediator declares an impasse by reporting to

1 the court or the parties the lack of an agreement;
2 (c) The mediation is terminated by court order, court
3 rule, or applicable law; or
4 (d) The mediation is terminated, after party
5 compliance with the court order to appear at mediation, by:
6 1. Agreement of the parties; or
7 2. One party giving written notice to all other
8 parties in a multiparty mediation that the one party is
9 terminating its participation in the mediation. Under this
10 circumstance, the termination is effective only for the
11 withdrawing party.
12 (2) In all other mediations, the mediation begins when
13 the parties agree to mediate or as required by agency rule,
14 agency order, or statute, whichever occurs earlier, and ends
15 when:
16 (a) A partial or complete settlement agreement,
17 intended to resolve the dispute and end the mediation, is
18 signed by the parties and, if required by law, approved by the
19 court;
20 (b) The mediator declares an impasse to the parties;
21 (c) The mediation is terminated by court order, court
22 rule, or applicable law; or
23 (d) The mediation is terminated by:
24 1. Agreement of the parties; or
25 2. One party giving notice to all other parties in a
26 multiparty mediation that the one party is terminating its
27 participation in the mediation. Under this circumstance, the
28 termination is effective only for the withdrawing party.
29 44.405 Confidentiality; privilege; exceptions.--
30 (1) Except as provided in this section, all mediation
31 communications shall be confidential. A mediation participant

1 shall not disclose a mediation communication to a person other
2 than another mediation participant or a participant's counsel.
3 A violation of this section may be remedied as provided by s.
4 44.406. If the mediation is court ordered, a violation of this
5 section may also subject the mediation participant to
6 sanctions by the court, including, but not limited to, costs,
7 attorney's fees, and mediator's fees.
8 (2) A mediation party has a privilege to refuse to
9 testify and to prevent any other person from testifying in a
10 subsequent proceeding regarding mediation communications.
11 (3) If, in a mediation involving more than two
12 parties, a party gives written notice to the other parties
13 that the party is terminating its participation in the
14 mediation, the party giving notice shall have a privilege to
15 refuse to testify and to prevent any other person from
16 testifying in a subsequent proceeding regarding only those
17 mediation communications that occurred prior to the delivery
18 of the written notice of termination of mediation to the other
19 parties.
20 (4)(a) Notwithstanding subsections (1) and (2), there
21 is no confidentiality or privilege attached to a signed
22 written agreement reached during a mediation, unless the
23 parties agree otherwise, or for any mediation communication:
24 1. For which the confidentiality or privilege against
25 disclosure has been waived by all parties;
26 2. That is willfully used to plan a crime, commit or
27 attempt to commit a crime, conceal ongoing criminal activity,
28 or threaten violence;
29 3. That requires a mandatory report pursuant to
30 chapter 39 or chapter 415 solely for the purpose of making the
31 mandatory report to the entity requiring the report;

1 4. Offered to report, prove, or disprove professional
2 malpractice occurring during the mediation, solely for the
3 purpose of the professional malpractice proceeding;
4 5. Offered for the limited purpose of establishing or
5 refuting legally recognized grounds for voiding or reforming a
6 settlement agreement reached during a mediation; or
7 6. Offered to report, prove, or disprove professional
8 misconduct occurring during the mediation, solely for the
9 internal use of the body conducting the investigation of the
10 conduct.
11 (b) A mediation communication disclosed under any
12 provision of subparagraphs (4)(a)3., (4)(a)4., (4)(a)5., or
13 (4)(a)6. remains confidential and is not discoverable or
14 admissible for any other purpose, unless otherwise permitted
15 by this section.
16 (5) Information that is otherwise admissible or
17 subject to discovery does not become inadmissible or protected
18 from discovery by reason of its disclosure or use in
19 mediation.
20 (6) A party that discloses or makes a representation
21 about a privileged mediation communication waives that
22 privilege, but only to the extent necessary for the other
23 party to respond to the disclosure or representation.
24 44.406 Confidentiality; civil remedies.--
25 (1) Any mediation participant who knowingly and
26 willfully discloses a mediation communication in violation of
27 s. 44.405 shall, upon application by any party to a court of
28 competent jurisdiction, be subject to remedies, including:
29 (a) Equitable relief.
30 (b) Compensatory damages.
31 (c) Attorney's fees, mediator's fees, and costs

1 incurred in the mediation proceeding.
2 (d) Reasonable attorney's fees and costs incurred in
3 the application for remedies under this section.
4 (2) Notwithstanding any other law, an application for
5 relief filed under this section may not be commenced later
6 than 2 years after the date on which the party had a
7 reasonable opportunity to discover the breach of
8 confidentiality, but in no case more than 4 years after the
9 date of the breach.
10 (3) A mediation participant shall not be subject to a
11 civil action under this section for lawful compliance with the
12 provisions of s. 119.07.
13 Section 5. Subsection (3) of section 61.183, Florida
14 Statutes, is amended to read:
15 61.183 Mediation of certain contested issues.--
16 (3) Any information from the files, reports, case
17 summaries, mediator's notes, or other communications or
18 materials~~,--oral-or-written,~~ relating to a mediation proceeding
19 pursuant to this section obtained by any person performing
20 mediation duties is ~~confidential-and~~ exempt from the
21 provisions of s. 119.07(1) ~~and-may-not-be-disclosed-without~~
22 ~~the-written-consent-of-all-parties-to-the-proceeding.--Any~~
23 ~~research-or-evaluation-effort-directed-at-assessing-program~~
24 ~~activities-or-performance-must-protect-the-confidentiality-of~~
25 ~~such-information.--Each-party-to-a-mediation-proceeding-has-a~~
26 ~~privilege-during-and-after-the-proceeding-to-refuse-to~~
27 ~~disclose-and-to-prevent-another-from-disclosing-communications~~
28 ~~made-during-the-proceeding,--whether-or-not-the-contested~~
29 ~~issues-are-successfully-resolved.--This-subsection-shall-not-be~~
30 ~~construed-to-prevent-or-inhibit-the-discovery-or-admissibility~~
31 ~~of-any-information-that-is-otherwise-subject-to-discovery-or~~

1 ~~that-is-admissible-under-applicable-law-or-rules-of-court,~~
2 ~~except-that-any-conduct-or-statements-made-during-a-mediation~~
3 ~~proceeding-or-in-negotiations-concerning-the-proceeding-are~~
4 ~~inadmissible-in-any-judicial-proceeding.~~
5 Section 6. This act shall take effect July 1, 2004.
6
7
8 ========== T I T L E A M E N D M E N T ==========
9 And the title is amended as follows:
10 Delete everything before the enacting clause
11
12 and insert:
13 A bill to be entitled
14 An act relating to mediation alternatives to
15 judicial action; amending s. 44.102, F.S.;
16 deleting language regarding the disclosure of
17 specified information made during court-ordered
18 mediation; amending s. 44.107, F.S.; providing
19 immunity from liability for trainees in the
20 Supreme Court's mentorship program; providing
21 immunity from liability for persons serving as
22 mediators in specified circumstances; amending
23 s. 44.201, F.S.; deleting language regarding
24 disclosure of specified information held by
25 Citizen Dispute Resolution Centers; creating
26 ss. 44.401-44.406, F.S.; providing a popular
27 name; providing for the creation of the
28 Mediation Confidentiality and Privilege Act;
29 providing for application; providing
30 definitions; specifying when a mediation begins
31 and ends; providing for confidentiality of

mediation communications; providing for a privilege; providing exceptions; providing for civil remedies; providing a statute of limitation; providing an exception; amending s. 61.183, F.S.; deleting language regarding disclosure of specified information made during cases; providing an effective date.

2

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2054

SPONSOR: Criminal Justice Committee and Senator Campbell

SUBJECT: Sexual Offenders and Predators

DATE: April 15, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable/CS
2.	Cibula TCC	Lang	JU	
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

This bill amends laws requiring registration, and providing for public and community notification, of sexual predators and offenders to require that a person civilly committed as a sexually violent predator be designated as a sexual predator for registration and notification purposes by the court involved in the civil commitment.

The bill also provides registration requirements for sexual predators and sexual offenders who vacate a permanent residence and do not establish or maintain another residence. It is a second degree felony for a sexual predator or sexual offender to fail to report that he or she remains at a residence after he or she has reported vacating the residence.

The bill also amends the definition of "conviction" under the registration statutes to indicate that a conviction includes an entry of a guilty plea or a plea of nolo contendere resulting in a sanction.

The bill also indicates where venue may occur for the purpose of prosecuting violations of the registration laws, specifies what constitutes actual notice of the duty to register, requires registration of sexual predators or sexual offenders who are charged with failure to register and who assert a lack of notice of the duty to register, and precludes the defense of lack of notice of duty to register on a subsequent charge of failure to register. Additionally, the bill provides that registration following arrest, service, or arraignment is not a defense and does not relieve the sexual predator or sexual offender from criminal liability for failure to register.

This bill substantially amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., and reenacts ss. 39.806(1)(d), 63.089(4)(b), 63.092(3), 775.13(5), 775.24(2), 775.25, 775.261(3)(b), 921.0022(3)(f), 944.608(7), 943.0436(2), 944.609(4), and 947.1405(2)(c), F.S.

II. Present Situation:

Registration of Sexual Predators and Sexual Offenders

Florida's Sexual Predators Act, s. 775.21, F.S., provides that an offender shall be designated as a "sexual predator," if the defendant's current felony offense was committed on or after October 1, 1993, and the offense is any of the offenses specified in that section. The court sentencing the offender for an offense applicable to the sexual predator designation makes the designation subject to statutory procedures for making a written finding. There are also provisions for a court to designate as a sexual predator those persons who were administratively designated as sexual predators under former law or who meet the sexual predator criteria but have not been designated by a court as a sexual predator.

If the sexual predator is in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is in the custody of a private correctional facility, the predator must register with the DOC and provide specified information. Private correctional facilities are also governed by these requirements.

If the sexual predator is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at an FDLE office, or at the sheriff's office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver's license office of the DHSMV and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or another sexual offender designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

Extensive procedures are provided for providing notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. The law directs how information collected by the DOC, the DHSMV, and others, is to be provided to FDLE. Extensive procedures are also provided for verification of sexual predator's addresses. *See* ss. 775.21, 943.043, 943.0435, 944.606, and 944.607, F.S.

A sexual predator's failure to comply with registration requirements is a third degree felony. s. 775.21, F.S.

Section 943.0435, F.S., requires a "sexual offender" (a person who has been convicted of any specified offense and who has been released on or after October 1, 1997, from the sanction imposed for any conviction of a specified offense) to report and register in a manner similar to the registration of a sexual predator under s. 775.21, F.S. There are also somewhat similar registration requirements for sexual offenders under the custody or control of the DOC, or under its supervision, or in custody of a private correctional facility. s. 944.607, F.S.
Failure of a sexual offender (under s. 943.0435, F.S., or s. 944.607, F.S.) to comply with the registration requirements is a third degree felony.

Section 944.606, F.S., requires that the DOC provide certain information to the FDLE and others, as specified, regarding any sexual offender being released from incarceration.

Civil Commitment of Sexual Violent Predators

Part V of ch. 394, F.S., provides that sexually violent predators may be subject to involuntary civil commitment. A sexually violent predator is a person convicted of a sexually violent offense who suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment. s. 394.912, F.S. Procedures for identifying persons subject to the sexually violent predator criteria and civilly committing a person identified as a sexually violent predator are provided in ss. 394.913, F.S., et seq.

III. Effect of Proposed Changes:

Civil Commitment

The bill amends s. 775.21, F.S., to require that a person civilly committed as a sexually violent predator be designated as a sexual predator for registration purposes by the court involved in the civil commitment.

Duty to Register

The bill amends s. 775.21 and s. 943.0435, F.S., to require sexual predators and sexual offenders who vacate a permanent residence and do not establish or maintain another residence to report to FDLE or the local sheriff where the person is located within 48 hours after vacating the residence and provide the date the residence was vacated, update registration information, and provide an address where the person will be during the time when no residence is established or maintained.

If the sexual predator or sexual offender remains at a permanent residence after having reported vacating the premises, he or she has to return to FDLE or the sheriff within 48 hours after the date he or she indicated the residence would be vacated and report that fact. Failure to make this report is a second degree felony. The offense is unranked so it defaults to a Level 4 ranking, which means the court could impose a sentence of imprisonment but is not required to do so.

Conviction Defined

The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to modify the definition of "conviction" under the registration statutes to indicate that conviction includes an entry of a guilty plea or nolo contendere resulting in a sanction.

Venue

The bill amends ss. 775.21, 943.0435, and 944.607, F.S., to indicate where venue may occur for the purpose of prosecuting violations of the registration laws. Venue for the prosecution of a sexual predator or sexual offender for failure to register is in the county in which the person should have registered, the county in which the person was last registered, the county in which the person was convicted or designated as a sexual predator or offender.

Notice

The bill specifies in ss. 775.21(10)(e), 943.0435(9)(c), and 944.607(10)(c), F.S., that an arrest, service of an information or complaint, or arraignment for failure to register constitutes actual notice of the duty to register. The bill further provides in the paragraphs cited above that a sexual predator or offender who is charged with the crime of failure to register who asserts a lack of notice of the duty to register must immediately register or face a subsequent arrest for failure to register. In a subsequent charge for failure to register, the bill provides that a defense of lack of notice of the duty to register may not be asserted. In the next paragraphs, ss. 775.21(10)(f), 943.0435(9)(d), and 944.607(10)(d), F.S., the bill states:

> Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

It is unclear to what arrest or which arrests "such arrest" refers. "Such arrest" could potentially refer to the first arrest in which a person is notified of a duty to register, the second arrest for failure to register after a person has been notified of the duty to register, or both arrests. As such, the bill does not clearly indicate whether a lack of notice of the duty to register is a defense against a charge of failure to register.

Reenactment

The bill also reenacts ss. 39.806(1)(d), 63.089(4)(b), 63.092(3), 775.13(5), 775.24(2), 775.25, 775.261(3)(b), 921.0022(3)(f), 944.608(7), 943.0436(2), 944.609(4), and 947.1405(2)(c), F.S., for the purpose of incorporating the amendments to statutes amended by the bill in reference to those statutes in the reenacted statutes or statutory provisions.

Effective Date

The bill provides an effective date of July 1, 2004.

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:

In *Lambert v. State*, 355 U.S. 225 (1957), the U.S. Supreme Court held that the Due Process Clause of the 14th Amendment to the U.S. Constitution requires

> actual knowledge and subsequent failure to comply are necessary before a conviction under [an ordinance requiring the registration of felons] can stand.[1]

Additionally, in *State v. Giorgetti*, 2004 WL 396212 (Fla. 2004),[2] the Florida Supreme Court has read into ss. 943.0435 and 944.607(9), F.S., that knowledge of the duty to register is required "before a conviction under the sexual offender registration statutes can stand."

The bill specifies in ss. 775.21(10)(e), 943.0435(9)(c), and 944.607(10)(c), F.S., that an arrest, service of an information or complaint, or arraignment for failure to register constitutes actual notice of the duty to register. The bill further provides in the paragraphs cited above that a sexual predator or offender who is charged with the crime of failure to register who asserts a lack of notice of the duty to register must immediately register or face a subsequent arrest for failure to register. In a subsequent charge for failure to register, the bill provides that a defense of lack of notice of the duty to register may not be asserted. In the next paragraphs, ss. 775.21(10)(f), 943.0435(9)(d), and 944.607(10)(d), F.S., the bill states:

> Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

It is unclear to what arrest or which arrests "such arrest" refers. "Such arrest" could potentially refer to the first arrest in which a person is notified of a duty to register, the

[1] *Lambert v. State*, 355 U.S. 225, 229 (1957).
[2] The opinion provides that it has not been released for publication in the permanent law reports and may be revised or withdrawn until it is released.

second arrest for failure to register after a person has been notified of the duty to register, or both arrests. As such, the bill does not clearly indicate whether a lack of notice of the duty to register is a defense against a charge of failure to register.

If the bill does not permit lack of knowledge as a defense to the first arrest for the failure of a sexual predator or offender to register, the bill is likely unconstitutional under *Lambert.* To avoid constitutional problems, the Legislature may wish to amend ss. 775.21(10)(f), 943.0435(9)(d), and 944.607(10)(d), F.S., to state:

> Registration following a second charge for failure to register is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An estimate of the impact, if any, on FDLE and DOC of the provisions of the bill was not available at the time this analysis was completed.

VI. Technical Deficiencies:

See the Other Constitutional Issues section of this analysis.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 2054

Amendment No. ___ 230560

CHAMBER ACTION

Senate | House

JUDICIARY

DATE: 4/16/04

TIME: 10:00AM

Senator Campbell moved the following amendment:

Senate Amendment

On page 26, line 29,

on page 31, line 1, and

on page 34, line 15, delete the word "such"

and insert: a subsequent

3

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 682

SPONSOR: Transportation Committee, Senators Argenziano and Lynn

SUBJECT: Highway Safety

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/CS
2.	Brown CMB	Lang AFL	JU	
3.			FT	
4.			ATD	
5.			AP	
6.				

I. Summary:

The bill amends s. 318.19, F.S., to require a mandatory hearing when a person commits an infraction resulting in a crash causing any bodily injury or death or runs a red light resulting in a crash. Under current law, mandatory hearings occur only if a traffic infraction results in a crash causing death or serious bodily injury, and the designated hearing official is permitted to impose enhanced penalties. Under the bill:

- If the infraction results in a crash causing death, or any bodily injury, and at the hearing the person is found to have committed the infraction, the designated official must impose an enhanced civil penalty in addition to any other penalties.
- If a person runs a red light and a crash occurs, then a mandatory hearing is required, and the designated official presiding over the hearing is authorized to impose a civil penalty of up to $500, and 4 points are assessed against his or her license.
- If a person runs a red light and no crash occurs, the person is subject to a $125 fine, and 4 points are assessed against his or her driver's license.
- If a person commits the offense of running a red light a second time within 12 months after the first violation, he or she must attend a driver improvement course to maintain driving privileges.

The bill will raise an estimated $19.2 million in FY 2004-05, $32.4 million in FY 2005-06, and $48.8 million in FY 2006-07, of which $3.3 million will be deposited into the Trauma Services Trust fund in the first year from mandatory penalties for required hearings, $16.4 million in the second year, and $32.9 million in the third year. One million dollars will be distributed to

ABATE of Florida, Inc., annually for motorcycle safety awareness, education, and research programs related to accident prevention. It is estimated that $16.9 million will be generated annually as a result of increasing the civil penalty for a red light violation from $60 to $125, and deposited into the Trauma Services Trust Fund. Revenues generated by this bill deposited into the Trauma Services Trust Fund will be used to provide support and incentives for the establishment of additional states-sponsored trauma centers.

The bill is also expected to increase the workload for designated hearing officials, and to require law enforcement officers to spend more time attending hearings.

This bill substantially amends ss. 316.075, 318.14, 318.18, 318.19, 318.21, 322.0261 and 322.27; and creates s. 395.4036 of the Florida Statutes.

II. Present Situation:

Mandatory Hearings
Section 318.19, F.S., requires a mandatory hearing following a citation for certain civil traffic infractions. These infractions are:

- Any infraction resulting in a crash that causes the death of another;
- Any infraction resulting in a crash that causes "serious bodily injury" to another;
- Passing a school bus on the door side while the bus displays a stop signal; and
- Certain infractions concerning loads on vehicles.

Any person who commits one of these infractions may not dispose of the matter by submitting payment of the fine by mail or by making the driver improvement course election. Instead, the person committing the infraction must appear before the designated official at a scheduled hearing.

Persons who have elected to appear at a hearing, or who are required to do so, are considered as having waived the right to the regular civil penalty provisions for traffic infractions. Instead, upon a finding that the person committed the charged traffic infraction, the official conducting the hearing may impose a civil penalty up to $500. If the infraction involves unlawful speed in a school or construction zone, or involves death, the official may impose a civil penalty up to $1,000. These civil penalty amounts are authorized, but they are not mandatory. The official conducting the hearing has discretion in choosing how much of a penalty, if any, to impose against a person found to have committed the infraction. See s. 318.14(5), F.S.

Under these provisions, a person committing an infraction resulting in the death of another person is required to appear before a designated official and may be subject to a $1,000 fine. A person committing an infraction that results in the "serious bodily injury" of another is also required to appear before a designated official, but may be subject to a $500 fine. The increased penalty is not mandatory. A person committing an infraction resulting in an injury to a person that is not considered "serious bodily injury", is not subject to a mandatory hearing, and is not subject to enhanced penalties. See ss. 318.14(5) and 318.19, F.S.

"Serious bodily injury" is defined as an injury which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ. See s. 316.1933(1), F.S. The precise point at which bodily injury becomes serious is unclear as the foregoing definition is open to interpretation. According to the Department of Highway Safety and Motor Vehicles (DHSMV), a law enforcement officer issuing a citation makes the determination (subject to judicial review) whether a bodily injury is serious and, therefore, whether a mandatory hearing is required. Furthermore, DHSMV is authorized to suspend a driver's license in the event that a person violates any traffic law that results in a crash causing death or personal injury to another or property damage in excess of $500. According to DHSMV, upon a review of its records, the department suspends the driver's license of any person meeting these criteria who are subject to a mandatory hearing. A suspension is lifted if at the hearing the designated official finds the accused not guilty of the offense or infraction.

Red Light Running
Section 316.075(1)(c)1, F.S., prohibits traffic from entering an intersection when facing a steady red traffic signal (red light running). Violation of this prohibition is a moving traffic infraction punishable by a $60 civil fine. If a red light runner causes a crash or an injury, that person may be subject to a license suspension or an enhanced penalty, under the circumstances described above. However, if the violation results in a crash that does not cause death or serious bodily injury, the driver is not subject to enhanced penalties. Even in cases involving death or serious bodily injury, imposition of the authorized enhanced penalty is a matter of the designated official's discretion.

Driver Improvement Course
Section 322.0261, F.S., provides DHSMV to require operators convicted of, or who pled nolo contendere to, a traffic offense involving: (1) a crash in which a death or bodily injury requires transport to a medical facility; or (2) a second crash by the same operator within the previous 2-year period which involves property damage in an apparent amount of at least $500, to attend a departmentally approved driver improvement course in order to maintain driving privileges. If the operator fails to complete the course within 90 days of receiving notice from DHSMV, the operator's driver's license must be cancelled until the course is successfully completed.

Points
Section 322.27, F.S., establishes a system of points that are assessed against a driver's license when a person is convicted of violating certain motor vehicle laws. The point system is used for the evaluation and determination of the continuing qualification of any person to operate a motor vehicle. The DHSMV is authorized to suspend the license of any person upon a showing of its records or other good and sufficient evidence the licensee has been convicted of violation of motor vehicle laws amounting to 12 or more points as determined by the point system. The suspension will be for a period of not more than one year. The statute provides the following provisions:

- When a licensee accumulates 12 points within a 12-month period, the period of suspension will be for not more than 30 days.

- When a licensee accumulates 18 points within an 18-month period, the suspension will be for a period of not more than 3 months.

- When a licensee accumulates 24 points within a 36-month period, the suspension will be for a period of not more than 1 year.

- The point system has, as its basic element, a graduated scale of points assigning relative values to convictions of the following violations:

    1. Reckless driving—4 points.
    2. Leaving the scene of a crash resulting in property damage of more than $50—6 points.
    3. Unlawful speed resulting in a crash—6 points.
    4. Passing a stopped school bus—4 points.
    5. Unlawful speed:

        a. Not in excess of 15 miles per hour of lawful or posted speed—3 points.
        b. In excess of 15 miles per hour of lawful or posted speed—4 points.

    6. All other moving violations (including parking on a highway outside the limits of a municipality)—3 points.
    7. Any moving violation, excluding unlawful speed, resulting in a crash—4 points.
    8. Dumping litter in an amount exceeding 15 pounds, which involves the use of a motor vehicle—3 points.
    9. Driving during restricted hours—3 points.
    10. Violation of curfew—3 points.
    11. Open container as an operator—3 points.
    12. Child restraint violation—3 points.

III. Effect of Proposed Changes:

The bill amends s. 318.19, F.S., to require a mandatory hearing when a person commits an infraction resulting in a crash causing any bodily injury or death or runs a red light resulting in a crash.

- If the infraction results in a crash causing death, and at the hearing the person is found to have committed the infraction, the designated official must impose a civil penalty of $1,000 in addition to any other penalties.
- If the infraction results in a crash causing serious bodily injury, and at the hearing the person is found to have committed the infraction, the designated official must impose a civil penalty of $500 in addition to any other penalties.
- If the infraction results in a crash causing any bodily injury other than that defined as serious, and at the hearing the person is found to have committed the infraction, the designated official must impose a civil penalty of $200 in addition to any other penalties.
- If a person runs a red light, and a crash occurs a mandatory hearing is required, and the designated official presiding over the hearing is authorized to impose a civil penalty of up to $500, and 4 points is assessed against his or her license.

- If a person runs a red light and no crash occurs, the person is subject to a $125 fine, and 4 points assessed against his or her driver's license.
- If a person commits the offense of running a red light a second time within 12 months after the first violation, he or she must attend a driver improvement course to maintain driving privileges.

Moneys collected from imposition of mandatory civil penalties provided in this bill and penalties for violating traffic control signal devices that are in addition to current penalty amounts are deposited into the Trauma Services Trust Fund, however, the first $1 million collected annually from the mandatory civil penalties is distributed to ABATE of Florida, Inc., to support motorcycle safety awareness, education, and research programs. ABATE of Florida, Inc., is made subject to audit by DHSMV and the Auditor General.

Moneys deposited into the Trauma Services Trust Fund will be distributed in the following manner by the Florida Department of Health (DOH), at its discretion:

- Each existing trauma center and each new center shall receive a one-time fixed payment toward offsetting startup costs.
- Equal payments will be made to all current verified trauma centers toward helping each center meet minimum trauma preparedness standards;
- Proportionate distribution of funds to trauma centers to pay for uncompensated trauma care; and
- Any funds remaining are deposited into the Nursing Student Loan Forgiveness Trust Fund to be used equally for the DOH's Nursing Student Loan Forgiveness Program and the Nursing Scholarship Program.

If they are not subject to Florida's Single Audit Act, trauma centers receiving these moneys must maintain financial records and submit an annual attestation to DOH, under penalties of perjury, that the funds are used in accordance with law. Trauma centers that are subject to the Single Audit Act must submit an annual audit report to the Auditor General.

The following discussion represents a section-by-section analysis of the bill:

Section 1 amends s. 316.075, F.S., to provide that a red light violation resulting in a crash subjects the violator to a mandatory hearing.

Section 2 amends s. 318.14, F.S., to provide mandatory penalties for traffic infractions resulting in crashes that cause bodily injury or death, and to provide for distribution to ABATE of Florida, Inc., and to the Trauma Series Trust Fund.

Section 3 amends s. 318.18, F.S., to increase the penalty for a red light violation from $60 to $125, and to provide for distribution of the additional amount into the Trauma Services Trust Fund.

Section 4 amends s. 318.19, F.S., to require a mandatory hearing for an infraction resulting in a crash that causes any bodily injury other than serious bodily injury, or for a red light violation.

Section 5 amends s. 318.21, F.S., to provide for distribution of mandatory civil penalties for traffic infractions resulting in crashes that cause bodily injury or death, and for distribution of fines for red light violations.

Section 6 amends s. 322.0261, F.S., to require driver improvement school attendance for persons violating the red light law twice within a 12-month period. Failure to complete the requirement results in cancellation of driving privileges.

Section 7 amends s. 322.27, F.S., to provide that violation of a traffic control device is assigned 4 points in the driver's licensing point system.

Section 8 creates s. 395.4036, F.S., to provide for the distribution by DOH of moneys deposited into the Trauma Services Trust Fund pursuant to ss. 318.18(3) and 318.14(5), F.S., and into the Nursing Student Loan Forgiveness Trust Fund, and to provide for audits and attestations of trauma centers receiving the distributions.

Section 9 provides the act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Mandatory civil fines will be imposed, in addition to other penalties, on any person found to have committed a traffic infraction resulting in bodily injury or death.

The fine for running a red light would be increased from $60 to $125. Persons running a red light would have four points assessed on their driving record.

Persons found guilty of a second violation of running a red light within twelve months would be required to attend a driver improvement school to retain driving privileges.

From the moneys collected from fines imposed as a result of mandatory hearings, $1 million annually will be distributed to ABATE of Florida, Inc., for motorcycle safety awareness, education, and research programs relating to accident prevention.

C. Government Sector Impact:

All fiscal estimates have been provided by DHSMV.

	FY 2004-05	FY 2005-06	FY 2006-07
1. Revenues:			
Increase in the penalty for red light violations from $60 to $125: Sections 3 and 5.			
Trauma Services Trust Fund	$16,926,000	$16,926,000	$16,926,000
Mandatory penalties for required hearings: Sections 1, 2, 4 and 5.			
Trauma Services Trust Fund	$ 3,285,160	$16,425,800	$32,851,600
TOTAL IMPACT:	$20,211,160	$33,351,800	$49,777,600
TOTAL Local Impact: Disbursement to ABATE of Florida, Inc.	$ 1,000,000	$ 1,000,000	$ 1,000,000
TOTAL Trauma Services Trust Fund:	$19,211,160	$32,351,800	$48,777,600

Methodology

Estimated Trauma Services Trust Fund increases for red light violations assumes 260,400 offenses occurring resulting in payment of a $125 fine, $65 of which is deposited into the Trust Fund. In addition, the 2002 Florida Traffic Crash Statistics Report reflected 133,508 crashes occurring with minor injuries, 9,484 serious injury crashes, and 2,816 crashes which resulted in death. Revenue estimates for the mandatory hearings portion of the bill are based on these statistics and estimates which have been multiplied by the corresponding mandatory penalty imposed by the bill. Revenue estimates have been adjusted to account for behavioral changes and potential instances of non-payment by violators subject to the provisions in the bill.

Local Government Impacts
The workload and revenue impact to the courts from requiring a mandatory court appearance for persons violating s. 316.075(1)(c)1, F.S., which results in a crash is unknown. (There were, however, 133,508 citations issued in 2002 for running a red light resulting in bodily injury other than death or serious bodily injury.) In addition, the bill may have a positive fiscal impact on local governments to the extent some funds may be directed to trauma centers which receive local government funding.

State Impacts
It is estimated that implementation of this bill will generate $19.2 million in FY 2004-05, $32.4 million in FY 2005-06, and $48.8 million in FY 2006-07, of which $3.3 million will be deposited into the Trauma Services Trust fund in the first year from mandatory penalties for required hearings, $16.4 million in the second year, and $32.9 million in the third year. One million dollars will be distributed to ABATE of Florida, Inc., annually. It is estimated that $16.9 million will be generated annually as a result of increasing the civil penalty for a red light violation from $60 to $125.

Implementation of this bill will also require programming modifications to the Florida Driver Information System which will be absorbed within existing resources of DHSMV.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2306

SPONSOR: Senator Lynn

SUBJECT: Radiologists Performing Mammograms

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable
2.	Brown CMUB	Lang	JU	
3.				
4.				
5.				
6.				

I. Summary:

The bill makes a Florida-licensed radiologist immune from liability in tort for any actions arising out of his or her duties relating to mammograms, except for instances in which the radiologist is found to be grossly negligent. The section is repealed July 1, 2006, unless reviewed and reenacted by the Legislature.

This bill creates an undesignated section of law.

II. Present Situation:

Radiology

A radiologist is a licensed medical or osteopathic physician who is trained to diagnose diseases by obtaining and interpreting medical images through the use of imaging techniques such as X-rays, ultrasound, computed tomography, and magnetic resonance imaging. A radiologist must graduate from an accredited medical school, pass a national licensing examination, and complete a residency of at least 4 years of graduate medical education. Such health care practitioners are usually board-certified to practice in the field of radiology by the American Board of Radiology or the American Osteopathic Board of Radiology. Chapter 458, F.S., governs the practice of medicine and chapter 459, F.S., governs the practice of osteopathic medicine. A radiologic technologist is trained to operate radiographic equipment to produce images. The radiologic technologist may explain the imaging procedure to the patient, and assist in positioning the patient for imaging specific areas of the patient's body as prescribed by the referring physician. Radiologic technologists are licensed under part IV, chapter 468, F.S., by the Department of Health (DOH).

Mammography

Mammography is an imaging technique that uses an x-ray to give a picture of the internal structure of the breast. Mammograms are used to screen for and diagnose breast problems including cancer. In Florida, 66.3 percent of women 40 years of age and older have had mammograms within the past year.[1]

According to the American Cancer Society (ACS), mammography detects approximately 90 percent of the breast cancers in women without symptoms. Breast cancer accounts for nearly one of every three cancers diagnosed in women in the United States. For 2004, the ACS estimated that 215,990 new cases of invasive breast cancer will be diagnosed among women, 59,390 additional cases of *in situ* breast cancer will be diagnosed in women and approximately 1,450 cases of breast cancer will be diagnosed in men in the United States. About 40,110 women and 470 men are expected to die from breast cancer in 2004.

Female breast cancer death rates decreased by 2.3 percent annually between 1990 and 2000. Survival of breast cancer is attributable to several factors including early detection and new methods of treatment.

Recommendations for the age and frequency at which women should receive mammograms have changed over time. The U.S. Preventive Services Task Force recommends mammography screening every one to two years after age 40. The ACS recommends annual mammograms for women aged 40 and older.

The U.S. Congress enacted the Mammography Quality Standards Act of 1992[2] to ensure that mammography is safe and reliable and that breast cancer is detected in its most treatable stages. The Act requires all mammography facilities to meet stringent quality standards, be accredited by an accreditation body that has been approved by the U.S. Food and Drug Administration, and be inspected annually.

Recent debate has emerged over the efficacy of mammogram screening following publication of an article in *The Lancet* in 2000, in which researchers Peter Gotzsche and Ole Olsen reported that their review of eight mammography trials found bias in six of the trials and that the two unbiased trials showed no effect of screening on breast cancer mortality.[3] The publication of the article prompted considerable comment from researchers and policy leaders—some questioning recommendations for mammography screening, others insisting that mammograms save lives. Both the U.S. Department of Health and Human Services and the American Cancer Society repeated their support of routine mammography screening for women over 40.

Access to mammogram screening has been an issue for several years. There is a dispute over which specific factors cause decreased access to such screening. Arguments allege that fluctuations in access to mammogram screening may be linked to reimbursement rates from insurers and other third party payors, changes in the supply of health care practitioners

[1] Breast Cancer Facts and Figures 2003-2004, American Cancer Society, 2003.
[2] See Pub. L. No. 102-539, 106 Stat. 3547 (42 U.S.C. §§ 201) approved on October 27 1992.
[3] Gotzsche, Peter, and Olsen, Ole. "Is screening for breast cancer with mammography justifiable?" *Lancet*, Vol. 355, Issue 9198. 2000.

performing mammograms or reading mammograms, increasing costs of malpractice insurance and fear of lawsuits on the part of radiologists, and education of individuals in need of such screening.

Medical Malpractice Tort Reform

Chapter 2003-416, Laws of Florida, was adopted last year as part of comprehensive medical malpractice tort reform. The legislation revised laws affecting medical incidents in the areas of patient safety and improved quality of health care, insurance regulation, litigation, and the Florida Birth-Related Neurological Injury Compensation Association (NICA). Specifically, the presuit process was amended to:

- Redefine "health care provider" for those subject to presuit procedural requirements.
- Revise and enhance statutory criteria for those who may be qualified to offer presuit corroborating medical expert opinions and expert witness testimony.
- Make presuit medical expert opinions discoverable.
- Prohibit contingency fee agreements for expert witnesses.
- Require attorneys to certify that expert witnesses are not guilty of fraud or perjury.
- Require a claimant to execute a medical information release to authorize a defendant to take unsworn statements from a claimant's physician and prescribe the conditions and scope for taking these statements.
- Specify potential sanctions if parties fail to cooperate with presuit investigations.

Requirements for medical malpractice suits were revised to:

- Require claimants to provide the Agency for Health Care Administration a copy of a complaint against a hospital or ambulatory surgical center licensed under chapter 395, F.S.
- Require settlement forms to include boilerplate language regarding the implication of a decision to settle.
- Require specific itemization of damages, as part of a verdict for medical malpractice actions, to include a break-out for future losses.

Caps on noneconomic damages in an action for personal injury or wrongful death arising from medical negligence by a practitioner or nonpractitioner were revised to provide that:

- *For an injury other than a permanent vegetative state, death, or catastrophic injury,*
    - Noneconomic damages are capped at $500,000 from each practitioner defendant and $750,000 from a nonpractitioner defendant.
    - However, no more than $1 million and $1.5 million can be recovered from all practitioner defendants and all nonpractitioner defendants, respectively, regardless of the number of claimants.
- *For catastrophic injury as determined by the trier of fact and when the court determines manifest injustice would occur otherwise,*

  - Noneconomic damages are capped at $1 million for the injured patient from all practitioner defendants, and,
  - Noneconomic damages are capped at $1.5 million for the injured patient from all nonpractitioner defendants.

- *For an injury that results in a permanent vegetative state or death,*

  - Noneconomic damages are capped at $1 million from practitioner defendants, regardless of the number of claimants and practitioner defendants, and,
  - Noneconomic damages are capped at $1.5 million from all nonpractitioner defendants, regardless of the number of claimants.

- *For any type of injury resulting when a practitioner provides emergency services in a hospital or life support services including transportation, provided there is no pre-existing health care patient-practitioner relationship,*

  - Noneconomic damages are capped at $150,000 per claimant, and,
  - Noneconomic damages cannot exceed $300,000, regardless of the number of claimants or practitioner defendants.

- *For any type of injury resulting when a nonpractitioner provides emergency services in a hospital or prehospital emergency treatment prior to stabilization and pursuant to statutory obligations, provided there is no pre-existing health care patient-practitioner relationship,*

  - Noneconomic damages are capped at $750,000 per claimant from all nonpractitioner defendants, and,
  - Noneconomic damages cannot exceed $1.5 million, regardless of the number of claimants or nonpractitioner defendants.

The law regarding damages in a malpractice suit was revised to:

- Require a reduction of any award for noneconomic damages by any settlement amount received in order to preclude recovery in excess of the statutory cap.
- Clarify that the caps on noneconomic damages applicable in medical negligence trials are applicable to trials that take place following a defendant's refusal to accept a claimant's offer of voluntary binding arbitration.
- Cap recovery of noneconomic damages in voluntary binding medical negligence arbitration involving wrongful death.

Bad faith actions against insurers were revised to:

- Provide that a professional liability insurer, for insuring medical negligence, may not be held to have acted in bad faith for failure to timely pay policy limits if it tenders its policy limits and meets other reasonable conditions of settlement before the earlier of two events: the 210th day after service of the complaint or the 60th day after the conclusion of the deposition

of parties and expert witnesses, the initial disclosure of witnesses and production of documents, and required mediation.

- Provide that the failure to tender policy limits is not presumptive of an insurer acting in bad faith and provides factors to be considered by the trier of fact in determining whether an insurer has acted in bad faith.
- Provide that when an insurer tenders policy limits and such tender is accepted by the claimant, the insurer is entitled to a release of its insured.

Medical malpractice insurance requirements were revised to:

- Require a rate freeze and mandatory rate filing to reflect the savings of the bill. Rates approved on or before July 1, 2003, for medical malpractice insurance remain in effect until the effective date of the new rate filing required by the act. Insurers were required to make a rate filing effective no later than January 1, 2004, to reflect the savings of the act, using the presumed factor established by the Office of Insurance Regulation (OIR), or using a different factor if the insurer contends that the presumed factor results in a rate that is excessive, inadequate, or unfairly discriminatory, subject to prior approval by OIR. The new rate applies to policies issued or renewed on or after the effective date of the act, requiring insurers to provide a refund for policies issued between the effective date of the act and the effective date of the rate filing.
- Require medical malpractice insurers to notify insureds at least 60 days prior to the effective date of a rate increase and at least 90 days prior to cancellation or non-renewal.
- Provide that medical malpractice rate filings disapproved by OIR may not be submitted to an arbitration panel, but would be subject to administrative review pursuant to chapter 120, F.S.
- Require medical malpractice insurers to notify policyholders upon making a rate filing that would have a statewide average increase of 25 percent or greater.
- Require that medical malpractice insurers make a rate filing at least once annually, sworn to by at least two executive officers.
- Revise rating standards for medical malpractice insurance to prohibit the inclusion of payments made by insurers for bad faith or punitive damages in the insurer's rate base. Such payments shall not be used to justify a rate or rate change.
- Require the Office of Program Policy and Government Accountability to study the feasibility and merits of authorizing the Office of the Public Counsel to represent the public in medical malpractice rate matters.
- Revise the closed claim reporting requirements of s. 627.912, F.S., to: (1) require reporting by all types of insurance and self-insurance entities, including specified health care practitioners and facilities for claims not otherwise reported by an insurer; (2) include reports of claims resulting in nonpayment; (3) include professional license numbers; (4) provide for electronic access to DOH for all closed claim data and otherwise delete separate reporting to DOH; (5) increase penalties for nonreporting; (6) provide that violations by health care providers of reporting requirements constitutes a violation of their practice act; (7) require OIR to prepare an annual report analyzing the closed claim reports, financial reports submitted by insurers, approved rate filings, and loss trends; and (8) authorize the Financial Services Commission to adopt rules to require the reporting of data on open claims and reserves.

- Authorize a group of 10 or more health care providers to establish a commercial self-insurance fund for providing medical malpractice coverage.
- Eliminate a prohibition against creating new medical malpractice self-insurance funds and authorize the Financial Services Commission to adopt rules relating to such funds.

Medical Negligence

Chapter 766, F.S., provides for standards of recovery in medical negligence cases. Those standards are found in s. 766.102, F.S. In any action for recovery of damages based on the death or personal injury of any person in which it is alleged that such death or injury resulted from the negligence of a health care provider, such as a radiologist, the claimant has the burden of proving the alleged actions of the health care provider represented a breach of the prevailing standard of care for that health care provider as defined in s. 766.202(4), F.S. The prevailing professional standard of care for a given health care provider is that level of care, skill, and treatment which, in light of all relevant, surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

Section 766.104(1), F.S., provides that no action shall be filed for personal injury or wrongful death arising out of medical negligence unless the attorney filing the action has made a reasonable investigation to determine if there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. This statute provides a safe harbor for the attorney's good faith determination, as good faith may be shown to exist if the claimant or his counsel has received a written opinion of an expert as defined in s. 766.102, F.S., that there appears to be evidence of medical negligence. The written opinion of the expert is not subject to discovery by an opposing party to the litigation. Section 766.102(2), F.S., sets forth the qualifications of the health care provider who may testify as an expert in a medical negligence action, and who, pursuant to s. 766.104(1), F.S., may provide an opinion supporting the attorney's good faith presuit belief that there has been medical negligence.

The purpose of s. 766.102(2), F.S., is to establish a relative standard of care for various categories and classifications of health care providers for the purpose of testifying in court. Accordingly, pursuant to s. 766.102(5), F.S., a person may not give expert testimony regarding the prevailing standard of care unless that person is a licensed health care provider and meets the following conditions.

If the health care provider against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:

- Specialize in the same specialty as the health care provider against whom or on whose behalf the testimony is offered; or specialize in a similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients; and
- Have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:
    - The active clinical practice of, or consulting with respect to, the same or similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients;

- Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same or similar specialty; or
- A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same or similar specialty.

If the health care provider against whom or on whose behalf the testimony is offered is a general practitioner, the expert witness must have devoted professional time during the 5 years immediately preceding the date of the occurrence that is the basis for the action to:

- The active clinical practice or consultation as a general practitioner;
- The instruction of students in an accredited health professional school or accredited residency program in the general practice of medicine; or
- A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the general practice of medicine.

If the health care provider against whom or on whose behalf the testimony is offered is a health care provider other than a specialist or a general practitioner, the expert witness must have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:

- The active clinical practice of, or consulting with respect to, the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered;
- The instruction of students in an accredited health professional school or accredited residency program in the same or similar health profession in which the health care provider against whom or on whose behalf the testimony is offered; or
- A clinical research program that is affiliated with an accredited medical school or teaching hospital and that is in the same or similar health profession as the health care provider against whom or on whose behalf the testimony is offered.

A medical physician or osteopathic physician who qualifies as an expert witness and who, by reason of active clinical practice or instruction of students, has knowledge of the applicable standard of care for nurses, nurse practitioners, certified registered nurse anesthetists, certified registered nurse midwives, physician assistants, or other medical support staff may give expert testimony in a medical negligence action with respect to the standard of care of such medical support staff.

Notwithstanding s. 766.102(5), F.S., in a medical negligence action against a hospital, a health care facility, or medical facility, a person may give expert testimony on the appropriate standard of care as to administrative and other nonclinical issues if the person has substantial knowledge, by virtue of his or her training and experience, concerning the standard of care among hospitals, health care facilities, or medical facilities of the same type as the hospital, health care facility, or medical facility whose acts or omissions are the subject of the testimony and which are located in the same or similar communities at the time of the alleged act giving rise to the cause of action.

If a health care provider who otherwise qualifies to provide expert testimony is providing evaluation, treatment, or diagnosis for a condition that is not within his or her specialty, a

specialist trained in the evaluation, treatment, or diagnosis for that condition shall be considered a similar health care provider.

Case Law
To prove negligence of the part of a radiologist, the claimant must show that the radiologist breached the standard of care of a similar health care provider, typically presented to the jury through expert testimony.[4] However, that a person deviates from or conforms to an accepted custom or practice does not indicate conclusively that negligence did or did not occur.[5]

Allowable claims for a failure to detect a condition through a negligent reading of an x-ray or CT scan, include physical injury, increased fear of cancer recurrence and death, increased risk of cancer recurrence and decreased chance of cancer survival.[6] Regarding future damages, the claimant must show within a reasonable degree of medical certainty that cancer will reoccur and life expectancy will decrease as a result.[7]

III. Effect of Proposed Changes:

The bill creates an undesignated section of law to make a Florida-licensed radiologist immune from liability in tort for any actions arising out of his or her duties relating to mammograms, except for instances in which the radiologist is found to be grossly negligent.[8] The section is repealed July 1, 2006, unless reviewed and reenacted by the Legislature.

The effective date of the bill is upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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[4] *Doctors Memorial Hospital v. Evans*, 543 So.2d 809, 812 (Fla. 1st DCA 1989).
[5] *Nesbitt v. Community Health of South Dade, Inc.*, 467 So.2d 711, 715 (Fla. 3d DCA 1985).
[6] *Merced v. Qazi*, 811 So.2d 702, 703 (Fla. 5th DCA 2002).
[7] *Id at* 705.
[8] Black's Law Dictionary defines "gross negligence" as the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It will be more difficult for plaintiffs to prove damages in a medical malpractice lawsuit against a Florida-licensed radiologist for duties relating to mammograms under a gross negligence standard of care. This bill, as applied, will result in an increased burden of standard of care not only for failure to detect cases, but also for those that involve any kind of tortious action attributable to a radiologist relating to mammograms.

Radiologists who perform mammograms may have a lower risk of negligence that may result in lower malpractice insurance costs, although lower insurance rates for radiologists are not addressed in the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Florida OIR, the malpractice insurance carriers who represent a large majority of the medical malpractice underwriting in Florida do not surcharge radiologists for reading mammograms. A 1997 survey which was published by the Physicians Insurers Association of America and the American College of Radiology found that mammography is the most prevalent patient condition for which claims are generated against physicians. "Furthermore, an error in the diagnosis of breast cancer is the most prevalent patient condition for which claims are generated against physicians."[9]

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

[9] Physician Insurers Association of America, American College of Radiology. Practice Standards Claims Survey. Rockville, MD: Physician Insurers Association of America, 1997 as cited at <http://www.acr.org/departments/pub_rel/press_releases/jama_coments.html.>.

Bill No. SB 2306

Amendment No. ___ 373902

CHAMBER ACTION

Senate | House

JUDICIARY
DATE: 4/16/04
TIME: 8:52 AM

Senator Webster moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Radiologist immunity.--

(1) A radiologist licensed in this state who complies with the following criteria is immune from liability in tort for any actions arising from the performance of his or her duties relating to mammograms:

(a) The licensee meets and continuously maintains the requirements governing mammography adopted by the Federal Government pursuant to the Mammography Quality Standards Act of 1992.

(b) The licensee is certified in diagnostic radiology by the American Board of Radiology, the American Osteopathic Board of Radiology, or the Royal College of Physicians and Surgeons of Canada or has at least 3 months of documented training in mammography interpretation, radiation physics, radiation effects, and radiation protection.

1 (c) The licensee has 60 hours of documented category I
2 continuing medical education in mammography or 40 hours, if
3 initially qualified before April 28, 1999, at least 15 of
4 which must have been acquired in the 3 years immediately prior
5 to meeting the requirements and earns at least 15 hours of
6 category I continuing medical education in a 36-month period,
7 at least 6 of which must be related to each mammographic
8 modality used.
9 (d) The licensee has interpreted mammograms of 240
10 patients within the 6 months immediately prior to the
11 licensee's qualifying date or in any 6-month period within the
12 last 2 years of residency, if the licensee becomes board
13 certified at the first possible opportunity and continues to
14 interpret or multiread at least 960 mammographic examinations
15 over a 24-month period.
16 (e) The licensee receives at least 8 hours of training
17 in any mammographic modality for which he or she was not
18 previously trained before beginning to use that modality.
19 (f) The licensee meets the most current guidelines of
20 the American College of Radiology for mammography procedures.
21 (g) The licensee operates from a facility that has
22 policies and procedures to provide for the safety of patients
23 and personnel, which include attention to the physical
24 environment; the proper use, storage, and disposal of
25 medications and hazardous materials and their attendant
26 equipment; and methods for addressing medical and other
27 emergencies.
28 (h) The licensee operates from a facility that has
29 policies and procedures to educate and inform patients about
30 procedures or interventions to be performed and facility
31 processes for the same, which include appropriate instructions

1 for any necessary patient preparation and aftercare. The
2 information must be provided in an appropriate form to the
3 patient. Such policies must provide:
4 1. Direct communication in person or by telephone to
5 the referring physician or an appropriate representative.
6 Documentation of direct communication is recommended. In
7 situations in which the interpreting physician feels that
8 immediate patient treatment is indicated, including tension
9 pneumothorax, the interpreting physician should communicate
10 directly with the referring physician or other health care
11 provider, or an appropriate representative. If that individual
12 cannot be reached, the interpreting physician should directly
13 communicate the need for emergent care to the patient or
14 responsible guardian, if possible.
15 2. Under some circumstances, practice constraints may
16 require a preliminary report before the final report is
17 prepared. A significant change between the preliminary and
18 final interpretation should be reported directly to the
19 referring physician.
20 3. An interpreting physician who feels that the
21 findings do not warrant immediate treatment but constitute
22 significant unexpected findings should communicate the
23 findings to the referring physician, other health care
24 provider, or an appropriate individual in a manner that
25 reasonably ensures receipt of the findings.
26 (i) The licensee's patient examinations must be
27 systematically reviewed and evaluated as part of the overall
28 quality improvement program at the facility. Monitoring
29 includes evaluation of the accuracy of interpretation and
30 appropriateness of the examination. Complications and adverse
31 events or activities that may result in sentinel events should

1 be monitored, analyzed, and reported as required by law and
2 periodically reviewed to identify opportunities to improve
3 patient care. These data must be collected in a manner that
4 complies with statutory and regulatory peer-review procedures
5 to ensure the confidentiality of the peer-review process.
6 (j) The licensee operates from a facility that has
7 policies and procedures to control the spread of infection
8 among patients and personnel, including adherence to universal
9 precautions and the use of clean or aseptic techniques as
10 warranted by the procedure or intervention being performed.
11 (2) Immunity is not provided if the provisions of this
12 section are not complied with or the licensee is found to be
13 grossly negligent.
14 (3) This section is repealed July 1, 2007, unless
15 reviewed and reenacted by the Legislature before that date.
16 Section 2. Workgroup on mammography accessibility.--
17 (1) There is created the Workgroup on Mammography
18 Accessibility within the Department of Health. The workgroup
19 shall study:
20 (a) The availability, quality of care, and
21 accessibility of mammography in this state.
22 (b) The need for research and educational facilities,
23 including facilities with institutional training programs and
24 community training programs for doctors of radiological
25 medicine at the student, internship, and residency levels.
26 (c) The availability of resources, including health
27 personnel and management personnel for mammography programs.
28 (2) The workgroup shall consist of 13 members and be
29 staffed by the Department of Health. It shall be chaired by
30 the Secretary of Health or his or her designee. The Secretary
31 of Health shall appoint the remaining 12 members.

1 (3) By January 15, 2009, the department shall submit a
2 report to the Governor, the President of the Senate, the
3 Speaker of the House of Representatives, and the substantive
4 legislative committees which provides the findings of the
5 workgroup and recommendations for Legislative action.
6 Section 3. This act shall take effect upon becoming a
7 law.
8
9
10 ========== T I T L E A M E N D M E N T ==========
11 And the title is amended as follows:
12 Delete everything before the enacting clause
13
14 and insert:
15 A bill to be entitled
16 An act relating to radiologists performing
17 mammograms; providing licensed radiologist with
18 immunity from tort liability under certain
19 circumstances; providing exceptions; providing
20 for future repeal; creating the Workgroup on
21 Mammography Accessibility; requiring a report;
22 providing an effective date.
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5

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1074

SPONSOR: Senator Fasano

SUBJECT: Limitation of Action/Sexual Offenses

DATE: April 15, 2003 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Lang	JU	
2.			CJ	
3.				
4.				
5.				
6.				

I. Summary:

This bill authorizes prosecution to begin within one year after the date on which the identity of the accused is established through DNA evidence, provided that a sufficient portion of the evidence tested for DNA is preserved and available for testing by the accused, in cases of sexual battery and certain lewd and lascivious offenses.

This bill substantially amends section 775.15 of the Florida Statutes.

The provisions in this bill apply to any offense not otherwise barred from prosecution on or after July 1, 2004.

II. Present Situation:

Lewd or Lascivious Offenses

Lewd or lascivious battery occurs where a perpetrator:

- Engages in sexual activity with a person 12 years or older, but under 16 years of age; or,
- Encourages, forces, or entices any person under 16 years of age to engage in sadomasochism, sexual bestiality, prostitution, or any other act involving sexual activity

and is charged as a second degree felony.[1]

[1] s. 800.04 (4), F.S.

Lewd or lascivious molestation occurs where a perpetrator intentionally touches certain parts of the body, whether or not clothed, of a person under the age of 16, or forces them to touch the perpetrator, and is charged in the following manner:

- As a first degree felony, where the perpetrator is 18 years or older and the victim is under the age of 12;
- As a second degree felony, where the perpetrator is under 18 and the victim is under the age of 12, or where the perpetrator is 18 or older and the victim is older than 12 and younger than 16;
- As a third degree felony, where the perpetrator is under 18 and the victim is older than 12 and younger than 16.[2]

Lewd or lascivious conduct occurs where a perpetrator intentionally touches a person under 16 in a lewd or lascivious manner or solicits a person under 16 to commit a lewd or lascivious act and is charged in the following manner:

- As a second degree felony, where the perpetrator is 18 years or older;
- As a third degree felony, where the perpetrator is under 18.[3]

Lewd or lascivious exhibition includes masturbation, genital exposure, and certain other sexual acts in a lewd or lascivious manner either in person or over the Internet and is charged in the following manner:

- As a second degree felony, where the perpetrator is 18 or older;
- As a third degree felony, where the perpetrator is under 18.[4]

Lewd or lascivious battery on a disabled adult or elderly person is punishable as a second degree felony, and molestation or exhibition are chargeable as a third degree felony.[5]

Sexual Battery
Sexual battery is defined in statute as:

> "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose."[6]

The level and severity of the offense charged varies according to the age of the perpetrator, the victim, and specific circumstances as follows:

[2] s. 800.04 (5), F.S.
[3] s. 800.04 (6), F.S.
[4] s. 800.04 (7), F.S.
[5] s. 825.1025, F.S.
[6] s. 794.011 (1) (h), F.S.

- A perpetrator who is 18 or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person under 12 years commits a capital felony.[7]
- A perpetrator under 18 who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person under 12 years commits a life felony.[8]
- A perpetrator who commits sexual battery upon a person 12 or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony.[9]
- A person who commits sexual battery upon a person 12 or older without that person's consent, where the victim is physically helpless, under coercion of force, violence, or threats, involuntarily under the influence, mentally defective, or where the perpetrator is a law enforcement officer or a certain public official, commits a felony of the first degree.[10]
- A perpetrator who commits sexual battery upon a person 12 or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree.[11]

Statute of Limitations

The Florida Criminal Code is contained in ch. 775.[12] Section 775.15, F.S. provides the statute of limitations to be applied in criminal cases. The statute of limitations applies as follows, to provide that a prosecution can commence:

- At any time for a capital felony, life felony or felony that resulted in a death;
- At any time for sexual battery offenses that constitute first or second degree felonies if reported to law enforcement within 72 hours;
- At any time for the crime of perjury in an official proceeding that relates to the prosecution of a capital felony;
- Within 10 years for a felony that resulted in an injury through use of a "destructive device"[13] ;
- Within four years for a first degree felony;
- Within three years for a second or third degree felony;
- Within two years or one year for a first degree or a second degree misdemeanor, respectively;

[7] s. 794.011 (2)(a), F.S.
[8] s. 794.011 (2)(b), F.S.
[9] s. 794.011 (3), F.S.
[10] s. 794.011 (4), F.S.
[11] s. 794.011 (5), F.S.
[12] s. 775.011, F.S.
[13] s. 790.011, F.S. defines a destructive device as "any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device."

- Within five years for a felony violation of securities transactions,[14] Medicaid provider fraud,[15] environmental control violations,[16] abuse, neglect, and exploitation of the elderly or disabled adults,[17] Worker's Compensation fraudulent acts,[18] and fraudulent insurance claims.[19]

For purposes of commencement of the period of limitation, an offense is considered committed either when every element has occurred, or, if a legislative purpose to ban a continuing course of conduct is evident, at the time when the course of conduct or the defendant's complicity ceases.[20]

The statute of limitations is tolled when the defendant is continuously absent from the state or has no reasonably ascertainable place of abode or work within the state, for up to three years, unless the defendant has been timely charged by indictment or information or other charging document and who has not been arrested due to a voluntary absence from the state or has not been extradited for prosecution from another state.[21]

Pending Legislation in Other States
Legislation providing for the extension of statutes of limitation in DNA/sexual offense cases is currently being considered in Illinois, Kansas, Massachusetts, Minnesota, New Hampshire, New York and Oklahoma.[22] Some states have proposed legislation to extend the statute of limitations by a time specified period, and others eliminate the statute of limitations for certain sex offenses altogether.

III. Effect of Proposed Changes:

This bill authorizes prosecution to begin within one year after the date on which the identity of the accused is established through DNA evidence, provided that a sufficient portion of the evidence tested for DNA is preserved and available for testing by the accused, in sexual battery and lewd and lascivious cases.

This bill substantially amends s. 775.15 of the Florida Statutes.

The provisions in this bill apply to any offense not otherwise barred from prosecution on or after July 1, 2004.

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[14] Chapter 517, F.S.
[15] s. 409.920, F.S.
[16] *See* Chapter 403, F.S., which applies the statute of limitations to commence within five years after the date of discovery of the violation.
[17] *See* Chapter 825, which requires the elderly victim to be 60 years of age or older and infirm.
[18] s. 440.105, F.S.
[19] s. 817.234, F.S.
[20] s. 775.15 (4), F.S.
[21] s. 775.15 (6), F.S.
[22] White Paper prepared by Smith Alling Lane on behalf of Applied Biosystems, as of February 25, 2004.

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:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may lead to more victims being able to bring their cases to court.

C. Government Sector Impact:

It is unknown what impact this bill will have on judicial, state attorney, law enforcement, and public defender workload.

VI. Technical Deficiencies:

It is unclear how this bill impacts first and second degree felony sexual batteries that are reported within 72 hours, which are currently not subject to a statute of limitations. This bill, as applied, may have the unintended consequence of limiting those actions to prosecution within one year after the accused is identified through DNA evidence.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

6

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2188

SPONSOR: Comprehensive Planning Committee

SUBJECT: Land Development

DATE: April 16, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Favorable/CS
2.	Cibula	Lang	JU	
3.			FT	
4.			ATD	
5.			AP	
6.				

I. Summary:

Tax Deeds
The bill clarifies that lands available for taxes which revert to the county 3 years after being offered for public sale shall escheat to the county free and clear of all tax certificates and accrued taxes. Further, the bill provides immunity for the county from environmental liability associated with properties that escheat to the county. It provides that the county and the Department of Environmental Protection (DEP) may enter into a written agreement that addresses investigative and remedial activities for a property that escheats to the county.

Accessory Dwelling Units
This bill provides legislative findings on the lack of affordable rentals for very-low-income, low-income, and moderate-income persons. The bill makes a finding that encouraging local governments to permit accessory dwelling units to increase the availability of affordable rentals serves a public purpose. It provides definitions and authorizes a local government to adopt an ordinance allowing accessory dwelling units (ADUs) in any areas zoned for single-family residential use based upon a finding that there is a shortage of affordable rentals. Each ADU that is allowed under an ordinance adopted under this section shall count towards the affordable housing component of the housing element in the local government's comprehensive plan. The bill requires DCA to report to the Legislature on January 1, 2007, regarding the effectiveness of using ADUs to address a local government's shortage of affordable housing.

Urban Infill and Redevelopment
This bill provides legislative findings regarding the benefits of mixed-use high density development for urban infill and redevelopment areas. It also expresses legislative intent to discourage single-use zoning in those areas. The bill requires the DCA to provide technical

assistance, including a model ordinance, to encourage mixed-use, high density urban infill and redevelopment projects.

In addition, the bill contains legislative findings regarding transfer of development rights programs in urban areas. It expresses legislative intent to encourage high-density development in urban infill and redevelopment areas while protecting historic structures and open spaces. The bill requires DCA to provide technical assistance, including a model ordinance, that promotes the transfer of development rights for urban infill and redevelopment projects.

Water Supplies
The bill requires a local government to address water supply projects necessary to meet existing and future water use demands in its comprehensive plan, extends the deadline for a local government to consider a regional water supply plan in its comprehensive plan, and provides for the local government's work plan for building water supply facilities to be updated at certain intervals. It requires DCA, the DEP, the water management districts, and regional planning councils to provide assistance to local governments relating to the implementation or rural lands stewardship areas. This bill provides that rural land stewardship area designation should be specifically encouraged as a future land use map overlay. Also, it allows for multicounty rural land stewardship areas and deletes acreage thresholds for these areas.

Brownfield Redevelopment Bonus Refunds Program
Finally, it reduces the number of jobs that must be created for participation in the brownfield redevelopment bonus refund and increases the percentage of a primary lender loan to which the limited state loan guaranty applies for redevelopment projects in brownfield areas.

The bill substantially amends the following sections of Florida Statutes: 197.502, 163.3167, 163.3177, 163.3187, 288.107, and 376.86.

II. Present Situation:

Urban infill and redevelopment projects are those projects that use vacant or under-utilized parcels within an urban area to improve existing neighborhoods and encourage economic development. In general, as communities have continued to grow with low density development and new public facilities towards the fringe, many older urban areas have begun to decline and are now considered distressed neighborhoods. The issue of strategies to promote and encourage urban infill and redevelopment was the subject of an interim project by the Committee on Comprehensive Planning in 2004.[1] In this report, staff discussed the obstacles to infill and redevelopment in an urban area, including land assemblage issues, abandoned properties, environmental contamination, outdated zoning regulations, and inadequate infrastructure. The Legislative Committee on Intergovernmental Relations also issued a report on Urban Revitalization this year and provided several preliminary policy options, but did not recommend any significant statutory changes.[2]

[1] *Strategies to Promote and Encourage Urban Infill and Redevelopment*, Committee on Comprehensive Planning, Interim Project Report 2004-165, December 2003.
[2] *Urban Revitalization in Florida*, Legislative Committee on Intergovernmental Relations (Preliminary Summary), December 2003.

At the same time urban infill and redevelopment projects are facing numerous barriers, the cost of housing continues to rise in many urban communities. Families move farther from work centers in search of housing that is within their income range. During the past three years, the median price for an existing home in Palm Beach County has risen by 73 percent while the county's median family income has risen by only 7 percent.[3] The median selling price for a home in Palm Beach County is now $290,000.[4] Similarly, Broward County has experienced a sharp increase in home prices. The median price for an existing single-family home is $226,000.[5] However, a family earning the Broward County median household income of $56,400 can only afford a $162,000 home under federal standards which allow 30% of annual income as the upper limit of income payable towards housing.

In order to address the rising cost of housing, some communities have worked with community development corporations to build mixed-use and mixed-income projects in urban areas.[6] These types of projects are high density with multiple uses including retail, office, and residential units. Also, these projects may have a number of units available to reduced-income buyers at lower prices.[7] In general, these types of high density, mixed-use developments have been successful, but are still in need of incentives because of some of the impediments to urban infill and redevelopment.

Several states have turned to the use of "granny flats" or accessory dwelling units (ADUs)to alleviate severe housing shortages. For example, California recently enacted legislation that requires cities to establish standards for ADUs. An application that meets the city's established standards (i.e., size, height, set-back, and parking) for an accessory dwelling unit must be approved without a public hearing.[8] Although some groups oppose this new legislation, some California cities have already authorized ADUs and are offering incentives such as the waiver of permitting fees for ADUs that rent for 80 percent of the median monthly income in the city. Proponents of ADUs argue these units generate more property tax revenue as the result of higher assessments and local governments save some of the expense associated with building additional affordable housing units.[9] The state of Washington requires its cities with more than 20,000 people to allow ADUs in any neighborhood.[10]

Growth Policy Act

The Florida Legislature passed urban infill and redevelopment legislation in 1999, allowing local governments to designate urban infill and redevelopment areas.[11] The intent of this legislation was to have a holistic approach to revitalizing urban centers, ensuring the adequate provision of infrastructure and education facilities, and the creation of jobs and economic opportunity. The

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[3] *$240,000 It's the New Norm in Palm Beach County*, Jennifer Peltz and John Maines, South Florida Sun-Sentinel, Nov. 24, 2003.
[4] *See id.*
[5] *$226,000 It's the New Norm for Homes in Broward County*, Brittany Wallman and John Maines, South Florida Sun-Sentinel, Nov. 23, 2003.
[6] *Housing Communities Near Atlantic Avenue Draw Good Review from Delray Residents*, Michelle Brown, Florida Sun Sentinel, Nov. 24, 2003.
[7] *See id.*
[8] *See Cities Scrambling to Control "Granny Flats"*, Daniel S. Levine, East Bay Business Times, June 16, 2003.
[9] *"Granny Flats" Finding a Home in Tight Market*, Haya El Nasser, USA Today, Jan. 5, 2004.
[10] *See Cities Scrambling to Control "Granny Flats"*, Daniel S. Levine, East Bay Business Times, June 16, 2003.
[11] Ch. 99-378, § 1, Laws of Fla.

legislation provided incentives for designating urban infill and redevelopment areas and created a grant program for local governments. The Legislature appropriated $2.5 million in fiscal year 2000-01 to implement the Urban Infill and Redevelopment Assistance Grant Program. In addition, the legislation provided exceptions from transportation concurrency requirements, substantial deviation thresholds for Developments of Regional Impact, and limitations on comprehensive plan amendments for certain types of development within designated urban infill and redevelopment areas. Notwithstanding the incentives for urban infill and redevelopment, there are persistent barriers to urban infill and redevelopment projects.

Tax Certificate Process

The issue of returning property that is encumbered by a tax lien and publicly owned properties to productive use has become an important issue in many areas of the country. The ability of a municipality to deal efficiently with tax delinquent properties affects urban infill and redevelopment projects. Abandoned or vacant properties in an urban area often become a haven for criminal activity, cause surrounding property values to decline, and discourage investment by current and potential residents and commercial investors. The benefits of returning these properties to productive use include increased tax revenues, improvement of surrounding properties by current residents and business owners, new residential and commercial investment, and improvement in the quality of life for neighborhood residents.[12]

Chapter 197, F.S., provides the exclusive method for enforcing tax liens resulting from unpaid ad valorem taxes and special assessments. Section 197.502(7), F.S., provides that if there are no bidders at a public sale, the property is listed as "land available for taxes" and the clerk is required to notify the county commission and all certificate holders that the land is available. Within 90 days from the public sale, the county may purchase the land for the opening bid. For county held certificates on nonhomestead property, the opening bid is the value of all outstanding tax certificates plus omitted years' taxes, delinquent taxes, interest, and all fees and costs paid by the county.[13] The opening bid for an individual certificate holder on nonhomestead property must include the amount of money paid to the tax collector by the certificate holder at the time of the application, the amount required to redeem the applicant's tax certificate, and all other costs and fees paid by the applicant.[14]

Section 197.502(8), F.S., provides that land not bought during a public sale is transferred 3 years from the day of the sale to the county and all certificates and liens against the property are cancelled. In addition, counties are authorized to cancel county-held tax certificates and omitted years' taxes on properties acquired under that section to provide infill housing. Also, property acquired by the county under s. 197.502, F.S., for infill housing does not have a right of redemption, i.e., the county is prohibited from transferring such property back to the previous owner or any entity in which the taxpayer or the taxpayer's family has an interest. Some counties in Florida have infill housing programs that attempt to expedite the process of "recycling" tax delinquent properties. However, at least one county has experienced delays in clearing title to those properties.

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[12] *Renewing Public Assets for Community Development*, Professor Frank S. Alexander, LISC [Local Initiatives Support Corporation] Online Resource Library at 1.
[13] S. 197.502(6), F.S.
[14] S. 197.502(6), F.S.

Environmental Liability and Escheated Property
Currently, a county does not enjoy any immunity from liability for a property with environmental contamination that escheats to the county. The Department of Transportation (DOT) has an immunity provision relating to property that it acquires through eminent domain. Section 337.27, F.S., provides that the DOT is not subject to liability under chapters 376 or 403 for preexisting soil or groundwater contamination due solely to its ownership. This provision does not affect the rights or liabilities of any past or future owners to the liability of any governmental entity for any actions that create or exacerbate a pollution source. The DOT and the DEP are authorized to enter into an interagency agreement regarding the performance, funding, and reimbursement of the investigative and remedial acts necessary for any property acquired by DOT through eminent domain.

Land Development Regulations
Many local zoning codes and land use designations discourage high density development. In particular, many mixed-use developments or those that combine commercial and residential uses require a variance or zoning change. Such projects usually also require an increase in density under existing zoning regulations. The cost associated with developing or redeveloping a property that does not conform to existing zoning regulations may deter some developers. Alternatively, the developer may pursue a lower-density project outside the urban service area that contributes to sprawl.

Some municipalities have dealt with the density issue creatively through the use of transferable development rights. The concept of transferable development rights has typically been used to allow the purchase or transfer of density units from rural lands to allow for a higher density development in a selected area. However, some local governments have begun using transferred development rights for redevelopment projects. The City of West Palm Beach recently adopted an ordinance allowing the owner of a building that is smaller than allowed under existing zoning regulations to sell the difference to a developer upon agreeing to a historic designation for the structure.[15] Those development rights are then transferred to eligible properties. Under the ordinance, the developer may exceed certain height restrictions when using transferred development rights.

Comprehensive Planning
The Local Government Comprehensive Planning and Land Development Regulation Act of 1985[16] (Act) establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as: a future land use plan; capital improvements element; and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in their land use decision-making.

Under the Act, DCA was required to adopt by rule minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the

[15] Sec. 94-116, West Palm Beach Code of Ordinances. *See also Law Lets Building Owners Cash in on History*, Thomas R. Collins, Palm Beach Post, Sept. 15, 2003.
[16] Ss. 163.3161-163.3246, F.S.

requirements of the Act. Such minimum criteria must require that the elements of the plan are consistent with each other and with the state comprehensive plan and the regional policy plan; that the elements include policies to guide future decisions and programs to ensure the plans would be implemented; that the elements include processes for intergovernmental coordination; and that the elements identify procedures for evaluating the implementation of the plan.

Section 163.3167(1), F.S., of the act provides for municipalities or counties to plan for their future development and growth, adopt and amend their comprehensive plans and elements of the plan, implement their adopted or amended comprehensive plans through the adoption of appropriate land development regulations, and to establish and maintain administrative procedures to implement the provisions of the act. Each local government is required to prepare an Evaluation and Appraisal Report (EAR) every 7 years that assesses the local government's progress in implementing its comprehensive plan.[17]

In 2002, the Legislature amended s. 163.3177(6)(c), F.S., to require a local government to consider the appropriate water management district's water supply plan in its general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element by January 1, 2005 ,or its EAR adoption deadline, whichever occurs first. The element must also include a workplan, including at least a 10-year planning period, for building water supply facilities necessary to serve existing and new development in the local government's jurisdiction.

Rural Land Stewardship Areas

Section 163.3177(11), F.S., provides for the establishment of rural land stewardship areas. This program is intended to allow for land use efficiencies within existing urban areas and allows for the conversion of rural lands to other uses, where appropriate and consistent with the affected local comprehensive plan, through the use of innovative planning and development strategies. Such strategies may include urban villages, new towns, satellite communities, clustering and open space provisions, mixed-use development and sector planning.[18] The DCA is authorized to allow up to five local governments to designate all or portions of their lands, that are classified in the future land use element as agricultural, rural, or an equivalent land use, as a rural land stewardship area.[19]

- The rural land stewardship area designation is intended to further the broad principles of rural sustainability, including:
- Restoration and maintenance of the economic value associated with rural lands;
- Control of urban sprawl;
- Identification and protection of ecosystems, habitats, and natural resources;
- Promotion of rural economic activity;
- Maintenance of the vitality of Florida's agricultural economy; and
- Protection of the character of Florida's rural areas.[20]

[17] Section 163.3191(1), F.S.
[18] Section 163.3177(11)(b), F.S.
[19] Section 163.3177(11)(d), F.S.
[20] Section 163.3177(11)(d)2., F.S.

A local government may apply to DCA in writing to request consideration for authorization to designate a rural land stewardship area. Such area may not be less than 50,000 acres and may not exceed 250,000 acres in size. The designated area must be located outside of a municipality and established urban growth boundaries.[21] The plan amendment designating the rural land stewardship area must include criteria for the creation of a receiving area within the stewardship area. At a minimum, this criteria must include the adequacy of suitable land for development that avoids conflict with environmentally sensitive land, compatibility between the transition of uses from higher density to lower intensity rural uses, and receiving area service boundaries which separate receiving areas from other land uses within the stewardship area.[22]

Following the adoption of a plan amendment that creates a rural land stewardship area, a local government, by ordinance, is required to assign credits to the area known as "transferable rural land use credits." These credits may only be used on lands designated as receiving areas and solely for the purpose of implementing innovative planning and development strategies. The underlying density assigned to a parcel ceases to exist once it is transferred to a receiving area or the underlying density to the parcel is utilized. The use or conveyance of these credits must be recorded in the county records where the property is located as a covenant or restrictive easement running with the land in favor of the county, a resource agency, or a recognized statewide land trust. Land may be withdrawn from a rural land stewardship area through a plan amendment.[23]

Brownfields

Section 288.107, F.S., provides for the brownfield redevelopment bonus refund. The term "brownfield site" is defined as an abandoned, idled, or underused industrial or commercial property where expansion or redevelopment is complicated by actual or perceived environmental contamination. A "brownfield area" means a contiguous area of one or more brownfield sites. The Office of Tourism, Trade, and Economic Development is authorized to approve bonus refunds of up to $2,500 for any qualified target industry business that meets certain criteria.[24] The minimum criteria for participating in the brownfield redevelopment bonus refund include the creation of at least 10 new full-time permanent jobs and the completion of a fixed capital investment of at least $2 million in mixed-use business activities. The jobs created may not include construction or site rehabilitation jobs associated with implementing a brownfield site agreement.

Section 376.86, F.S., creates the Brownfield Areas Loan Guarantee Program. Specifically, the Brownfield Areas Loan Guarantee Council reviews, approves, or denies the situations and circumstances for participation by agreements with local governments, lenders, and others associated with the redevelopment of brownfield areas for a limited state of up to 5 years of loan guarantees or loan loss reserves. This limited state loan guaranty applies only to 10 percent of the primary lender loans for redevelopment projects in brownfield areas.[25]

[21] Section 163.3177(11)(d)6., F.S.
[22] Section 163.3177(11)(d)6., F.S.
[23] Section 163.3177(11)(d)6., F.S.
[24] Section 288.107(2), F.S.
[25] Section 376.86(1), F.S.

The Office of Program Policy Analysis and Government Accountability (OPPAGA) recently issued a progress report on the Brownfields Redevelopment Program.[26] The report recommended eliminating the requirement that a business create a minimum of 10 new jobs to receive brownfield incentives. Additionally, OPPAGA recommends increasing the state guarantee on loans to developers from 10 percent to 50 percent or higher.

III. Effect of Proposed Changes:

Tax Deeds
The bill provides that lands available for taxes which revert to the county 3 years after being offered for public sale shall escheat to the county free and clear of all tax certificates and accrued taxes. The bill specifies that liens of any nature against the property are cancelled and the clerk is required to issue an escheatment tax deed vesting title in the board of county commissioners where the property is located. Further, the bill provides immunity for the county from environmental liability associated with properties that escheat to the county. This does not affect the rights or liabilities of any past or future owners to the liability of any governmental entity for any actions that create or exacerbate a pollution source. It provides that the county and DEP may enter into a written agreement that addresses investigative and remedial activities for a property that escheats to the county.

Accessory Dwelling Units
The bill provides legislative findings on the lack of affordable rentals for very-low-income, low-income, and moderate-income persons. The bill makes a finding that encouraging local governments to permit accessory dwelling units to increase the availability of affordable rentals serves a public purpose. It provides definitions for the following terms: accessory dwelling unit, affordable rental, local government, low-income persons, moderate-income persons, and very-low-income persons.

The bill authorizes a local government to adopt an ordinance allowing ADUs in any area zoned for single-family use based upon a finding that there is a shortage of affordable rentals in its jurisdiction. Each ADU that is allowed by an ordinance adopted under this section shall count towards the affordable housing component of the housing element in the local government's comprehensive plan. Finally, the bill requires DCA to report to the Legislature on January 1, 2007, regarding the effectiveness of using ADUs to address a local government's shortage of affordable housing. The report must include the number of ordinances adopted under this section and the number of ADUs created under those ordinances.

Water Supplies
The bill creates subsection (13) of s. 163.3167, F.S., to require a local government to address, in its comprehensive plan, water supply projects necessary to meet existing and projected water use demand for the applicable planning period.

[26] *Brownfield Rehabilitation Is Increasing; More Time Needed to Assess Program's Impact*, Office of Program Policy Analysis and Government Accountability, Report No. 04-18, Feb. 2004.

Rural Lands Stewardship Areas
The bill provides that rural lands stewardship area designation should be specifically encouraged as a future land use map overlay. It amends s. 163.3177(6)(c), F.S., to extend the deadline by which a local government must consider a water supply plan, approved pursuant to s. 373.0361, F.S., in the general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element of its comprehensive plan. Also, it requires the local government's work plan for building water supply facilities to be updated every 5 years or within 12 months after the adoption of a revised regional water supply plan.

The bill also requires DCA, DEP, the water management districts, and regional planning councils to provide assistance to local governments relating to the implementation or rural lands stewardship areas. This assistance may include, but is not limited to, the following:

- Assistance from DEP and the water management districts in creating a geographic information systems land cover database and aerial photogrammetry necessary that is needed to designate a stewardship area;
- Allocation of funds for conservation easement and land acquisition programs that could be leveraged to protect greater acreages using a rural land stewardship area approach; and
- Expansion of DCA's role as a resource agency and grants to facilitate the establishment of these stewardship areas in rural counties that do not have the staff or planning budget to create such an area.

The provisions of this bill allow for the designation of multicounty rural land stewardship areas. It provides that a local government, regional planning council, or stakeholder organization of private land owners, in conjunction with another local government, may apply to DCA for authorization to designate a rural land stewardship area. It deletes acreage thresholds for these stewardship areas, and removes a limitation on the number of local governments which may be designated. Also, it allows transferable land use credits to be assigned at different ratios according to the natural resource and other beneficial characteristics of the land and according to the land use remaining following the transfer of credits.

The bill exempts a comprehensive plan amendment that establishes or implements a rural land stewardship area from the limitation on the frequency of plan amendments.

Urban Infill and Redevelopment
This section of the bill also amends s. 163.3177(11), F.S., to provide legislative findings regarding the benefits of mixed-use high density development for urban infill and redevelopment areas. It also expresses legislative intent to discourage single-use zoning in those areas. The bill requires DCA to provide technical assistance, including a model ordinance, to encourage mixed-use, high density urban infill and redevelopment projects.

The bill also amends s. 163.3177(11), F.S., to provide legislative findings regarding a program for the transfer of development rights in urban areas. It expresses legislative intent to encourage high-density development in urban infill and redevelopment areas while protecting historic structures and open spaces. The bill requires DCA to provide technical assistance, including a model ordinance, that promotes a program for the transfer of development rights for urban infill and redevelopment projects.

Brownfield Redevelopment Bonus Refunds Program
The bill reduces the number of full-time permanent jobs, from 10 to 5, that are required for a business to participate in the brownfield redevelopment bonus refund. The bill also increases the percentage of a primary lender loan to which the limited state loan guaranty applies for redevelopment projects in brownfield areas.

Effective Date
The bill provides an effective date of July 1, 2004.

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 excuses homeowners from covenants and restrictions, as adopted by the respective homeowner's association or as specified in legal instruments that created the association, which prohibit accessory dwelling units or secondary units. Retroactive application of this bill may raise the issue of impairing obligations of contracts.[27]

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community.[28] The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.[29] In *Exxon Corp. v. Eagerton*[30], the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

In 1989, the Federal District Court in Tampa held that the state statute permitting condominium unit owners to display the American Flag [s. 718.113(4), F.S.] did not impair existing contract rights of the condominium association to restrict such display. The court suggested in dicta that personal display of the flag is constitutionally protected

[27] Art. I, § 10, Fla. Const.; Art. I, § 10 U.S. Const.
[28] Stone v. Mississippi, 101 U.S. 814 (1880).
[29] General Motors Corp. v. Romein, 503 U.S. 181 (1992).
[30] 462 U.S. 176 (1983).

speech, and because "the statute did not create rights, but merely recognized them, it does not impair existing contract rights."[31]

Article I, Section 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers.[32] This exception extends to laws that are reasonable and necessary to serve an important public purpose,[33] to include protecting the public's health, safety or welfare.[34]

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts.[35]

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides for an escheatment tax deed that is free and clear of all tax certificates, accrued taxes, and other liens and vests title in the board of county commissioners for properties that have been offered for public sale for a 3-year period and have reverted to the county. This should reduce litigations costs regarding title issues for parties that purchase a property after it has escheated to the county.

In addition, the bill authorizes local governments, based on a finding that there is a shortage of affordable rentals, to permit ADUs in any single family neighborhood. This should assist very-low-income, low-income, and moderate-income persons in finding an affordable rental in those areas that currently have housing costs that exceed an amount a person earning the median income for the area can afford. The ADUs would also provide additional income for the property owner.

This bill reduces the number of jobs that a business must create to receive brownfield incentives. It also increases the state guaranty on loans to developers from 10% to 50% for redevelopment projects in brownfield areas. This could result in the rehabilitation of a greater number of designated brownfield areas which benefits both the developer and the community where the brownfield site is located.

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[31] *Gerber v. Longboat Harbour North Condominium, Inc.*, 724 F.Supp. 884 (M.D.FL., 1989).
[32] *Park Benziger & Co. v. Southern Wine & Spirits*, Inc., 391 So. 2d 681 (Fla. 1980).
[33] *Yellow Cab Co. v. Dade County,* 412 So. 2d 395 (Fla. 3rd DCA 1982), *cert. denied,* 424 So. 2d 764 (Fla. 1982).
[34] *Khoury v. Carvel Homes South, Inc.*, 403 So. 2d 1043 (Fla. 1st DCA 1981), *cert. denied,* 412 So. 2d 467 (Fla. 1981).
[35] *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979).

C. Government Sector Impact:

The bill authorizes a local government, based upon a finding that there is a shortage of affordable rentals in its jurisdiction, to permit ADUs in any single family neighborhood. This could lead to increased property tax revenues.

The DCA is required by the bill to provide technical assistance to local governments, including the development of a model ordinance, that encourages mixed-use, high density development in urban infill and redevelopment areas and also a transfer of development rights program in those areas. In addition, DCA and the water management districts must assist local governments with the creation and implementation of rural land stewardship areas.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2196

SPONSOR: Banking and Insurance Committee and Senator Geller

SUBJECT: Insurance Payments from Escrow Accounts

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Deffenbaugh	Deffenbaugh	BI	Favorable/CS
2.	Cibula	Lang	JU	
3.				
4.				
5.				
6.				

I. Summary:

This bill adds requirements to the current law that makes a lender of money secured by a mortgage liable to the property owner for a loss that results from the failure of the lender to timely pay any insurance premium from escrowed funds. The bill provides that if the premium payment is not more than 90 days overdue, the insurer must reinstate the insurance policy, retroactive to the date of cancellation, and the lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner for reinstating the policy. If the premium payment is more than 90 days overdue or if the insurer refuses to reinstate the insurance policy, the lender must pay the difference between the cost of the previous policy and a new, comparable policy, for a period of two years.

This bill substantially amends sections 501.137 and 627.4133 of the Florida Statutes.

II. Present Situation:

Florida Law (s. 501.137, F.S.) Making Mortgage Lenders Liable for Late Payment of Taxes or Premiums

Section 501.137, F.S., provides that every lender of money whose loans are secured by a mortgage on real estate located in Florida and who receives funds held in escrow for the payment of property taxes or hazard insurance premiums, must promptly pay the taxes or insurance premiums when due, so that the maximum tax discount is obtained and the insurance coverage does not lapse. If the lender, as a result of neglect, fails to pay any tax or insurance premium when due, when sufficient escrow funds are on deposit, the lender is liable *if the property owner suffers a loss as a result of such failure*. The statute does not define or otherwise describe the type of loss for which a lender would be liable.

The cited statute is in ch. 501, F.S., Consumer Protection, but there is no specific state agency responsible for its enforcement. State chartered financial institutions, including banks and credit unions, as well as mortgage lenders, are licensed and regulated by the Office of Financial Regulation (OFR or Office).[1] Representatives of OFR state that such state regulated financial institutions and mortgage lenders would be expected to abide by the requirements of this section, and would typically do so if a complaint is received by OFR or by the Division of Consumer Services of the Department of Financial Services, (though the meaning of "loss" may be vague). But, ultimate enforcement of the statute's requirements is a matter for the courts. However, for mortgage lenders licensed under ch. 494, F.S., the Office may levy administrative penalties and fines for the mortgage lender's failure to disburse funds in accordance with agreements,[2] although OFR representatives state that such penalties are unlikely unless there was a repeated practice of violations. Also, there is no comparable provision for imposing administrative penalties on state licensed banks, savings and loan associations, savings banks, and credit unions, which are exempt from ch. 494, F.S.

Florida Law Requiring Property Insurers to Provide Notice of Cancellation
Florida law requires Insurers to give the named insured at least 10 days' written notice of cancellation of a property insurance policy when cancellation is for nonpayment of premium.[3] However, there is no statutory requirement for an insurance company to reinstate an insurance policy that has been canceled for nonpayment of premium, whether due to the mortgage lender's failure to pay the premium when due or any other reason.

Federal RESPA Requirements
The federal Real Estate Settlement Procedures Act[4] (RESPA) imposes requirements that apply to any mortgage loan on residential property designed for one to four families and which is insured by any agency of the federal government or is made by any lender which is regulated by any agency of the federal government.[5]

The act includes a provision that if the loan requires the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due.[6]

If a borrower sends a "qualified written request" to the loan servicer concerning the servicing of the loan, the servicer must provide a written acknowledgement within 20 business days of receipt of the request. Not later than 60 business days after receiving the request, the servicer must make any appropriate corrections to the borrower's account, and must provide a written clarification

[1] The Office of Financial Regulation regulates mortgage brokers, lenders and mortgage companies, including enforcement of the Florida Fair Lending Act (ch. 494, F.S.), as well as financial institutions, generally (ch. 655, F.S.), credit unions (ch. 657, F.S.), bank and trust companies (ch. 658, F.S.), international banking (ch. 663, F.S.), associations (ch. 665, F.S.), and savings banks (ch. 667, F.S.).
[2] Section 494.0072(2)(g), F.S.
[3] Section 627.4133(2), F.S.
[4] 12 U.S.C. s. 2601, et seq.
[5] 12 U.S.C. s. 2602.
[6] 12 U.S.C. s. 2605(g).

regarding any dispute. A servicer that fails to comply with any provision of this section shall be liable to the borrower for any actual damages to the borrower as a result of the failure, plus reasonable costs and attorneys fees. The act authorizes any additional damages as the court may allow in the case of a pattern or practice of noncompliance in an amount not to exceed $1,000. The act further provides that any action for a violation of the provision may be brought in the U.S. District Court or in any other court of competent jurisdiction within 3 years of the violation.[7]

The following questions and answers relative to RESPA provisions related to escrow accounts are quoted from the website for the U.S. Department of Housing and Urban Development (HUD):[8]

> ***What steps should I take if the lender does not pay my hazard insurance on time or at all and my insurance is canceled?***
>
> *Lenders are required by Section 6 to make escrow account disbursements on time. If a lender fails to do so, a borrower may bring a private law suit under this Section. Therefore, if you incur any damages due to the lender's negligence, you may wish to consult an attorney.*
>
> *You should also contact your lender immediately and send a copy of the bill. Some lenders list a special address and/or FAX number for insurance and tax bills. Keep checking with the insurance company to make certain the bill is paid. You may wish to pay the insurance company directly to avoid cancellation of your policy and then seek a refund from your lender. Keep copies of all your correspondence and payments. If you incur any damages due to the lender's negligence, you may wish to consult an attorney.*
>
> ***I got a notice that my hazard insurance has been canceled. My lender force-placed hazard insurance with a different company and it costs a lot more. Can a lender do this?***
>
> *As long as your mortgage payment is not more than 30 days late, Section 6 of RESPA requires the lender to make escrow payments, for taxes, insurance, etc., in a timely manner. You should write to your lender and complain. If your lender does not refund the difference or otherwise resolve your complaint satisfactorily, you may wish to file a complaint with HUD or the Consumer Protection Office of your State Attorney General's Office. You may also wish to consult an attorney.*

RESPA further provides that its provisions do not alter, affect, or exempt any person from complying with state laws with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of RESPA. The Secretary of HUD is authorized to determine whether such inconsistencies exist, but the Secretary may not determine that any state

[7] 12 U.S.C. s. 2614.
[8] FAQs About Escrow Accounts for Consumers (http://www.hud.gov/offices/hsg/sfh/res/respafaq.cfm).

law is inconsistent with any provision if the Secretary determines that such law gives greater protection to the consumer.[9]

Even though RESPA does not preempt state laws that give greater protection to the consumer, there still may be a question of federal preemption if the lender that services the loan is a federal bank charted under the National Bank Act, or a subsidiary of a federal bank, regulated by the Office of the Comptroller of Currency (OCC) National banks are permitted to engage in activities "incidental to the business of banking," which OCC regulations interpret as including servicing loans by the national bank or by a service company owned by the bank.[10] The National Bank Act and OCC regulations are interpreted as preempting additional state requirements on such institutions.

III. Effect of Proposed Changes:

The bill amends s. 501.137, F.S., to add requirements to the current law that makes a lender of money liable to the property owner for a loss that results from the failure of the lender to timely pay any insurance premium from escrowed funds. The bill provides that if the premium payment is not more than 90 days overdue, the insurer must reinstate the insurance policy, retroactive to the date of cancellation, and the lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner for reinstating the policy. If the premium payment is more than 90 days overdue or if the insurer refuses to reinstate the insurance policy, the lender must pay the difference between the cost of the previous policy and a new, comparable policy, for a period of two years.

The bill also amends s. 627.4133, F.S., related to cancellation or non-renewal of property insurance policies, to require a property insurer that cancels a policy on property secured by a mortgage due to the failure of the lender to timely pay the premium to reinstate the policy as required by s. 501.137, F.S. (above). By having this provision in the Florida Insurance Code, the Office of Insurance Regulation will have the full authority to enforce the provisions of s. 501.137, F.S., as it applies to insurers.

The bill provides and effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[9] 12 U.S.C. s. 2616.
[10] 12 U.S.C. s. 94 and 12 C.F.R. Part 5.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill takes effect July 1, 2004, and if interpreted to apply to policies in effect on that date, it may be deemed to impair the obligations of such policies and as such, violate Art. 1, Sec. 10, Florida Constitution, which prohibits any law impairing the obligation of contracts. This could be cured by applying the bill to policies issued or renewed on or after the effective date.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property owners would be afforded greater protections to either reinstate a property insurance policy that has been canceled due to nonpayment of premium by the mortgage lender or to be reimbursed for the additional cost of obtaining replacement coverage.

State regulated financial institutions and mortgage lenders would be subject to any policy reinstatement fees or additional costs for replacement coverage for two years.

The bill may expose insurers to loss for risks covered under a policy for up to 90 days for which the premium has not yet been paid, but the past due premium would be required to be paid before the coverage is reinstated, retroactive to the date of cancellation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Federal law may preempt application of the bill to national banks, as explained in Present Situation, above.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 444

SPONSOR: Governmental Oversight & Productivity Committee and Senators Geller and Miller

SUBJECT: Abrogating Offensive or Derogatory Place Names

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Favorable/CS
2.	Cooper	Yeatman	CP	Favorable
3.	Cibula ICC	Lang	JU	
4.			ATD	
5.			AP	
6.				

I. Summary:

This bill requires the Division of Historic Resources to aid state agencies and local governments in identifying geographic sites that have offensive or derogatory place names and to find replacement names. "Offensive or derogatory place names" is defined to mean only racial, religious or ethnic slurs. The division is required to select replacement names and to file a formal request with the United States Board on Geographic Names to render a decision on the proposed name change so that new names will be reflected on official maps. Further, the division is required to notify specified state agencies as to name changes to ensure that markers, maps, and informational literature reflect the changes.

This bill creates section 267.0625 of the Florida Statutes.

II. Present Situation:

The *Tallahassee Democrat* reported on November 17, 2003, that a rural Florida bridge in Hendry County bore the offensive name of a character in Mark Twain's "The Adventures of Huckleberry Finn." This place name was found by a search on the U.S. Board of Geographic Names, though the pejorative term was replaced with the word "Negro." In conversation with staff, Lester Baird, county manager in Hendry County, however, stated that the bridge is on State Road 80 and was not named by the county. Further, he notes that all county references to the pejorative name were removed from county maps and other descriptions. He also stated that the bridge was near a hammock which a man named "Jim" used to harvest timber from to build boats. According to Mr. Baird, the hammock, and not the bridge, was once called by a pejorative name but that the hammock was turned into farm land and the name is no longer in use.[1]

[1] Conversation with staff of the Committee on Governmental Oversight and Productivity, 1:30 p.m., February 23, 2004.

There are only a few provisions in the *Florida Statutes* relating to place names. Section 267.062(1), F.S., provides that, unless otherwise provided in law, no state building, road, bridge, park, recreational complex, or other similar facility is to be named for any living person. Subsection (2) of that section requires the Division of Historical Resources, after consultation with the Florida Historical Commission,[2] to recommend persons whose contributions to the state have been of such significance that the division may recommend that state buildings and facilities be named for them.

Additionally, s. 177.142, F.S., provides that

> If the local governing body determines that a subdivision, street, or other name appearing on a recorded plat or map or an unrecorded map maintained by the clerk of the circuit court pursuant to s. 177.132[3] constitutes an ethnic or racial slur, the local governing body is authorized to change that name by ordinance. The clerk of the circuit court of the county shall place in the margin of the plat or map a notation that an ordinance has been passed changing the name, the date of the name change, and the book and page in the public records where the ordinance is recorded.

While a few states have their own naming boards, Florida is not among them. There is, however, a federal entity that compiles geographic names. The United States Board on Geographic Names (BGN) is an interagency board established by federal law to standardize geographic name spellings for use in U.S. Government publications.

According to information provided by the BGN, it was first established in 1890 by an executive order issued by President Benjamin Harrison. The Board was reestablished in its present form by Public Law 80-242 passed by Congress in 1947. Overall responsibility for the work of the Board is in the hands of the Secretary of the Interior. The work of the Board is funded out of the normal operating expenses of the agencies involved, and members of the BGN and its committees receive no additional remuneration for their service.

The work of the BGN is carried out primarily by two of its standing committees: the Domestic Names Committee (DNC) and the Foreign Names Committee (FNC). The DNC works closely with State geographic names boards and with interested agencies, groups, and individuals to standardize place name spellings within the 50 States and in U.S. possessions. The DNC does not actively name features but prescribes overall policy and assists in the resolution of geographic name disputes. Members of the DNC come from the Departments of Agriculture, Commerce, and the Interior, the Government Printing Office, the Library of Congress, and the U.S. Postal Service. Staff support for the DNC comes from the U.S. Geological Survey.

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[2] The Florida Historical Commission is created in s. 267.0612, F.S., to serve in an advisory capacity to the director of the Division of Historical Resources, in order to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties. The commission is composed of 11 members.

[3] Section 177.132, F.S., permits the clerk of the circuit court of a county to receive and copy, as unrecorded maps, otherwise unrecorded plats and maps which describe or illustrate the boundaries and subdivision of parcels of land for informational purposes only.

The National Geographic Names Database is a part of the Geographic Names Information System (GNIS) and represents the primary source for identifying official names. The system is maintained by the U.S. Geological Survey in cooperation with the U.S. Board on Geographic Names. Over 2.5 million name records are currently in the database. These records include the names of natural features, populated places, civil divisions, areas and regions, and cultural features such as mines, churches, schools, cemeteries, hospitals, dams, airports, and shopping centers. All names in the database, except for variant names, are considered official for Federal use, by either Board policy or decision or under the procedures of the organization responsible for its administrative names. Information associated with each record includes the following:

- written form of the official or primary name
- term identifying the kind of feature
- location and, in some cases, extent of the feature by geographic coordinates
- U.S. Geological Survey or other official base series map on which the feature can be located
- elevation of the feature when appropriate
- variant names and spellings for the same feature

Information in the database can be retrieved, analyzed, and organized to meet general and specialized needs.

It is the policy of the Federal Government that only official domestic geographic names are to be used on Federal maps and in other publications. An official name is one in which the written form of that name and its application to the appropriate place, feature, or area are approved by the U.S. Board on Geographic Names or the appropriate administrative agency. By law, the Board is responsible for all geographic names except those applying to offices or establishments of Federal agencies. Practically, however, the Board decides primarily on the names of natural features of the land, unincorporated localities, and populated places in the United States and its territories and outlying areas. Unless asked to do so, the Board does not rule on the names of cultural features such as roads, streets, shopping centers, churches, schools, hospitals, and airports.[4] Borderline cases exist; for example, the Board determines the official names of

[4] Names Established by Other Authorities--Certain categories of names only rarely are the subject of decisions by the Board, generally because they fall within the purview of other authorities. The following categories of names generally are not the subject of decisions by the Board: (1) Facilities, offices, establishments, and bounded areas of administration of Federal agencies--Examples are Forest Service stations and ranger districts (Department of Agriculture, Forest Service); military bases and reservations (Department of Defense); Coast Guard lighthouses and lifesaving stations (Department of Transportation); and post offices (U.S. Postal Service). However, the names adopted by these agencies apply to the facilities themselves, but not necessarily to similar names of adjacent communities or geographic features. Such names may be the subject of Board decisions; (2) Facilities, offices, establishments, and bounded areas of administration of State and local governments--Examples are regional forest preserves, State parks, municipal buildings and parks, municipal airports, and public schools; (3) Indian reservations--Names of these generally are specified in an act of Congress, a treaty, or an Executive order; (4) Administrative geographic subdivisions (counties, cities, townships, and similar legally incorporated units)--These entities are created under State law, which typically prescribes procedures for establishing their names. Included are entities that generally have local self-government such as cities, towns, townships, boroughs, villages, and plantations (in Maine); districts, precincts, and similar entities established as administrative subdivisions of larger units; wards of cities; and municipios, barrios, and similar entities in Puerto Rico and the outlying areas. The Board frequently promulgates current information on such names but renders decisions only in rare instances of conflict or ambiguity between established sources; (5) Local transportation, communication, navigational, and water-management features--Names of highways, streets, bridges, ferries, tunnels, airports, radio and television towers, buoys, artificial fishing reefs, dams, ditches, and canals that are

reservoirs not formally named by Congress, but not the names of dams that form the reservoirs. The following statements define the Board's procedures for establishing and maintaining uniform geographic name usage for Federal maps and other publications.

The web site of the BGN provides a means to propose a new name or name change to place names at *http://geonames.usgs.gov/dgnp/dgnp.html*. The site also contains an electronic form for the process.[5]

III. Effect of Proposed Changes:

The bill provides that the Legislature finds that certain place names for geographic sites are offensive or derogatory to the state's people, history, and heritage. The bill provides that the Legislature finds that these offensive or derogatory place names should be replaced by names that reflect the state's people, history, and heritage without resorting to offensive stereotypes, slurs, names, words, or phrases.

The bill requires each state agency or political subdivision that owns or manages public land, waters, or structures in Florida to identify any public property under its jurisdiction which contain racial, ethnic, or religious slurs and inform the Division of Historical Resources (division) of such property by October 1, 2004. Political subdivisions must recommend a replacement name for offensive or derogatory names identified. The Division is required to replace the offensive or derogatory names by March 1, 2005, with the advice of the Florida Historical Commission within the Department of State.

The division is required to ensure that whenever an agency updates a map or replaces a sign, interpretative marker, or any other marker "*because of war or vandalism*," the offensive or derogatory place name is removed and replaced with the name chosen by the division. The prior version of the bill used the word "wear" instead of "war." The word "war" is probably a typographical error and should be replaced with "wear."

The bill also requires the division to notify specific agencies that compile information for or develops maps or markers for the state of the name change so that it may be reflected on subsequent editions of any maps, informational literature, or markers produced by those entities. Further, the bill requires the division to place a formal request with the U.S. Board on Geographic Names to render a decision on the proposed name change so that the new name will be reflected on official maps. The division is also required to report to the Governor and the Legislature by no later than July 2, 2005, regarding implementation of the bill.

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constructed or administered by a government or quasi-government agency generally are named by the appropriate office. Only if a conflict arises does the Board become involved; (6) Structures and other manmade features on private property--Examples are shopping malls, resorts, mines, oil rigs, churches, cemeteries, and stations, shops, and sidings of railroads and other public transit facilities. As in the case of post offices, a railroad station name does not automatically apply to the adjacent community, whose name may be the subject of a Board decision. A Board decision also may be called for when several property owners are involved or when a feature is no longer active (for example, an abandoned mine) if the correct name is in doubt. The Board may, however, decide to rule on such names if necessary to settle conflicts between different agencies. Independent of whether decisions are rendered, the Board may include such names in lists it issues from time to time, as part of its responsibility to promulgate standard names for U.S. Government use. (See Sec. 5 of Public Law 80-242).

[5] See, http://erg.usgs.gov/dgn/DGNFORM2.html

The bill provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article 18, Section VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (d) exempts certain categories of laws from the enacting conditions contained in the constitutional provision, to include laws having insignificant fiscal impact, which means an amount not greater than the average statewide population for the applicable fiscal year times ten cents, which is $1.7 million for FY 2004/05. The average fiscal impact, including any offsetting effects over the long term, is also considered.

The bill requires each political subdivision, which includes counties and municipalities that owns or manages public land, waters, or structures in Florida to identify any geographic sites under its jurisdiction which contain offensive or derogatory place names by October 1, 2004, and inform the division of those sites.

However, because the fiscal impact on cities and counties is estimated to be insignificant, the bill is exempted from the mandate restriction.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to an economic impact analysis performed by the Department of State, the bill would cost the department in fiscal year 04-05 approximately $50,689.57.

VI. Technical Deficiencies:

None.

VII. Related Issues:

As the Department of State is an agency as defined in s. 120.52(1), F.S., action by the department under this act would be either by rule or order, either of which could be challenged pursuant to the provisions of the Administrative Procedure Act.

The bill requires replacement of offensive or derogatory place name markers or maps only when the entity updates a map or recorded plot or when the entity replaces a sign, interpretive marker, or any other marker "***because of war or vandalism***," not upon identification and alternative naming. The use of the word "war" in the italicized phrase above is probably a typographical error and probably should be replaced with the word "wear." The word "wear" was used in the prior version of the bill.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1962

SPONSOR: Senators Wasserman Schultz and Smith

SUBJECT: Sex Trafficking

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.	Brown CMB	Lang	JU	
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

This bill creates a new section that provides that any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, with knowledge that, as a consequence of the sale or transfer, force, fraud, or coercion will be used to cause the minor to engage in prostitution or otherwise participates in the trade of sex trafficking, commits sex trafficking, a first degree felony.

The bill also creates another section that provides that any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second degree felony, unless the victim is under the age of 14 or the offense results in a death, in which case it is a first degree felony.

The bill also amends the definitions section of the Florida RICO statute to add these new offenses as predicate offenses for the purpose of racketeering prosecutions.

This bill substantially amends s. 895.02, F.S., creates ss. 796.035 and 796.045, F.S., and reenacts ss. 16.56(1)(a), 27.34(1), 655.50(3)(g), 896.101(2)(g), and 905.34(3), F.S.

II. Present Situation:

Relevant Florida Law

Present Florida law does not identify any crime as "sex trafficking."

Section 796.03, F.S., provides that it is a second degree felony to procure a minor for prostitution or cause the minor to be prostituted.

Section 796.04, F.S., provides that it is a third degree felony to force, compel, or coerce another person to become a prostitute.

Section 796.05, F.S., provides that it is a third degree felony for any person with reasonable belief or knowing another person is engaged in prostitution to live or derive support or maintenance in whole or in part from what is believed to be the earnings or proceeds of such person's prostitution.

Section 796.06, F.S., provides that it is a second degree misdemeanor (a first degree misdemeanor for a second or subsequent violation) to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used for the purpose of lewdness, assignation, or prostitution.

Section 796.07, F.S., provides, in part, that it is unlawful to: own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution; offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act; receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation; solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation; or aid, abet, or participate in any of these acts.

A first violation is a second degree misdemeanor; a second violation is a first degree misdemeanor; a third or subsequent violation is a third degree felony.

Section 827.04, F.S., provides, in part, that it is a first degree misdemeanor to: commit any act which causes, tends to cause, encourages, or contributes to a child becoming a delinquent or dependent child or a child in need of services; or induces or endeavors to induce, by act, threat, command, or persuasion, a child to commit or perform any act, follow any course of conduct, or live in a manner that causes or tends to cause such child to become or to remain a dependent or delinquent child or a child in need of services.

Section 827.071, F.S., provides, in part, that it is a second degree felony for any person who, knowing the character and content thereof, employs, authorizes, or induces a minor to engage in

a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. It is also a second degree felony for any person who, knowing the character and content thereof, to produce, direct, or promote any performance which includes sexual conduct by a child less than 18 years of age.

Section 847.0145, F.S., provides that it is first degree felony for any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, either: (1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or (2) with intent to promote either the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

Section 847.0145, F.S., provides that it is a first degree felony for any person to purchase or otherwise obtain custody or control of a minor, or offer to purchase or otherwise obtain custody or control of a minor, either: (1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or (2) with intent to promote either the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

Section 800.04, F.S., provides, in part, that a person who encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity commits a second degree felony.

Relevant Federal Law

The Victims of Trafficking and Violence Protection Act of 2000, Pub L. No. 106-386 (effective October 28, 2000), supplemented existing federal laws applicable to human trafficking including those passed to enforce the Thirteenth Amendment (proscribing slavery and involuntary servitude). The Act is the result of coordinated efforts between the FBI, INS, Department of Labor and other agencies to address domestic and global trafficking of persons, primarily women and children.

The Act provides as follows:

- Creates new laws that criminalize trafficking with respect to slavery, involuntary servitude, peonage or forced labor;
- Permits prosecution where nonviolent coercion is used to force victims to work in the belief they would be subject to serious harm;
- Permits prosecution where the victim's service was compelled by confiscation of documents such as passports or birth certificates;

- Increases prison terms for all slavery violations from 10 years to 20 years and adds life imprisonment where the violation involves the death, kidnapping, or sexual abuse of the victim;
- Requires courts to order restitution and forfeiture of assets upon conviction;
- Enables victims to seek witness protection and other types of assistance;
- Gives prosecutors and agents new tools to get legal immigration status for victims of trafficking during investigation and prosecution.

Various other sections of the United States Code address slavery and indentured servitude:

Title 18, Part I, Ch. 77, Sec. 1581(a): provides that any person who holds or returns any person to a condition of peonage (debt servitude), or arrests any person intending to place or return him or her to a condition of peonage, is fined under Title 18 or imprisoned not more than 20 years, or both. If death results from the violation of sec. 1581, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant is fined under Title 18 or imprisoned for any term of years or life, or both. Subsection (b) of sec. 1581 provides that whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of sec. 1581 is liable for the penalties prescribed in subsection (a).

Title 18, Part I, Ch. 77, Sec. 1583: provides that any person who kidnaps or carries away any other person, with the intent for them to be sold into involuntary servitude, or held as a slave; or entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he or she be made or held as a slave, or sent out of the country to be so made or held is fined under Title 18 or imprisoned not more than 20 years, or both. If death results from the violation of sec. 1583, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant is fined under Title 18 or imprisoned for any term of years or life, or both.

Title 18, Part I, Ch. 77, Sec. 1584: provides that any person who knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, is fined under Title 18 or imprisoned not more than 20 years, or both. If death results from the violation of sec. 1584, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant is fined under Title 18 or imprisoned for any term of years or life, or both.

Title 18, Part I, Ch. 77, Sec. 1589: provides that any person who knowingly provides or obtains the labor or services of a person: (1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process, is fined under Title 18 or imprisoned not more than 20 years, or both. If death results from the violation of sec. 1589, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant is fined under Title 18 or imprisoned for any term of years or life, or both.

Title 18, Part I, Ch. 77, Sec. 1590: provides that any person who knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of ch. 77 is fined under Title 18 or imprisoned not more than 20 years, or both. If death results from the violation of sec. 1590, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant is fined under Title 18 or imprisoned for any term of years or life, or both.

Title 18, Part I, Ch. 77, Sec. 1591(a): provides that any person who knowingly: (1) in or affecting interstate commerce, recruits, entices, harbors, transports, provides, or obtains by any means a person; or (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing that force, fraud, or coercion will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, is punished as provided in subsection (b). Subsection (b) of sec. 1591 provides that the punishment for an offense under subsection (a) is: (1) if the offense was effected by force, fraud, or coercion or if the person transported had not attained the age of 14 years at the time of such offense, by a fine under Title 18 or imprisonment for any term of years or for life, or both; or (2) if the offense was not so effected, and the person transported had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under Title 18 or imprisonment for not more than 20 years, or both.

Title 18, Part 1, Ch. 96, Sec. 1961: provides, in part, that the definition of "racketeering activity" includes any act which is indictable under sections 1581-1588 (relating to peonage and slavery).

Reports on Human Trafficking

The National Institute of Justice reports:

> The sale and distribution of trafficked humans in the U.S. is a global, regional, and national phenomenon. The largest influx of humans trafficked to the U.S. are coming from the less developed regions of the world. The most popular transit route for Chinese, South Americans and South Asians is through Central America and Mexico. Panama is a major transit point for migrants coming from Columbia, Ecuador, Peru, Cuba, India and China. In addition, South Africa has also become a major transit point into the United States. The major points of entry...are located in...Texas, Southern California...Arizona, and areas of New Mexico. Other newly emerging points of entry include Atlanta, Houston, Orlando and Washington, D.C.
>
> Another aspect critical to understanding the role of demand in this market is the willingness of many U.S. employers to hire undocumented workers. For example, the illegal job market is flourishing in Florida and the INS estimates that about 350,000 illegal immigrants are currently living there. The U.S. Congress passed the Illegal Immigration Reform and Immigration Responsibility Act of 1996. This law significantly expanded potential sentences for individuals convicted of alien trafficking, and doubled the maximum penalty for alien smuggling to 10 years. The goal of the anti-trafficking

> strategy of the INS is to deter and disrupt alien smuggling at all levels of operation, including overseas, at the border, and in the interior of the United States, as well as to dismantle trafficking operations. In accomplishing this goal, the INS has utilized a number of investigative techniques. These techniques include the application of expanded asset forfeiture laws; the use of wire intercepts; the establishment of an undercover proprietary business; and, the use of the Racketeer Influenced and Corrupt Organizations Act (RICO), which now designates alien smuggling and immigration-related visa fraud as RICO predicate offenses.[1]

The following was recently reported by CNN regarding human trafficking and sex trafficking in Florida:

> Human traffickers bring thousands of people into the United States each year and Florida is believed to be one of the top three destinations, along with New York and Texas, according to the Center for the Advancement of Human Rights at Florida State University.
>
> Although there have been several prosecutions of human trafficking in Florida, no one knows how many people in Florida are under the control of traffickers, said Terry Coonan, the center's executive director.
>
> In south Florida, federal prosecutions have indicated hundreds of farm workers were victims of human trafficking, and a forced prostitution ring identified as many as 40 young women and girls brought from Mexico. The center also cited a case of "domestic servitude" in southwest Florida.
>
> But the problem is not limited to those areas or those industries, according to Robin Thompson, director of the research project.
>
> "All you have to do is look where cheap labor is required and where there is a potential for labor exploitation, which pretty much can put you anywhere in our state," Thompson said.
>
> The center organized a "working group" of advocates and law enforcement officials to study the issue. The project was funded by a federal grant under a 2000 law designed to increase protections for victims of human trafficking.
>
> The center's report emphasized that not all victims of human trafficking are illegal immigrants. Many enter the United States legally but because of their poverty or inability to speak English are exploited by traffickers.
>
> And some victims are Americans, Thompson said, pointing to the homeless, addicted and runaways as potential victims for traffickers.

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[1] James O. Finckenauer and Jennifer Schrock, *Human Trafficking: A Growing Criminal Market in the U.S.*, International Center, National Institute of Justice, U.S. Department of Justice website: www.ojp.usdoj.gov/nij/international/ht.html (2000).

> "The greater the awareness, the more likely these cases will be reported and prosecuted," Coonan told reporters. "This is almost an invisible crime because the victims are kept out of the public eye. We need to crack this code of silence.

"Report: Modern-day slavery alive and well in Florida," *CNN.com* (February 24, 2004). The report referred to in the article is "Florida Responds to Human Trafficking," Center for the Advancement of Human Rights, Florida State University (Fall 2003)

III. Effect of Proposed Changes:

Senate Bill 1962 creates s. 796.035, F.S., to provide that any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of the minor, or offers to sell or otherwise transfer custody of the minor, with knowledge that, as a consequence of the sale or transfer, force, fraud, or coercion will be used to cause the minor to engage in prostitution or otherwise participates in the trade of sex trafficking, commits sex trafficking, a first degree felony.

The bill also creates s. 796.045, F.S., to provide that any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution, commits the offense of sex trafficking, a second degree felony, unless the victim is under the age of 14 or the offense results in a death, in which case it is a first degree felony.

The bill also amends s. 895.02, F.S., the definitions section of the Florida RICO statute to add these new offenses as predicate offenses for the purpose of racketeering prosecutions. A defendant can be convicted of both the sex trafficking crime and a RICO offense in which the sex trafficking crime is a predicate offense. This does not violate the constitutional protection against double jeopardy. *Gross v. State*, 728 So.2d 1206, 1208 (Fla. 4th DCA 1999). The predicate offense is not a lesser included offense of the RICO offense. *Id.* The gravamen of a RICO offense is a "pattern of racketeering activity," which means "engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that are otherwise interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of [the RICO Act] and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct." ss. 895.02(4) and 895.03(1), F.S. A RICO violation (under s. 895.03, F.S.) is a first degree felony. s. 895.04, F.S.

The bill also reenacts ss. 16.56(1)(a), 27.34(1), 655.50(3)(g), 896.101(2)(g), and 905.34(3), F.S., which relate to the authority of the Office of Statewide Prosecution to investigate and prosecute certain offenses, the contribution of funds by counties and municipalities towards salaries of assistant state attorneys, the Florida Control of Money Laundering in Financial Institutions Act, the Florida Money Laundering Act, and the subject matter jurisdiction of the statewide grand jury, respectively, to incorporate the amendment to s. 895.02, F.S., in references thereto.

The bill takes effect October 1, 2004, and applies to offenses committed 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.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates that the bill is likely to have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The same elements required to prove the crime of sex trafficking may already exist for certain other crimes provided for in current law, such as Sections 796.03 and 796.04, F.S., which prohibit forcing a minor into prostitution and procurement of a person into prostitution. Charging a defendant under both provisions may bring a constitutional challenge based on double jeopardy. The Supreme Court in *United States v. Dixon* set out the application of the Blockburger, or the same elements test. The same elements test provides that the prohibition against double jeopardy does not apply where there are two distinct offenses and each offense requires proof of fact that the other does not.[2] Likewise, charging twice for the same crime, as demonstrated by the prosecution proving the same elements for both crimes may be

[2] 509 U.S. 688, 703 (1993).

unconstitutional.[3] Therefore, to the extent that this bill provides punishment based on the same elements in this crime as well as one in existing law, the prosecution may be prohibited from charging under both, as limited by Blockburger.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

[3] *See, generally, Blockburger v. United States*, 284 U.S. 299 (1932).

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1596

SPONSOR: Senators Smith and Lynn

SUBJECT: Frivolous Actions/Filed by Prisoner

DATE: April 15, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Favorable
2.	Brown	Lang	JU	
3.				
4.				
5.				
6.				

I. Summary:

This bill amends s. 944.279, F.S., which subjects an inmate to Department of Corrections disciplinary proceedings if a court finds that the inmate filed an action or appeal in bad faith or knowingly presented false information or evidence to the court. The bill removes the exception that prevents application of the sanction to a collateral criminal proceeding filed by an inmate.

This bill substantially amends s. 944.279 of the Florida Statutes:

II. Present Situation:

Statutory Authority

Section 944.279, F.S., was enacted in 1996 as part of an act aimed at reducing unnecessary or frivolous prisoner filings. The section provides that a prisoner is subject to disciplinary procedures if a Florida state court or a federal court determines that a prisoner has either:

- Filed a frivolous or malicious suit, action, claim, proceeding, or appeal; or,
- Knowingly, or with reckless disregard for the truth, brought false information or evidence before the court.[1]

A prisoner is defined as a person who is convicted of a crime and incarcerated for that crime, or held in custody pending extradition or sentencing.[2]

An exception is provided for criminal proceedings and collateral criminal proceedings.[3]

[1] s. 944.279 (1), F.S.
[2] s. 944.279 (3), F.S.
[3] s. 944.279 (2), F.S.

Upon making a written finding, the court is required to direct a certified copy to the Department, for the Department to take disciplinary action pursuant to its administrative rules.[4]

Section 944.28(2)(a), F.S., provides separate authority for the Department to forfeit all or part of any gain time earned by an inmate if he or she is found by a court to have brought a frivolous suit, action, claim, proceeding, or appeal in any court. The Department may also forfeit all gain time of an inmate who is found by a court to have brought false information or evidence before the court either knowingly or with reckless disregard for the truth. There is no exception for collateral criminal proceedings.

Certain due process procedures apply in cases of gain-time forfeiture, including requiring a copy of the filing of a written charge to be forwarded to the prisoner, that the prisoner be given notice of a hearing, and that the prisoner has the right to be present at the hearing.[5]

Florida Administrative Code
Section 9-32 of Rule 33-601.314, F.A.C., tracks the statutory language and provides a maximum penalty of 60 days disciplinary confinement and loss of all gain time if a court makes the required finding of prisoner misconduct.

Case Law
In *Hall v. State*, 752 So.2d 575 (Fla. 2000), the Florida Supreme Court noted that the term "collateral criminal proceeding" is not defined in the statute and that there is no definition of the term in *Black's Law Dictionary*. However, the Court found that a postconviction motion filed pursuant to Rule 3.850, Florida Rules of Criminal Procedure, and any appeal of such a motion, are collateral criminal proceedings. In *Saucer v. State*, 779 So.2d 261, (Fla. 2001), the Court held that a writ of *habeas corpus*, although quasi-civil in nature, that challenges the prisoner's criminal conviction or sentence is also considered to be a collateral criminal proceeding, based on the subject matter of the action.

In *Hall*, the Court held that sections 944.279 and 944.28, F.S. must be read together and cannot be read independently. In so doing, the court found that the exception for collateral criminal proceedings applies to both statutes. Therefore, gain time cannot be revoked if the underlying action was a collateral criminal proceeding.[6]

Additionally, the sanction recommended by the court is not binding on the Department.[7]

III. Effect of Proposed Changes:

The bill will remove the current exception that prevents the Department of Corrections from taking disciplinary action, including revocation of gain time, against a prisoner who is found by a court to have brought a collateral criminal proceeding in bad faith or to have presented false information or evidence before the court in such a proceeding.

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[4] s. 944.279 (1), F.S.
[5] s. 944.28 (2)(c), F.S.
[6] *Id at* 579.
[7] *Id at* 577.

This bill applies prospectively.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is no quantifiable impact, but there will be a reduction of use of judicial and prosecutorial resources if the extension of s. 944.279, F.S., to cover collateral criminal proceedings, deters frivolous filings by prisoners.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2008

SPONSOR: Transportation Committee and Senator Sebesta and others

SUBJECT: Motor Vehicle Records/Public Records

DATE: April 16, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Favorable/CS
2.	Cibula	Lang	JU	
3.			GO	
4.			RC	
5.				
6.				

I. Summary:

The State of Florida's motor vehicle records contain personal information about licensees and motor vehicle owners. Personal information includes, but is not limited to, a driver's social security number, driver's license number, name, address, telephone number, and medical or disability information.

The bill revises public records exemption that withholds from public disclosure information contained in motor vehicle records held by the Department of Highway Safety and Motor Vehicles (DHSMV). Individuals will no longer need to "opt out" in writing to have their personal information exempted from being released. Instead, personal information on all persons with motor vehicle records will be automatically exempt from public disclosure unless the licensee requests such information be disclosed. Additionally, disclosure of social security numbers and medical and disability information contained in motor vehicle records is further clarified.

This bill also revises two exceptions allowing for public disclosure of motor vehicle records in connection with a legal proceeding and revises the citation to the federal Driver's Privacy Protection Act to reflect recent amendments.

This bill substantially amends section 119.07, Florida Statutes.

II. Present Situation:

Motor vehicle records contain personal information about drivers and motor vehicle owners. Personal information is described as "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but

not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver status."

Drivers Privacy Protection Act

Congress enacted the Driver's Privacy Protection Act (DPPA) as part of the Violent Crime Control and Law Enforcement Act of 1994. The DPPA is a federal law prohibiting the release of "personal information' contained in state motor vehicle records, unless the release is otherwise specifically authorized.

The DPPA further requires states comply with its provisions by 1997. Florida came into compliance with DPPA (1994) in 1997, when chapter 97-185, Laws of Florida, became law. However in 1999, Public Law 106-69, 113 Stat. 986, changed a provision in the DPPA from an "opt out" alternative to an "opt in" alternative. Under the amended DPPA, states may not imply consent from a driver's failure to take advantage of a state-afforded opportunity to block disclosure, but must rather obtain a driver's affirmative consent to disclose the driver's personal information. Florida is not in compliance with the 1999 amendment to the DPPA.

Any state department of motor vehicles in substantial noncompliance is subject to a civil penalty of up to $5,000 per day. In addition, DPPA provides for a criminal fine and civil remedy against any person who knowingly violates the DPPA. Persons injured by the unauthorized disclosure of their motor vehicle records may bring a civil action in a United States district court.

Availability of Motor Vehicle Records

Unless specifically exempted by law, DHSMV is required to make all motor vehicle records available to the public (see s. 119.07 (1) (a), F.S.). Currently, individuals must complete a form provided by DHSMV to request their personal information be withheld form public disclosure or "opt out". Upon receiving the request, DHSMV will block the personal information from any requester. Note choosing to "opt out" does not remove the information entirely from public disclosure, as there are numerous exceptions allowing for disclosure. Personal information is available for the following purposes:

1. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers, to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act.

2. For use by any government agency, including any court of law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions.

3. For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance

monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.

4. For uses in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

    a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

    b. If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

5. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body for:

    a. Service of process by any certified process server, special process server, or other person authorized to serve process in this state.

    b. Investigation in anticipation of litigation by an attorney licensed to practice law in this state or the agent of the attorney.

    c. Investigation by any person in connection with any filed proceeding.

    d. Execution or enforcement of judgments and orders.

    e. Compliance with an order of any court.

6. For use in research activities and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

7. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting.

8. For use in providing notice to the owners of towed or impounded vehicles.

9. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this paragraph. Personal information obtained based on an exempt driver's record may not be provided to a client who cannot demonstrate a need based on a police report, court order, or a business or personal relationship with the subject of the investigation.

10. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. App. 2710 et seq.

11. For use in connection with the operation of private toll transportation facilities.

12. For bulk distribution for surveys, marketing, or solicitations when the department has implemented methods and procedures to ensure:

    a. Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit such uses; and

    b. The information will be used, rented, or sold solely for bulk distribution for survey, marketing, and solicitations, and that surveys, marketing, and solicitations will not be directed at those individuals who have timely requested that they not be directed at them.

13. For any use if the requesting person demonstrates that he or she has obtained the written consent of the person who is the subject of the motor vehicle record.

14. For any other use specifically authorized by state law, if such use is related to the operation of a motor vehicle or public safety.

Public Records Law

Article I, s. 24(a), of the Florida Constitution, expresses Florida's public policy regarding access to government records in providing:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from open government requirements. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Section 119.07(1)(a), F.S., provides that every person who has custody of a public record must permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the "Open Government Sunset Review Act of 1995," provides an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

III. Effect of Proposed Changes:

Public Records Exemption

The CS amends s. 119.07(3)(aa), F.S., to provide holders of Florida driver licenses will not have to "opt out" to ensure identifying information contained in motor vehicle records is withheld from public disclosure. Additionally, disclosure of social security numbers and medical and disability information contained in motor vehicle records is further clarified.

The bill revises two exceptions allowing for public disclosure in connection with a legal proceeding specifying the information may not be used for mass commercial solicitation of clients for litigation against motor vehicle dealers.

This bill also provides driver license information can be distributed for surveys, solicitations or marketing purposes only when the license holder expressly consents to the release of the information for that purpose.

This bill provides the restrictions contained in s. 119.07(3) (aa), F.S., do not impair the use of organ-donation information found on a driver license nor impair the administration of organ-donation initiatives in this state.

This bill also revises the citation to the federal Driver's Privacy Protection Act to reflect recent amendments.

This bill makes this exemption subject to the Open Government Sunset Review Act of 1995 and will repeal on October 8, 2009, unless reviewed and reenacted by the Legislature.

Public Necessity Statement
The bill provides a public necessity statement as required by Art. s. 24(c), Florida Constitution, to justify the exemption from public records laws. The bill is needed, according to the public necessity statement, to prevent the disclosure of personal information to individuals who would use the information for malicious purposes and to conform to federal law.

Effective Date
The bill provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill revises public records exemption that withholds from public disclosure information contained in motor vehicle records held by DHSMV. Individuals will no longer need to "opt out" in writing to have their personal information exempted from being released. Instead, personal information on all persons with motor vehicle records will be automatically exempt from public disclosure unless the licensee requests such information be disclosed.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Citizens will not have to go through the process of "opting out" of public disclosure identifying information held by the DHSMV in driver license records. Consequently, there may be an impact on private entities that collect and aggregate information obtained from public agencies.

C. Government Sector Impact:

According to DHSMV, during FY 2002-2003, DHSMV collected approximately $25,664,048 in fees from the sale of driving and motor vehicle records. DHSMV estimates implementation of this bill will not significantly affect the continued sale of

these records since a majority of the records presently sold fall within the current exemptions authorized by law.

According to DHSMV, this bill will require contracted programming modifications to the Driver License and Motor Vehicle Software Systems at an estimated cost of $9,151.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 498

SPONSOR: Committee on Children and Families and Senator Lynn

SUBJECT: Children's Visitation Programs

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Fav/CS
2.			ED	Withdrawn
3.	Brown	Lang	JU	
4.			CJ	
5.			AHS	
6.			AP	

I. Summary:

This bill repeals the sections contained in ch. 753, F.S., regarding the Family Visitation Network. It replaces these repealed sections with new sections that set forth elements for providing safety and quality services in supervised visitation programs, including the development of standards for certification and monitoring, development and provision of training, and collection of data on services provided, to be implemented to the extent that funding permits. Supervised visitation programs are required by the bill to meet guidelines adopted by the courts. The fee for the issuance of a certification of a birth record is increased by $1.00 to provide funds to enhance security at the supervised visitation programs. The bill also provides new mechanisms for facilitating volunteerism of law enforcement officers at supervised visitation programs through various incentives.

Liability and Workers' Compensation
The bill provides that the community-based programs are "responsible" for the acts or omissions of the volunteer law enforcement officer. However, for purposes of workers' compensation, law enforcement officer volunteers are considered as acting within the course of employment.

This bill repeals sections 753.001, 753.002, and 753.004, of the Florida Statutes and creates sections 753.01, 753.02, 753.03, 753.04, 753.05, 753.06, 753.07, 753.08, 753.09, 753.10, and 943.254, of the Florida Statutes. The bill also substantially amends sections 382.0255 and 943.135, of the Florida Statutes.

II. Present Situation:

Family Courts and Safety

For many families before the court in cases of divorce, custody, domestic violence injunctions, or child abuse, there is often a known or alleged risk of physical or sexual abuse to the child or even a risk of abduction. In determining visitation, family courts are constantly faced with the dilemma of balancing child safety with maintaining the parent-child relationship. Supervised visitation provides the courts and families with an option to continue the parent-child contact while minimizing the risk of further abuse to the child or to the spouse or other family member when domestic violence is involved.

A supervised visitation program provides the opportunity for contact between a noncustodial parent and a child in the presence of a third party responsible for observing and ensuring the safety of those involved (s. 753.001(1), F.S.). Supervised exchange services may also be offered which monitor the exchange of a child from one parent to the other at the beginning and end of the visitation period. Supervised visitation programs provide the facilities, resources, and administrative services required to offer a safe and structured setting for supervised visitation and exchange. A court order usually dictates the requirements for the visit or exchange supervision.

The Family Visitation Network

In 1996, the Legislature created ch. 753, F.S., the Family Visitation Network (ch. 96-402, L.O.F.). This chapter was created as supervised visitation programs were evolving and provided a definition for "supervised visitation program," created the Florida Family Visitation Network to provide formal communication among existing and emerging programs, and provided a linkage to other resources for new community supervised visitation programs. Since 1997, the number of supervised visitation programs in Florida has grown from 15 to 43 programs (operating 50 supervised visitation sites) which in 2002 supervised over 40,000 visits.[1] These supervised visitation programs obtain funding to support their services from a variety of sources, including Access and Visitation Grants from the Department of Children and Families, Victims of Crime Act (VOCA) funds through the Office of the Attorney General (which are no longer available), local government funds, the United Way, Junior League, and small private foundations. In addition, four of the forty-two supervised visitation programs receive federal funds from the Department of Justice, Office of Violence Against Women.[2]

Supervised Visitation and Sources for Support

With the steady increase in the number and use of supervised visitation programs, there is a growing need for assurances that programs will provide for a safe contact between the noncustodial parent and the child. In 1999, the Chief Justice of the Supreme Court adopted minimum guidelines for supervised visitation programs which are used by the court. However, in some circuit court jurisdictions, agreements which stipulate the supervised visitation programs' agreement to comply with the guidelines are still not in place.[3] Further, there are no standards by which to assess program quality and only limited tracking of services is provided.

The volatile nature of the relationship between the family members that created the need for supervised visitation programs has made security at the programs a critical concern. Incidents

[1] Oehme, Karen and Maxwell, Sharon, *Florida's Supervised Visitation Programs: The Next Phase*, The Florida Bar Journal, January 2004, p. 44 and conversation with Karen Oehme.
[2] Oehme, *Supra*, p. 47.
[3] Oehme, *Supra*, p. 44.

that have raised safety concerns at supervised visitation programs in this state include threats or actual acts of physical aggression toward staff or custodial parents, incidents where the noncustodial parent is openly intoxicated or under the influence of illegal drugs, and incidents where the noncustodial parent arrives at the program exhibiting delusional behavior or even hallucinating.[4] In some areas of the state, law enforcement officers have provided security services for supervised visitation program through either volunteer service or paid employment. However, it has been reported that supervised visitation programs often do not have adequate resources.

Section 382.0255, F.S., sets forth fees or fee ranges to be charged for various forms of birth and death certificates. Specific fees to be charged are to be established in rule and, currently, the state office of the Department of Health charges $9.00 for a certification of a birth record. Certifications of a birth record obtained through county health departments range from $9.00 to $15.50. While most of the fees charged are retained by the Department of Health or the county health department, s. 382.0255, F.S., provides for portions of these fees to be used for other purposes. Specifically, s. 382.0255(1)(i), F.S., provides that fees in excess of the expenses of the $25.00 for the commemorative certificate of birth or marriage be used by the Regional Perinatal Intensive Care Center Program to prevent child abuse and neglect, and for the Improved Pregnancy Outcome Program. Section 382.0255(2), F.S., requires that $1.50 of the fee charged for each request for a certification of the birth record be transferred to the Child Welfare Training Trust Fund.

III. Effect of Proposed Changes:

This bill repeals language providing for the Family Visitation Network. It replaces the Network with new authority that sets forth elements providing for safety and quality services in supervised visitation programs, including the development of standards for certification and monitoring, development and provision of training, and collection of data on services provided, to be implemented to the extent that funding permits. Supervised visitation programs are required by the bill to meet guidelines adopted by the courts. The fee for the issuance of a certification of a birth record is increased by $1.00 to provide funds to enhance security at the supervised visitation programs.

Specifically, legislative findings and intent to provide for uniform standards, security, training, and certification for supervised visitation programs, subject to available funding, are articulated. The bill requires comprehensive standards to be developed to provide a uniform set of guidelines that will be used by supervised visitation programs and form the basis for certification of such programs. A process for certifying and monitoring compliance of supervised visitation programs with the comprehensive standards is to be phased in based on availability of funds. Certification, once fully implemented, will be required for receipt of both state or federal funds and referrals from the court. Prior to the development of comprehensive standards and implementation of a certification process, the bill requires that supervised visitation programs meet the minimum standards adopted by the courts and prohibits a supervised visitation program from receiving federal access and visitation grant funds unless documentation is provided that the program has

[4] Oehme, *Supra*, p. 45.

entered into agreement as required by the court. The bill encourages supervised visitation programs to develop community partnerships to strengthen the services provided.

The Clearinghouse on Supervised Visitation at the Institute for Family Violence at Florida State University is charged with the following:

- Developing training materials for supervised visitation programs, offering training to staff, tracking training compliance, and fully implementing and maintaining a mechanism for collecting data on supervised visitation services, to the extent the available funding permits.
- Developing standards for supervised visitation programs, criteria for approving and rejecting certification of a program, a process for phasing in the standards and certification process, and a recommendation for the state entity that should be charged with certifying and monitoring supervised visitation programs.
- Implementing an advisory board to assist in developing standards and recommendations, with a preliminary report to be submitted to the Legislature and the Chief Justice of the Supreme Court by December 31, 2004, and a final report to be submitted by December 31, 2005.

The bill also provides new mechanisms for facilitating volunteerism of law enforcement officers at supervised visitation programs. This bill authorizes the use of volunteer time at programs that serve children and families at risk of abuse to meet continuing education requirements, as well as the administration of voluntary security services for off-duty officers at these programs.

A fee is added for certifications of birth records issued by the Department of Health state office. The funds collected are to be transferred to the Department of Children and Families on a yearly basis and distributed to DCF to assist supervised visitation programs meet the security standards to be developed pursuant to this bill. The availability and use of the funds are reiterated in ch. 753, F.S., with a directive for criteria for the provision of the funds to be recommended by the advisory board.

Supervised visitation programs are encouraged to collaborate with law enforcement agencies to facilitate volunteerism of law enforcement officers at their programs using the newly created provisions in this bill. Section 943.135, F.S., requires that all law enforcement officers receive a minimum of 40 hours of training or education every four years as a condition of continued employment. The training must be approved by the Criminal Justice Standards and Training Commission within the Florida Department of Law Enforcement. This bill requires that the commission permit law enforcement agencies to allow officers to meet up to 3 hours of the 40 hours of required continuing education or training by volunteering at a community-based, not-for-profit organization that serves children and families who have experienced or are at risk for child abuse or domestic violence, including, but not limited to, a supervised visitation program. Section 943.254, F.S., is created to authorize law enforcement agencies to administer volunteer security services for officers during off-duty hours at community-based, not-for-profit programs that serve children or families who have experienced or are at risk for child abuse or domestic violence and where there is a potential danger to staff or clients, including, but not limited to, a supervised visitation program. The bill provides that the community-based programs are responsible for the acts or omissions of the law enforcement officer. However, for purposes of

workers' compensation, law enforcement officer volunteers are considered as acting within the course of employment. This bill stipulates that law enforcement officers volunteering pursuant to this section are exempt from licensing requirements for security and investigating services in ch. 493, F.S.

The bill provides for an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill imposes an additional $1.00 fee for a certification of the birth record issued through the Department of Health state office. This will increase the total current charge from $9.00 to $10.00. In comparison, four county health departments currently charge $9.00 for a certification of the birth record and the remaining county health departments charge between $10.00 and $15.50.

B. Private Sector Impact:

While the Supreme Court had already required supervised visitation programs to meet the minimum standards adopted by the court, not all supervised visitation programs have entered into agreement to meet these standards. The number of supervised visitation programs which have not entered into an agreement is not known. The statutory provision reinforces the court's directive and facilitates compliance, thus, strengthening the requirement for programs to meet these standards.

The Clearinghouse on Supervised Visitation at Florida State University has agreed to convene the advisory committee and develop the requested recommendations within their existing revenues. The existing revenue is a small grant through the Department of Children and Families, without which the Clearinghouse could not perform the identified function.

The fee increase on the certification of the birth record provided for by this bill will increase the costs persons will be required to pay by $1.00 when requesting a certification.

C. Government Sector Impact:

The Department of Children and Families reports there will be no fiscal impact with this bill as originally filed. The department noted that this legislation would have a positive impact on the department in that there will be statewide uniformity for supervised visitation programs and practice standards.

The collection of the additional $1.00 on the certification of the birth record and the distribution of funds to the supervised visitation programs may have an associated cost. Neither the Department of Children and Families nor the Department of Health have had an opportunity to determine the fiscal impact.

The Office of the State Court Administrator does not identify a fiscal impact to the courts. However, their analysis did not take into account any possible effects from the pending implementation of Article V, Revision VII.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2808

SPONSOR: Children and Families Committee and Senator Lynn

SUBJECT: Department of Children and Family Services

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable/CS
2.	Cibula	Lang	JU	
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

This bill sets forth the following provisions relative to the services and responsibilities of the Department of Children and Families. Specifically, the bill:

Child Abuse

- Clarifies that the risk assessment conducted when there is a report of child abuse, neglect, or abandonment begins immediately, is on-going to reflect changes in the child's risk, and can include a safety plan.
- Modifies the description of the citizen review panel process to use terminology that will allow for the receipt of federal funding, to clarify the application of the six month review process to the court review and citizen review panel reviews, and to require the court to stipulate its findings relative to the care the child is receiving when the child is not required to appear before the court;
- Strengthens the actions that may be taken in institutions in response to child abuse, removes outdated provisions, and requires procedures specific to investigations in different institutional settings;
- Adds law enforcement agencies to the groups that can receive medical reports from hospitals regarding children who have been abused and for whom a protective investigation is being conducted;

Services Provided by the Department

- Includes self neglect in the definition of "neglect" for the purposes of identifying adult neglect and providing adult protective services;

- Directs the Department of Children and Families to support individuals with developmental disabilities who are in the Medicaid Home and Community-Based Waiver or the Medicaid Consumer Directed Care Waiver and who choose to seek employment;
- Provides the department with direction relative to the course approval process for the Parent Education and Family Stabilization Course;
- Repeals the fee charged to certain individuals receiving services of the Community Care for the Disabled Adults program;

Agency Organization

- Shifts the responsibility for conducting Medicaid related fair hearings, with the exception of Medicaid eligibility determination hearings, from the Department of Children and Families to the Agency for Health Care Administration;
- Amends provisions relative to homelessness services to correct the name of the Florida Supportive Housing Coalition in the Council on Homelessness membership, to articulate the construction and rehabilitation activities for which the Homelessness Housing Assistance Grant funds may be used to change the due date of the annual report on local homeless coalitions, and to require a statement of assurance from local lead agencies that the proposed services for the grant-in-aid funding is consistent with the local coalitions' continuum of care plan;
- Requires the department to use a competitive bid process to contract in two pilot districts for the performance of certain eligibility determination functions for public assistance programs, to assess the service delivery in the pilots, to provide a report to the Governor and Legislature, and to authorize the Governor to provide direction relative to expansion of contracted public assistance eligibility determination;

Department Staffing

- Adds employment history screening to the employment screening required for direct service providers of developmental disabilities services and mental health personnel working in the mental health programs;
- Directs the department to adopt rules for the hiring and training of child protective staff, to develop a program design to test an alternative response system, and to report to the legislature on the implementation of the recommendations of the Protective Investigator Retention Workgroup;
- Establishes criminal penalties for specific acts of sexual misconduct by employees of the Agency for Health Care Administration perpetrated on individuals under their care;
- Establishes criminal penalties for employees who fail to report sexual misconduct;
- Authorizes termination for sexual misconduct regardless of whether an employee is convicted of sexual misconduct;

Miscellaneous Provisions

- Specifies that the notification of a person's right to legal counsel in an administrative hearing being held to consider the imposition of an administrative fine for false reporting of adult abuse is to be included in the notification of the intent to impose the fine;

- Sets forth the legal parameters of the residential facility license and comprehensive transitional education program license, including that these licenses are not professional licenses, they do not create a property right, and they are a privilege, not an entitlement;
- Requires that community mental health providers, inpatient mental health providers, and substance abuse providers, and providers of child protection services receive a contract to participate in the provider network for pre-paid behavioral health services;

This bill substantially amends sections 39.301, 39.302, 39.304, 39.701, 61.21, 120.80, 393.0655, 393.066, 393.067, 393.13, 394.4572, 400.0255, 400.215, 400.964, 408.15, 409.91195, 409.912, 410.604, 415.102, 415.1113, 420.622, 420.623, 420.625, 435.03, 435.04, 435.045, 943.0585, and 943.059, of the Florida Statutes. The bill creates sections 393.135, 394.4593, and 916.1075, of the Florida Statutes.

II. Present Situation:

Child Protective Investigation Risk Assessment

Section 39.301, F.S., sets forth the requirements for conducting a child protective investigation when a report of child abuse, neglect, or abandonment has been received by the central abuse hotline. The child protective investigation is to be initiated either immediately or within 24 hours and is to be completed within 60 days. Minimum requirements of the child protective investigation include a face-to-face interview with the child, other siblings, parents, and other adults in the home and an on-site assessment of the child's residence to determine the composition of the family, whether there is indication of abuse, the person responsible for the abuse, whether there is any criminal background of the family members, and the services needed for the child. In addition, an assessment of risks and needs of the child and family which incorporates the information from these above sources is to be conducted. This risk assessment is required to be completed within 48 hours after the initial contact with the child and is to provide evidence of whether a case plan, which is a plan of voluntary or court-ordered services for the family to address the problems that have resulted in the risk to the child, is needed [s. 39.301(9)(b) and s. 39.601(2), F.S.].

Citizen Review Panels

Title IV E of the Social Security Act requires that each child in foster care receive a review no less frequently than once every six months in order to determine the safety of the child, the continuing necessity and appropriateness of the child's placement, the level of compliance with the child's case plan, the progress made in addressing the circumstances that resulted in the need for foster care placement, and the projected date the child will either be reunified with his or her parents or placed for adoption [42 U.S.C. 675, sec 475]. Federal law permits this review to be conducted by either the court or by administrative review [42 U.S.C. 675, sec 475]. Such an administrative review process was established within Florida's dependency system with ch. 90-306, L.O.F. Currently, there are three citizen review panel programs operating in Florida each with at least one panel and one program with 18 panels. Section 39.701(2), F.S., provides that citizen review panels may conduct the hearings required every six months to review the status of the child. Citizen review panels are authorized for a judicial circuit by an administrative order executed by the chief judge of the circuit [s. 39.702(1), F.S.]. These panels are composed of five

citizens who serve without compensation and are administered by an independent not-for-profit organization [s. 39.702, (2) and (3), F.S.]. Section 39.702(5), F.S., sets forth the required policies and procedures that the independent not-for-profit organization must establish for such aspects as the recruitment, selection and training of panel members, the operation of the panel, and the assurance that the panels comply with the appropriate state and federal laws.

The requirements for holding the six month judicial reviews of the status of the child, the information to be considered, and the determinations to be made by the court at these reviews, are delineated in s. 39.701, F.S., as is the role the citizen review panel plays in this review process. For the cases reviewed by the citizen review panels, the same requirements for noticing, for the reports to be considered, and for the determinations of the cases to be deliberated that are stipulated for judicial review hearings are applied. Limitations of the citizen review panels are identified including that a citizen review panel may only conduct two consecutive reviews without an intervening judicial review. Also, the court alone is permitted to dispense with the attendance of the child, of other parties, and even of the hearing under certain circumstances. Once the citizen review panel has conducted its review, it submits a report and a recommended order to the court.

Federal matching funds are available for certain state and local administrative costs under Title IV-E at a matching rate of fifty percent, including the preparation for and participation in judicial determinations [45 C.F.R. sec. 1356.60]. The department reports that preparation and participation in judicial determinations can include the administrative costs for the administrative reviews which seventeen other states have already utilized. The barrier to Florida's receipt of this funding is reportedly the current statutory language of s. 39.701, F.S., which frames the activities of the citizen review panels as judicial functions which are ineligible for Title IV-E funding [ACYF-PIQ-92-03, July 17, 1992]. Specifically, s. 39.701, F.S., refers to the reviews of the citizen review panels as hearings and the recommendations of the panel as recommended orders.

Medicaid Fair Hearings

Federal law requires that a state Medicaid plan provide an opportunity for a fair hearing to any Medicaid recipient or applicant whose Medicaid eligibility or covered services have been denied or otherwise limited or who is to be transferred or discharged from a nursing facility [42 C.F.R. 431.865]. When the former Department of Health and Rehabilitative Services was reorganized in 1974 and the Medicaid program, with the exception of Medicaid eligibility determination, was shifted to the Agency for Health Care Administration, the department retained responsibility for conducting all fair hearings afforded to Medicaid recipients and applicants through its Office of Appeals Hearings. For February 2002, through February 2003, the DCF Office of Appeals Hearings conducted a total of 7,190 fair hearings, of which 187 were related to Medicaid benefits, 222 were nursing facility discharge hearings, 718 were disqualification hearings for TANF and food stamp recipients, and 6,063 were for eligibility determination and other fair hearings not related to AHCA. The department reports that given the volume of fair hearings held, the hearings must be conducted quickly requiring an expertise to be developed in the pertinent areas. The fair hearings requested relative to Medicaid benefits or nursing home transfers are areas where greater expertise is available in AHCA than the department.

Employment of Individuals with Developmental Disabilities

Employment rates for individuals with developmental disabilities continue to remain low even with improvements in technology and other advances in the field. The U.S. Bureau of the Census 1997 Survey of Income and Program Participation reports that the unemployment rate for all working age adults with disabilities was 70 percent.[1] A recent study of the employment needs and goals of individuals with developmental disabilities in Florida found that 78 percent of the individuals who participated in the study went to a day program or a workshop, and less than 31 percent were either working in a supported employment job or were competitively employed.[2] Of those individuals who did not have a community job, 75 percent reported they would like a job in the community.[3]

Legislative intent for services for individuals with developmental disabilities recognizes the goal of enabling individuals with developmental disabilities to achieve their greatest potential for independent and productive living. However, the emphasis of this goal is enabling these individuals to live in their own homes or in residences in their own community and not on building their capability to become and remain employed [s. 393.062, F.S.]. Section 393.066, F.S., authorizes the department to provide services to individuals with developmental disabilities and reiterates the goal of the services as allowing individuals with developmental disabilities to live as independently as possible and to achieve lives that are as productive as possible. Similarly, the Bill of Rights of Persons Who are Developmentally Disabled [s. 393.13, F.S.], which provides further legislative intent that the design and delivery of services is to enable individuals with developmental disabilities to live their lives as close to normal as possible, does not identify providing opportunities for employment as an aspect of the system that supports this goal.

Developmental Disabilities and Mental Health Employment Screening

Section 393.0655, F.S., requires that any direct service provider is to meet the ch. 435, F.S., level two screening standards. A "direct service provider" is an individual 18 years of age or older who has direct contact with individuals with developmental disabilities and who is unrelated to the individuals with developmental disabilities, including family members residing with the direct service provider [s. 393.063(15), F.S.]. Similarly, s. 394.4572, F.S., requires mental health personnel to meet the ch. 435, F.S., level two screening standards. "Mental health personnel" is considered to be all program directors, professional clinicians, staff, and volunteers working in a mental health program or facility, public or private, who have direct contact with unmarried patients under the age of 18 years [s. 394.4572(1), F.S.].

Chapter 435, F.S., provides for two levels of screening requirements that various employment and licensure statutes utilize based on the responsibilities of the position being filled or facility being licensed. The level one screening standards stipulated in s. 435.03, F.S., require a criminal background screening of statewide criminal and juvenile records through the Department of Law Enforcement, a local criminal records check through local law enforcement, and an employment

[1] *Survey of The Employment Needs and Goals of Individuals with Developmental Disabilities*, sponsored by the Florida Developmental Disabilities Council, March 200, p. 1.
[2] *Id.*, p. 5.
[3] *Id.*, p. 6.

history check. Section 435.03(2), F.S., identifies a list of crimes which, if an individual were found guilty of or entered a plea of nolo contendere or guilty, would disqualify that person from having satisfied the background screening requirements. The level two screening requirements of ch. 435.04, F.S., require the same state and local criminal records check and add a federal criminal records check through the Federal Bureau of Investigation [s. 435.04(1), F.S.]. Section 435.04(2), F.S., identifies a longer list of crimes than stipulated for the level one screening that could disqualify a person. Not included in the level 2 screening requirements is an employment history check.

Developmental Disabilities Program Licensing

Section 393.067, F.S., sets forth a licensure process for residential facilities and comprehensive transitional education programs, including provider qualifications, standards, training criteria, and monitoring. A "residential facility" is one that provides room and board as well as personal care to individuals with developmental disabilities [s. 393.063(39), F.S.]. A "comprehensive transitional education program" is a group of centers or units that operate jointly to provide individuals with developmental disabilities with a sequential series of educational care, training, treatment, habilitation, and rehabilitation services. The department has raised concerns that the current licensing authority granted to them for these facilities and programs does not provide sufficient authority to reject a license application or terminate a license when serious questions exist as to the adequate provision of care but specific licensure criteria have not been violated.

Prepaid Behavioral Health Services

While the Department of Children and Families is responsible for delivery of publicly funded mental health and substance abuse services, the Agency for Health Care Administration (AHCA) provides a substantial portion of the funding for these services through the Medicaid Program thus requiring collaboration in strategies to improve the efficiencies and effectiveness of the programs. Section 409.912, F.S., requires AHCA to provide Medicaid services in the most cost-effective manner which has included transitioning the provision of mental health and substance abuse services from a traditional fee-for-service and unit cost contracting methodology to a capitated pre-paid arrangement. Chapter 2003-279, L.O.F., provided a time frame of July 1, 2006, to implement this transition to capitated pre-paid arrangements and directed AHCA and the department to contract with managed care entities or arrange to provide these services through a capitated pre-paid arrangement to all Medicaid recipients, with the exception of one area, where allowed by federal law and regulation. Section 409.912,(4)(b)7, F.S., requires that traditional community mental health providers contracting with the department under ch. 394, F.S., providers of services for children and families in the child protection system, and inpatient mental health providers licensed under ch. 395, F.S., be offered the opportunity to contract and participate in the provider network for the pre-paid behavioral health services.

Adult Protective Services

Chapter 415, F.S., sets forth the statutory framework for Florida's system of adult protective services which provides for investigating alleged adult abuse, neglect, and exploitation and the provision of services and supervision to protect adults from further abuse, neglect, or exploitation. Adults protected by this chapter are vulnerable adults who are at least 18 years of

age and are experiencing an impaired ability to perform the normal activities of daily living or to provide for their own care or protection [s. 415.102(26), F.S.]. Reports of known or suspected abuse, neglect, or exploitation are made to the central abuse hotline [s. 415.103 F.S.]. For the purposes of adult protective investigations and services, "neglect" is defined as the failure or the omission of the caregiver to provide the care, supervision, and services that a vulnerable adult needs to maintain his or her physical or mental health.

Protective investigators of the department conduct an onsite investigation of allegations of abuse, neglect, or exploitation of vulnerable adults to determine the following: if the reported victim is a vulnerable adult; if there is any indication of abuse, neglect, or exploitation and the extent and nature of the injuries; the composition of the family or household; the person responsible for the abuse, neglect, or exploitation; the immediate or long term risk; and the services needed to protect the vulnerable adult. If the investigation determines that the vulnerable adult is in need of services or supervision to protect the vulnerable adult from further abuse, neglect, or exploitation, such services are to be arranged [s. 415.105, F.S.]. If the vulnerable adult determined to need such services and supervision lacks the understanding or capacity to make or communicate responsible decisions, the department may petition the court to authorize the provision of protective services [s. 415.1051, F.S.]. The department's authority to obtain a court order to provide protective services without the consent of the vulnerable adult had historically been based on the definition of "neglect" that had included the disabled adult or elderly person's failure to provide the care needed to maintain his or her own physical or mental health. Chapter 2000-349, L.O.F., removed reference to the disabled adult or elderly person's failure to provide the care from the definition of "neglect. " At least one court has dismissed the department's petition for involuntary adult protective services on the grounds that ch. 415, F.S., no longer applies to "self neglect."

In addition to the criminal penalties that may be imposed for making a false report, the department is authorized to impose an administrative fine of up to $10,000 [s. 415.1113(1), F.S.]. The person alleged to have filed the false report is entitled to an administrative hearing under ch. 120, F.S., prior to the imposition of the administrative fine and has a right to be represented by legal counsel at the administrative hearing [s. 415.1113(4) and (5), F.S.]. However, the statute does not stipulate how the person is to be notified of his or her right to legal counsel. Also, the statute's stipulation of the person's right to legal counsel is set forth within the subsection that provides for the level of proof required at the hearing which may be construed as not requiring the notification of right to legal counsel until the day of the hearing.

Homelessness Services

Chapter 2001-98, L.O.F., established the State Office on Homelessness within the department, as well as the Council on Homelessness, to develop and advise the State Office on Homelessness. Section 420.622, F.S., sets forth the membership of the Council which includes representation from the Florida Coalition for Supportive Housing. However, the legal name of this organization is actually the Florida Supportive Housing Coalition. The State Office on Homelessness was authorized by ch. 2001-98, L.O.F., to distribute Homeless Housing Assistance Grants. These grants provide up to $750,000 to construct and rehabilitate transitional or permanent housing units for homeless persons. The statute, however, does not define the construction and rehabilitation activities for which these grant funds may be used.

Financial and social services for the homeless are provided through local coalitions for the homeless created by the department [s. 420.623, F.S.]. Local coalitions can apply for state funding through a competitive grants-in-aid program administered by the department through its districts [s. 420.625, F.S.]. These local coalitions are required to develop local homeless continuum of care plans which present an assessment of the availability and need for services for the homeless population and the plan for providing a continuum of care [s. 420.623, F.S.]. Additional functions of the coalition are delineated in s. 420.623, F.S., including collecting data on the homeless population, developing a spending plan, and preparing an annual report. The department is required to submit by June 30th of each year a compilation of all the programs and resources available locally, local spending plans, progress implementing the continuum of care plans, and data collected.

Sexual Misconduct

Concerns have been raised regarding employees of the Department of Children and Families who engage in sexual misconduct with clients who are in the care of the department. Particular concerns have been expressed regarding the vulnerability of persons with developmental disabilities who live in residential facilities, developmental services institutions, foster care facilities, group homes, intermediate care facilities, residential habilitation centers, and family care centers. There is also concern for persons with mental illness who may be temporarily residing at a receiving facility or living for longer periods of time at a treatment facility.

National statistics indicate that between 70 and 90 percent of these vulnerable individuals will be the victims of sexual abuse, assault, and/or exploitation at some point of their lives.[4] Many times this abuse comes from persons who are charged with providing care to these persons with disabilities. Because of functional limitations that are experienced by individuals with developmental disabilities or mental illness, they can be particularly vulnerable to these types of crimes.

Currently, s. 825.102, F.S., addresses the sexual abuse of elderly or disabled persons and specifies the penalties for these crimes. Depending upon the offense, the sexual abuse of an elderly or disabled person is a 2nd or 3rd degree felony that is punishable as provided in s. 775.082, s. 775.083, or s. 775.084, of the Florida Statutes. The current law also requires that certain persons who know or have a reasonable suspicion to suspect that a vulnerable adult is being abused immediately make a report to the abuse hotline [s. 415.1034, F.S.]. If an investigation reveals that an incident occurred, subsequent actions include the notification of law enforcement, and the state attorney's office. Further, s. 794.011, F.S., addresses the crime of sexual battery and specifies penalties for that crime if the victim is "mentally defective" and the offender has knowledge of this fact. These provisions have not been considered strong enough to put a stop to the sexual victimization of clients who are in the care of the department.

It has been difficult to prosecute offenders because in many instances the perpetrator argues that the victim provided consent. It has been suggested that strengthening the penalties associated with staff sexual misconduct would be a way to help ensure the safety of these vulnerable clients.

[4] *Behind Locked Doors – Institutional Sexual Abuse*, Crossmaker, M., Sexuality and Disability, Vol. 9, No. 3, 1991.

Strengthening the penalties associated with sexual misconduct would also have an impact on employee screening and termination practices as well as criminal penalties.

Administration of Public Assistance Eligibility

The Economic Self-Sufficiency (ESS) program of the department is responsible for determining eligibility for food stamps, Temporary Assistance for Needy Families (TANF), Medicaid, and Refugee cash assistance. More than 7,367 individuals are employed by the ESS program who, during FY 2002-2003, processed more than 1.4 million eligibility applications and assisted more than 2.7 million clients.[5] The Florida Legislature has provided direction to the department in both 1997 and in 2003 to examine and begin pursuing the option of outsourcing the eligibility determination function for Medicaid, food stamps, and TANF. While TANF requirements have allowed for this privatization, federal regulations for food stamps and Medicaid have prohibited the complete outsourcing of the eligibility determination process. Specifically, federal regulation for both food stamps [7 C.F.R. Part 272.4] and Medicaid [42 U.S.C. 1396a(a)(4)] require that a public employee perform the actual eligibility determination for these benefits. The department has requested waivers of this requirement for both programs. While a waiver for the Medicaid program has not been approved, a waiver of this requirement was granted by the United States Department of Agriculture (USDA) for a limited number of food stamp clients in six sites.

In response to the 2003 legislative directive in the General Appropriations Act for 2003-2004 proviso language, the department has embarked upon a modernization initiative for the ESS program. This modernization initiative has focused on soliciting bids for most of the ESS eligibility determination functions with the goal of simplifying the ESS process and utilizing other innovations to create more efficiencies in the program such as a call/change center and internet innovations. To address the food stamp and Medicaid requirement for a public employee to determine eligibility, the plan has included using private sector employees to conduct the initial front-end processing for eligibility determination and providing for a DCF employee to review the work and provide the official approval to meet the federal requirement. The department has released the Request for Information to receive comments on the program requirements and the draft solicitation document from which the formal solicitation document will be finalized and released with an anticipated contract execution date of July 2004. At this time, the department estimates a 5-year contract for approximately $1.2 billion (or $220 to $250 million per year). The department reports that the plan for meeting the requirements of the 2003 proviso has continued to evolve. In particular, the department reports that the USDA has very recently offered to expedite a review of a waiver request from Florida that would allow the department to use the private sector for the entire eligibility determination process on a statewide basis and not require as stringent an evaluation as initially required for the six site demonstration project. The department reports it intends to develop such a waiver which would eliminate the need for any public employee role in the determination of eligibility, including DCF giving final approval. Florida would become the only state with such a broad-scale privatized eligibility determination process.

[5] *Economic Self-Sufficiency Eligibility Process: A Study in Conjunction with DCF Reengineering Initiatives*, Internal Audit of the Office of Inspector General of the Department of Children and Families, November 26, 2003

The employees of the department have been developing an employee plan for achieving the required efficiencies. The department reports that the employees' plan will be compared with the selected private sector plan after the competitive procurement process at which time a decision will be made as to whether to contract with the private sector vendor or utilize the employees' plan.

Law Enforcement Receipt of Medical Reports

If a child who is the subject of a child abuse investigation either complains of an injury, is alleged to have been sexually abused, or appears to need a medical examination, the child protective investigator may refer the child to a physician or the emergency room of a hospital for an examination without the consent of the parents or legal custodians [s. 39.304, F.S.]. Hospitals and other facilities licensed under ch. 395, F.S., are required to provide copies of the photographs, x-rays, and medical reports of these examinations to the department, its agents, or the child protection teams for their child abuse investigation or assessment of the child. Law enforcement is required to be contacted relative to certain allegations of child abuse [s. 39.301(2), s. 39.301(17), and s. 39.202, F.S.] from which an investigation of criminal conduct may be initiated. However, law enforcement is not identified as an entity permitted to receive copies of the medical reports, and at least one sheriff's office has experienced difficulties obtaining this information.

Institutional Child Abuse

Child protective investigations of institutional child abuse are conducted using the same laws and investigative requirements as are used for familial child abuse and neglect allegations with the exception or addition of the provisions set forth in s. 39.302, F.S. This section, however, only addresses a very narrow scope of the institutional investigative process including unannounced investigations, notification of facility owner or operator if the facility is not licensed, access to information when agencies are conducting joint investigations, a visit to the child's place of residence, communication with the state attorney and law enforcement, the department's authority to restrict access to children when there is evidence of abuse or neglect, the department's responsibility to assist a facility to maintain operation under certain circumstances, notification of the Florida local advocacy council, notification of the state attorney and law enforcement if a criminal investigation is warranted, and the conducting of a specialized investigation under certain circumstances.

Issues have been raised by protective investigators in the field regarding the protective investigators' lack of authority to take action to protect children because the recourse available is limited to actions designed to be applied to parents or other familial caregivers.[6] The Protective Investigator Retention Workgroup created with ch. 2003-127, F.S., to examine certain aspects of the work of the child protective investigator, also found unnecessary requirements for institutional child abuse investigations, a lack of consistent communication between DCF and the agencies with oversight of the facilities regarding the investigations and findings, and a need for more guidance relative to investigating these reports. As a result, the Retention Workgroup

[6] Senate Interim Project Report 2003-110, *Retention of Protective Investigators and Projective Investigative Supervisors.*

developed a series of recommendations to reduce unnecessary investigative activities, improve information sharing, and to stipulate expectations for the department's actions.

Retention of Protective Investigators

Section 39.301, F.S., has required Florida's child protective investigators to apply the same set of investigative activities to all child abuse reports. Chapter 2003-127, L.O.F., amended this section to allow for an on-site and enhanced investigative processes and, thus, began the effort to provide for different levels of investigative activities. The discussions of the Retention Workgroup recognized the importance of creating a process that would enable protective investigators to focus more attention on the serious abuse and neglect allegations and provide certain lower risk families with a less intrusive system that is focused on strengthening the functioning of families and, in turn, child safety and child well-being outcomes. As a result, the Retention Workgroup developed recommendations for piloting an Alternative Response Model in Florida. This proposed model would provide for some child abuse and neglect reports to be eligible for an Assessment Response Track, require other particular reports to be investigated using the current full investigative requirements, allow for reports of abuse to be closed using a streamlined process when there is clear and convincing evidence that no maltreatment occurred, and provide for an expedited closure of certain cases with referrals to community services when there are no safety threats and the family has sufficient protective capabilities.

The Retention Workgroup also found that the system for hiring and preparing protective investigators for the job needed to be strengthened, and a culture of valuing employees from the highest administrative level within the organization to the frontline staff should be instituted. Towards this end, the Retention Workgroup developed recommendations to strengthen the process and requirements for hiring protective investigators including adding some experience in child welfare or a related area to the basic educational requirement for protective investigators and protective investigative supervisors and enhancing the screening and hiring process to expose prospective staff to the job early, to consider utilizing a characteristic-based screening assessment, and to involve the supervisor in the selection decision. The Retention Workgroup developed recommendations to strengthen the training, including requiring a protected caseload and standardizing not only the pre-service classroom training but also the on-the-job training. Additional recommendations were developed to strengthen management's focus on the frontline staff.

Parent Education and Family Stabilization Course

Section 61.21, F.S., requires parties who have children and who are separating or in a divorce or who are part of a paternity action to complete the Parent Education and Family Stabilization Course before a final judgment is entered. This course is to be designed to provide parents with education on the consequences of divorce on the parents and children. The judicial circuits had been responsible for approving the parenting courses to be offered, but with ch. 2003-402, L.O.F., the responsibility for approving the parenting courses was shifted to the Department of Children and Families.

Community Care for Disabled Adults Program Fee Assessment

The Community Care for Disabled Adults program offers services and case management to disabled adults to make it possible for them to live independently [s. 410.604, F.S.]. Services include homemaker service, home-delivered meals, and personal care. Depending on the availability of funding, individuals may also receive such services as adult day care, chore services, respite care, interpreter services, medical equipment or supplies, health maintenance services, and transportation. Chapter 88-350, L.O.F., required that individuals receiving the Community Care for Disabled Adults services who had income above the Institutional Care Program level ($1,635 for an individual as of October 2002) be charged a fee. A 2003 Office of Program Policy Analysis and Government Accountability (OPPAGA) report stated that although the department promulgated rules in 1989 that established a fee assessment process, including verification of income and expenses and the collection of the fee, as of September 2002, four districts had not implemented the fee assessment and collection process. Of the districts implementing the process, few individuals were found who had incomes that exceeded the Institutional Care Program (ICP) level and many of these individuals were not required to be charged because of the level of their monthly expenses. In addition, the administrative cost entailed in this assessment and collection process was estimated to basically equal the amount that would be collected. As a result, OPPAGA recommended that the system of assessing and collecting fees be eliminated.[7]

III. Effect of Proposed Changes:

The bill sets forth a number of provisions relative to the services and responsibilities of the Department of Children and Families.

Child Protective Investigation Risk Assessment

Section 1 of the bill sets forth additional requirements for conducting the risk assessment. First, a clear directive is articulated by the bill that a risk assessment must be conducted for every report accepted by the hotline and that the risk assessment is to commence upon receipt of the report from the hotline. Second, the bill stipulates that assessment of risk is an on-going process that requires continuous review and modifications to the assessment to reflect the child and family's changing risk and needs. Third, the option of developing and implementing a safety plan is provided by the bill. A safety plan provides for the actions needed to address the immediate, emerging, and long-term safety of the child. The identification of these actions have historically been considered in the assessment of the child; however, the development of the child safety assessment for Homesafenet has resulted in a more formalized process and plan which this bill recognizes.

[7] *Improvements Needed in the Department of Children and Families Adult Services Program*, OPPAGA Progress Report, Report No. 03-08, January 2003. (Based on a survey of the districts, it was estimated that only 18 of the program's 932 current participants had incomes above the ICP levels and would, therefore, be subject to the fees. It was estimated that the maximum amount that would be collected is $1,560, but the administrative cost for the fee assessment and collection is estimated at $1,500.)

Citizen Review Panels

Section 2 of the bill modifies the terminology used to describe the activities of the citizen review panel to eliminate the current barrier to the receipt of federal matching funding for these services. Specifically, the citizen review panel "hearings" are changed to "reviews" and the "recommended orders" of the panels are changed to "recommendations" to the court. This terminology more clearly reflects the role and process of the citizen review panel since these panels do not have the authority of the court, and the court has and continues to be charged with making the determinations for all six month reviews regardless of whether the reviews are actually conducted by the court or the court is relying on the information and deliberations of the citizen review panels.

Further clarification of how aspects of the six month review process are applied to the court hearings or the citizen review panel is provided by the bill. First, s. 39.701(4), F.S., stipulates that the court schedules the next judicial review but is silent as to the scheduling of the next review if being conducted by the citizen review panel. The bill provides that the court schedules the next review, including both the next judicial hearing or the next review to be conducted by the citizen review panel. Second, s. 39.701(6), F.S., which provides for the written report of the investigation and social study of the child to be submitted to either the court or citizen review panel, is amended by the bill to stipulate that the report is submitted only to the court. This amendment clarifies that all information for the case is part of the official court record since the court is the entity responsible for the six month reviews and actual determinations of the reviews. Third, several references to the court or judicial hearing are modified to reflect the sole involvement of the court or that either the court or citizen review panel is involved in a particular portion of the judicial review process. Fourth, the bill recognizes the citizen review panels that may conduct the six month review as those authorized by the court. Finally, the bill also requires that if the court is permitting the child to not appear before the court at a judicial hearing, then the court must stipulate its findings that the department had direct knowledge of the care the child is receiving.

Medicaid Fair Hearings

This bill shifts the responsibility for conducting the fair hearings for those aspects of the Medicaid program that are unrelated to eligibility determination from the Department of Children and Families to the Agency for Health Care Administration. Fair hearings related to Medicaid eligibility determinations would remain the responsibility of the department. Specifically, section 3 of the bill amends s. 120.80(7), F.S., to add AHCA to the current exemption afforded DCF from using an administrative law judge for the hearings conducted relative to the Medicaid program. Section 8 of the bill amends s. 400.0255(8), (15), and (16), F.S., to reflect the responsibility of AHCA for conducting fair hearings related to nursing home resident transfers and discharges that were previously conducted by DCF. Section 9 of the bill amends s. 408.15, F.S., which sets forth the powers of the Agency for Health Care Administration, to authorize AHCA to establish and conduct the Medicaid fair hearings that are unrelated to eligibility determinations. Section 10 of the bill amends s. 409.91195, F.S., which provides for the Medicaid Pharmaceutical and Therapeutics Committee within AHCA to develop a preferred drug formulary, is amended to provide that appeals from Medicaid recipients of the preferred drug formulary can be heard by AHCA instead of DCF.

Employment of Individuals with Developmental Disabilities

Sections 5 and 7 amend s. 393.062 and s. 393.066, F.S., respectively, to direct the department to support individuals with developmental disabilities who choose to seek gainful employment. Specifically, s. 393.066, F.S., is amended to direct the department to provide each individual in the Medicaid Home and Community Based Waiver program and the Medicaid Consumer Directed Care program who chooses to seek employment with services and supports, to the extent available resources will permit. Similarly, s. 393.13, F.S., is amended to add that the design and delivery of services should provide individuals with developmental disabilities with the opportunity to choose employment and reduce the use of nonemployment day activities, including sheltered workshops.

Developmental Disabilities and Mental Health Employment Screening

Section 4 and 58 of the bill amend s. 393.0655 and s. 394.4572, F.S., to add the employment history check required in the ch. 435, F.S., level one screening but not the level two screening to the employment screening required for both direct service providers offering developmental disability services and mental health personnel working in mental health programs.

Developmental Disabilities Program Licensing

Section 6 amends s. 393.067, F.S., to set forth the legal parameters of the residential facility license and the comprehensive transitional education program license. Specifically, the bill clarifies that these facility and program licenses are not professional licenses for a particular individual and do not create a property right[8] for the license holder. The bill stipulates that the license is not an entitlement but a public trust and a privilege and in an administrative or court proceeding initiated by the department, it is this privilege, that must guide the finder of fact or trier of law.[9]

Prepaid Behavioral Health Services

Section 11 of the bill amends s. 409.912(4)(b), F.S., to require that the community mental health providers, inpatient mental health providers, and providers of child protection services actually receive a contract to participate in the provider network for pre-paid behavioral health services, instead of being offered an opportunity to accept or decline a contract. Also, substance abuse treatment providers are added to the list of service providers to which this requirement to contract applies. This provision prevents offering of contracts to a service provider that would not be fiscally feasible to accept.

Adult Protective Services

Section 12 of the bill amends the definition of "neglect" in s. 415.102, F.S., to include the failure or omission of vulnerable adults to provide themselves with care and services necessary to

[8] "property right" is defined as a right to a specific property, whether tangible or intangible (Black's Law Dictionary, Seventh Edition).
[9] "finder of fact" or "trier of law" is the person(s) in a court or an administrative hearing who hears the testimony and reviews the evidence to rule on a factual issue (Black's Law Dictionary, Seventh Edition).

maintain their physical and mental health. This revision provides clear authority to the department to utilize the actions available through ch. 415, F.S., i.e., making the services of the department available and petitioning the court for an order authorizing the provision of protective supervision, if necessary, when self-neglect of a vulnerable adult is found.

Section 415.1113, F.S., which authorizes the department to impose administrative fines for false reporting, is amended by section 13 of the bill to specify how and when the person alleged to have filed a false report is to be notified of his or her right to legal counsel in an administrative hearing. Specifically, the notice of intent to impose the administrative fine required to be served on the person by the department is required by the bill to also include the notification of the right to be represented by legal counsel.

Homelessness Services

Sections 14, 15, and 16 of the bill amend provisions of ch 420 F.S., relative to homelessness services. First, the bill amends s. 420.622, F.S., to replace the reference to the Florida Coalition for Supportive Housing in the list of required members of the Council on Homelessness with the correct name of the coalition, Florida Supportive Housing Coalition. Section 420.622, F.S., is further modified to clarify the eligible uses of the Homelessness Housing Assistance Grant. The construction and rehabilitative activities for which these grants funds may be used is specifically articulated and includes site preparation and demolition costs; professional fees for architects, surveyors, or engineers; certain local government fees; utilities and special district fees; costs of labor, materials and tools; and other construction and rehabilitative associated costs. These costs are eligible for grant funding if they could not be contributed, absorbed, or waived. Second, the date by which the annual report on the local homeless coalitions is to be submitted to the Legislature and Governor is changed from June 30th to December 31st which coincides with the Council on Homelessness' annual report due date and allows both reports to be reviewed as a package. Finally, the requirements for the spending plan that is part of the grant-in-aid funding process is amended to require that the lead agency for the local catchment area provide a statement that the proposed services are contained in and consistent with the local coalition's continuum of care plan.

Sexual Misconduct

The bill prohibits an employee of the department or the Agency for Healthcare Administration from engaging in sexual misconduct with a client (a person in the care of the department or living in certain facilities) and provides for mandatory reporting of sexual misconduct. The offense of sexual misconduct is a second degree felony, and the failure of a person having knowledge of such a crime to report it is a first degree misdemeanor. A defendant is prohibited from using the consent of the individual as a defense for the charge of sexual misconduct. The crime of sexual misconduct is also added to the list of offenses that prohibit employment if identified through Level 1 and 2 background screening. The bill forbids the sealing or the expunction of criminal records when the offense of sexual misconduct has been committed.

Sections 17, 18, and 19 of the bill create three new sections [s. 393.135, s. 394.4593, and s. 916.1075, F.S.] of statute that prohibit sexual misconduct by employees with certain clients who receive services provided by the Developmental Disabilities and Mental Health programs

within the department. These sections provide definitions for the terms "employee," "sexual activity," and "sexual misconduct."

This bill specifies that an employee who engages in sexual misconduct with a client or a patient as specified commits a felony of the second degree that is punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. The bill further provides that an employee may be found guilty of violating sexual misconduct without having committed the crime of sexual battery

The bill requires that an employee who witnesses sexual misconduct or otherwise knows or has reasonable cause to suspect a person has engaged in sexual misconduct to immediately report the incident to the department's central abuse hotline and to law enforcement. The employee must then prepare, sign and date a report that specifically describes the nature of the misconduct including the time and location the incident occurred and the persons involved in the incident. The written report is to be delivered to the employee's supervisor or program director who then must provide copies to the department's inspector general. The inspector general is required to immediately conduct an administrative investigation and notify the state attorney if there is reasonable cause to believe an incident occurred.

An employee who fails to make a report, willfully prevents another person from doing so, or knowingly or willfully submits an inaccurate, incomplete, or untruthful report commits a first degree misdemeanor that is punishable as provided for in s. 775.082, or s. 775.083, F.S. Further, a person who threatens or coerces another person to alter testimony or a written report commits a third degree felony that is punishable as provided in s. 775.082, or s. 775.083, or s. 775.084, F.S.

Currently, there are procedures for abuse reporting of incidents relating to sexual abuse of clients in the care of the department [ch. 415, F.S.]. It is unclear how employees will make a determination to report a violation based on "reasonable cause." It is also questionable whether these same employees will actually make a report to law enforcement if they have not personally observed the incident.

The consent of the client or patient to sexual activity does not prohibit prosecution in accordance with this proposed legislation. However, these requirements are not applicable if the employee is legally married to the client or the employee had no reason to believe that the individual was a client receiving services in accordance with the specifications of this bill.

The bill further specifies that, notwithstanding prosecution, any violation of sexual misconduct, as determined by the Public Employees Relations Commission, constitutes sufficient cause under s. 110.227 F.S., for dismissal from employment. Section 393.135, F.S., prohibits the person from being employed by the developmental services system in any capacity but does not specifically preclude the individual from working in the mental health services system; s. 394.4569(5), F.S., prohibits the individual from working in any capacity in the mental health services system but does not specifically preclude employment in the developmental services system; however, s. 916.1075(5), F.S., prohibits the person from being employed in any capacity in connection with the developmentally disabled or mental health service systems. It is not clear why these employment prohibitions are different. This bill does not specify how

employers are to obtain information relating to employee dismissal for reasons of sexual misconduct.

Sections 435.03, and 455.04, F.S., pertaining to employee background screening requirements are amended in sections 20 and 21 of the bill to include sexual misconduct as an offense banning employment. This bill also amends s. 943.0585 and s. 943.059, F.S., in sections 22 and 23 of the bill to prohibit the court-ordered expunction and sealing of criminal history records relating to the sexual misconduct of an employee as specified by of s. 393.135, s. 394.4593, or s. 916.1075, F.S., without regard to whether adjudication was withheld or the defendant was found guilty or plead nolo contendere to the offense or if whether the defendant committed this crime as a minor and was found guilty or plead nolo contendere to the crime. Based upon the requirement of ch. 916, F.S., it appears that background screening is only required for institutional security personnel; there is no specified screening for other employees.

Sections 24 through 57 and sections 59 through 84 of the bill reenact the following sections of the Florida Statutes for the purpose of incorporating the addition of the new offenses to ss. 435.03 and 435.04, F.S. as applied to the following sections: 39.001, 39.821, 110.1127, 112.0455, 381.0059, 381.60225, 383.305, 390.015, 393.0655, 393.067, 394.875, 395.0055, 395.0199, 397.451, 400.071, 400.414, 400.471, 400.4174, 400.506, 400.509, 400.512, 400.556, 400.5572, 400.6065, 400.607, 400.619, 400.6194, 400.801, 400.805, 400.906, 400.931, 400.953, 400.962, 400.980, 400.991, 402.302, 402.305, 402.3054, 409.175, 409.907, 435.05, 435.07, 464.018, 483.30, 483.101, 744.1085, 744.309, 744.474, 744.3135, 943.053, 943.0582, 984.01, 985.01, 985.04, 985.407, and 1002.36., F.S. Section 85 of the bill applies the offenses provided for in ss. 393.135, 394.4593, and 916.1075, F.S., committed on or after the effective date of the act.

Administration of Public Assistance Eligibility

Section 86 of the bill directs the department to competitively bid the eligibility determination activities for food stamps, Medicaid, TANF, and other public assistance programs under its jurisdiction to one or more providers. Initially, these services are to be performed by the selected providers in only two pilot districts, one predominantly rural district and one predominantly urban district. Contracts are to be effective September 30, 2004. The competitive bid process used by the department is required to allow employees of the department performing this eligibility determination process the opportunity to submit a proposal. The department is directed to allow employees to organize, to provide the employees with legal procurement and fiscal expertise, and to allow employees to select consultants to assist them in preparing the bid offer. The bill also requires the approval of the Technology Review Workgroup before implementing any technological change to the FLORIDA system that resulted from this competitive procurement process.

The department is directed to assess the quality of the services delivered in the two pilot districts prior to contracting for the conducting of eligibility determination services in additional districts. This assessment by the department is to provide a comparison of data from before the outsourcing with data from after the service delivery was contracted, the minimum elements for which are outlined in the bill. The department is required to prepare two reports for the Governor and Legislature regarding the implementation of the pilots, the assessment of services, and a plan

for future implementation; one is due December 30, 2004, and the other January 30, 2005. The bill authorizes the Governor to provide direction to the department regarding expanding the privately performed eligibility determination to additional districts, unless countermanded by the Legislature. If the initiative to privately perform eligibility determinations continues beyond June 30, 2005, additional reports to the Governor and Legislature are required to be submitted semi-annually beginning January 1, 2006, and to continue until either the initiative has ceased or has been in place statewide for three years.

Law Enforcement Receipt of Medical Reports

Section 87 of the bill amends s. 39.304, F.S., to add law enforcement agencies to the groups that can receive photographs, x-rays, and medical reports from hospitals and other facilities licensed under ch. 395, F.S., regarding children who have been abused and for whom a protective investigation is being conducted.

Institutional Child Abuse

Section 88 of the bill amends s. 39.302, F.S., to strengthen the actions that may be taken in facilities in response to child abuse, remove out-dated provisions, and require procedures specific to investigations in different institutional settings. Specifically, the requirement to automatically refer all reports accepted for child protective investigation to the state attorney is eliminated by this bill. The department continues to be required to notify the state attorney if a criminal investigation is found to be needed. The bill expands this provision to require notification if criminal conduct is suspected. The department is required by the bill to inform the owner or operator of the facility in which the investigation is being conducted of the report, regardless of whether the facility is licensed or not. The requirement that the protective investigation always include a visit to the child's family's residence is modified to require that the parents or legal custodians be notified of the allegation within 48 hours of commencing the investigation. An on-site visit to the child's residence is only required if determined necessary or there is a need for further services.

Subsection (2) of s. 39.302, F.S., currently authorizes the department to restrict the access of a facility employee considered responsible for the abuse if that employee's continued contact poses a threat of harm to the child. This provision is expanded by the bill to require that other actions identified as necessary to respond to the immediate safety concern be implemented, if there is a continued threat of harm to the child, and that the agency or department with responsibility for the on-going regulation or oversight of a facility ensure that the actions are implemented. The concurrence of the protective investigative supervisor that some evidence of the child abuse, neglect, or abandonment exists is added to the bill which guards against the misuse of the expanded authority. The department is also authorized by the bill to recommend corrective actions after the completion of the investigation to prevent further abusive acts.

The bill eliminates the department's responsibility to assist a facility to maintain operation if the department's restriction of an employee's access to the child will result in the closure of the facility. It has been reported that this provision is not used. The bill also eliminates the provision allowing for the use of a specialized investigation under certain circumstances because the

specific procedures for conducting an investigation will be delineated in rule and the utilization of specialized investigations can be incorporated in rule if determined needed.

The department is directed to adopt rules to guide the child protective investigations for each type of facility to which s. 39.302, F.S., applies. These rules are to provide for the conducting of institutional child protective investigations, the use of child safety assessments that are specific to the institutions instead of the current child safety assessment which is specific to familial abuse, communication and collaboration with the facilities and licensing or oversight agencies, and, in general, implementation of s. 39.302, F.S.

Retention of Protective Investigators

Section 89 of the bill directs the department to adopt rules that set forth the minimum education and experience requirements, as well as minimum screening and hiring requirements, for child protective investigators and child protective investigative supervisors as recommended by the Retention Workgroup. In addition, the department is to adopt rules that provide for the minimum process requirements for child welfare training. These rules would include not only the recommendations of the Retention Workgroup, such as requiring a protected caseload and providing for training in institutional child abuse investigations, but will formalize the current training requirements including the requirement for pre-service training and certification.

Section 90 of the bill requires the department to report to the Legislature by December 31, 2004, on the implementation of the recommendations in the Retention Workgroup and those in the 2004 interim project *Retention of Protective Investigators Phase II.* While this report is to present the actions taken to implement all the recommendations of the interim project and Retention Workgroup, specific direction is provided relative to some of the recommendations contained in the report. First, a full program design for piloting an alternative response system in Florida is to be developed which is to provide for different levels of investigation including a streamlined track, a family assessment track, and a traditional investigative track. This program design is to be developed in collaboration with all the potential players in the system and include, at a minimum, detailed requirements for the proposed system, the expectations of each of the players, possible pilot sites, and an evaluation component. Second, there is to be an examination of the information needed by the court and recommendations for revisions to the information currently required to be provided. This directive focuses not only on the elements needed in the predisposition study which the Retention Workgroup recommended be eliminated but examines the information sharing between DCF and the courts comprehensively. Third, the department is to report on the status of the rule development required by this bill.

Parent Education and Family Stabilization Course

Section 91 of the bill amends s. 61.21, F.S., to provide direction to the department relative to the course approval process, including requirements for and resulting from course approval. Specifically, the bill requires all providers of the parenting course under s. 61.21, F.S., to be approved by the department and authorizes the department to withdraw the approval if the course provider does not comply with either the requirements of the section or the implementing rules. The courses approved by the department and the sites of the courses are to be provided to each of the judicial circuits. Each judicial circuit is required to make information on all approved courses

for their circuit available to the parents. Providers of the course may charge a fee. However, each circuit must have, at least, one site that offers the course on a sliding fee scale. The department is required by the bill to include as an approved course at least one statewide internet course and one statewide correspondence course. The department is authorized to adopt rules to implement these provisions.

Community Care for Disabled Adults Program Fee Assessment

Section 92 of the bill repeals subsection (6) of s. 410.604, F.S., which eliminates the requirement that individuals receiving Community Care for Disabled Adult services be charged a fee for services if their income is above the institutional care program eligibility standard.

Effective Date

The bill provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. None. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The direction to the department to make employment services available to individuals with developmental disabilities should increase the number of individuals with developmental disabilities who become employed and earn a wage.

The repeal of the fee currently charged certain recipients of the services of the Community Care for Disabled Adults will allow those disabled adults to retain the dollars they had been paying in fees.

The strategies instituted for performing the eligibility determination functions through the proposed contracting can either enhance the ability of low-income individuals and families to receive the food stamps they need or deter the receipt of the food stamps.

C. Government Sector Impact:

The revisions to the citizen review panel provisions will bring additional dollars to the programs through the receipt of federal reimbursement.

The sexual misconduct provisions of the bill may result in an undetermined increase in administrative procedures relating to employee appeals as allowed under s. 110.227, F.S. There may also be an undetermined increase in court hearings relating to the crime of sexual misconduct. In addition, staff training will need to be developed and delivered for employees working in areas affected by this bill.

The Department of Children and Families estimates that statewide ESS modernization will achieve at least $9,595,500 in GR savings, as well as another $8,104,500 in trust fund savings. The department reports this savings would not be realized with the limited approach proposed by the bill.

The department reports that the development, implementation, and monitoring of the Parent Education and Family Stabilization course approval process will require the establishment of one FTE position which has a fiscal impact of $64,311 for FY 2004-2005 and $45,128 for FY 2005-2006. However, this fiscal impact is not the result of the amendments to the course approval process as provided for in the bill but the transfer of the course approval responsibility from the courts to the department with ch. 2003-402, L.O.F.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 2808

Amendment No. ___ 833660

CHAMBER ACTION

Senate | House

JUDICIARY

DATE: 4/15/04

TIME: 4:36 pm

Senator Webster moved the following amendment:

Senate Amendment (with title amendment)

On page 27, line 17, through page 29, line 24, delete those lines and redesignate subsequent sections.

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

And the title is amended as follows:

On page 1, line 22, through page 2, line 7, delete those lines

and insert:

administrative law judge; amending s.

Bill No. CS for SB 2808

Amendment No. ___ 150180

CHAMBER ACTION

Senate | House

JUDICIARY
DATE: 4/16/04
TIME: 10:40 AM

Senator Webster moved the following amendment:

Senate Amendment (with title amendment)

On page 118, lines 17 through 25, delete those lines

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

And the title is amended as follows:

On page 7, line 31, delete "393.0655(1),"

and insert:

Bill No. CS for SB 2808

Amendment No. ___ 820104

CHAMBER ACTION

Senate | House

JUDICIARY

DATE: 4/16/04

TIME: 10:40 Am

Senator Campbell moved the following amendment:

Senate Amendment (with title amendment)

On page 164, line 13, through

page 166, line 16, delete those lines and renumber subsequent sections.

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

And the title is amended as follows:

On page 11, line 9, through

page 12, line 1, delete those lines

and insert

applicability; amending s. 39.304, F.S.; adding

a law

Senate Committee On

JUDICIARY
Addendum Packet

J. Alex Villalobos, Chair
Dave Aronberg, Vice Chair

Meeting Packet

Monday, April 19, 2004
11:30 a.m. – 1:30 p.m.
Room 110 (EL), Senate Office Building
–

(Please bring this packet to the committee meeting. Duplicate materials will not be available.)

Bill No. CS for SB 682

Amendment No. ___ 572464

LATE FILED

CHAMBER ACTION

Senate | House

Senator Aronberg moved the following amendment:

Senate Amendment (with title amendment)

On page 11, lines 29-30, delete those lines

and insert:

Section 9. Effective January 1, 2006, paragraph (a) of subsection (1) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.--

(1)(a) Every operator of a motor vehicle as defined herein, while transporting a child in a motor vehicle operated on the roadways, streets, or highways of this state, shall, if the child is 7 5 years of age or younger, provide for protection of the child by properly using a crash-tested, federally approved child restraint device that is appropriate for the height and weight of the child. Such devices may include a vehicle manufacturer's integrated child seat, a separate child safety seat, or a child booster seat that displays the child's weight and height specifications for the seat on the attached manufacturer's label as required by

1 Federal Motor Vehicle Safety Standards FMVSS213. The device
2 must comply with standards of the United States Department of
3 Transportation and be secured in the vehicle in accordance
4 with instructions of the manufacturer. For children aged
5 through 3 years, such restraint device must be a separate
6 carrier or a vehicle manufacturer's integrated child seat. For
7 children aged 4 through 7 5 years, a separate carrier, an
8 integrated child seat, or a child booster seat ~~belt~~ may be
9 used. The court shall dismiss the charge against a motor
10 vehicle operator for a first violation of this paragraph upon
11 proof of purchase of a federally approved child restraint
12 device.
13 Section 10. Effective July 1, 2005, a driver of a
14 motor vehicle who does not violate the then-existing
15 provisions of section 316.613(1)(a), Florida Statutes, but
16 whose conduct would violate that provision, as amended January
17 1, 2006, may be issued a verbal warning and given educational
18 literature by a law enforcement officer.
19 Section 11. Effective July 1, 2004, section
20 316.613(1)(a), Florida Statutes, does not apply to a person
21 who is transporting a child aged 4 through 7 if the person is:
22 (1) Visiting in this state;
23 (2) Not the parent or guardian of the child and is
24 transporting the child in a vehicle that is not owned by the
25 child's parent or guardian;
26 (3) Transporting the child gratuitously and in good
27 faith in response to a declared emergency situation or an
28 immediate emergency involving the child; or
29 (4) Is acting generally as a Good Samaritan.
30 Section 12. Except as otherwise expressly provided in
31 this act, this act shall take effect upon becoming a law.

1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 On page 1, line 30, delete that lines
4
5 and insert:
6 attestations; amending s. 316.613, F.S.;
7 providing child-restraint requirements for
8 children ages 4 through 7; providing a grace
9 period; providing exceptions to such
10 requirements; providing effective dates.
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Bill No. SB 2306

Amendment No. 2

361236

CHAMBER ACTION

Senate | House

JUDICIARY

DATE: 4/16/04

TIME: 3:30pm

Senator Webster moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsections (1) and (2) and paragraph (a) of subsection (4) of section 627.64171, Florida Statutes, are amended to read:

627.64171 Coverage for length of stay and outpatient postsurgical care.--

(1) Any health insurance policy that is issued, amended, delivered, or renewed in this state which provides coverage for breast cancer treatment may not limit inpatient hospital coverage for lymph-node dissections or mastectomies to any period that is less than that determined by the treating physician to be medically necessary in accordance with prevailing medical standards and after consultation with the insured patient.

(2) Any health insurance policy that provides coverage for mastectomies under subsection (1) must also provide

1 coverage for outpatient postsurgical followup care in keeping
2 with prevailing medical standards by a licensed health care
3 professional qualified to provide postsurgical mastectomy
4 care. The treating physician, after consultation with the
5 insured patient, may choose that the outpatient care be
6 provided at the most medically appropriate setting, which may
7 include the hospital, treating physician's office, outpatient
8 center, or home of the insured patient.
9 (4)(a) This section does not require an insured
10 patient to have a lymph-node dissection or a ~~the~~ mastectomy in
11 the hospital or stay in the hospital for a fixed period of
12 time following a lymph-node dissection or a ~~the~~ mastectomy.
13 Section 2. Subsections (1) and (2) and paragraph (a)
14 of subsection (4) of section 627.66121, Florida Statutes, are
15 amended to read:
16 627.66121 Coverage for length of stay and outpatient
17 postsurgical care.--
18 (1) Any group, blanket, or franchise accident or
19 health insurance policy that is issued, amended, delivered, or
20 renewed in this state which provides coverage for breast
21 cancer treatment may not limit inpatient hospital coverage for
22 lymph-node dissections or mastectomies to any period that is
23 less than that determined by the treating physician to be
24 medically necessary in accordance with prevailing medical
25 standards and after consultation with the insured patient.
26 (2) Any group, blanket, or franchise accident or
27 health insurance policy that provides coverage for
28 mastectomies under subsection (1) must also provide coverage
29 for outpatient postsurgical followup care in keeping with
30 prevailing medical standards by a licensed health care
31 professional qualified to provide postsurgical mastectomy

1 care. The treating physician, after consultation with the
2 insured patient, may choose that the outpatient care be
3 provided at the most medically appropriate setting, which may
4 include the hospital, treating physician's office, outpatient
5 center, or home of the insured patient.
6 (4)(a) This section does not require an insured
7 patient to have a lymph-node dissection or a ~~the~~ mastectomy in
8 the hospital or stay in the hospital for a fixed period of
9 time following a lymph-node dissection or a ~~the~~ mastectomy.
10 Section 3. Paragraphs (a) and (c) of subsection (31)
11 of section 641.31, Florida Statutes, are amended to read:
12 641.31 Health maintenance contracts.--
13 (31)(a) Health maintenance contracts that provide
14 coverage, benefits, or services for breast cancer treatment
15 may not limit inpatient hospital coverage for lymph-node
16 dissections or mastectomies to any period that is less than
17 that determined by the treating physician under contract with
18 the health maintenance organization to be medically necessary
19 in accordance with prevailing medical standards and after
20 consultation with the covered patient. Such contract must also
21 provide coverage for outpatient postsurgical followup care in
22 keeping with prevailing medical standards by a licensed health
23 care professional under contract with the health maintenance
24 organization qualified to provide postsurgical mastectomy
25 care. The treating physician under contract with the health
26 maintenance organization, after consultation with the covered
27 patient, may choose that the outpatient care be provided at
28 the most medically appropriate setting, which may include the
29 hospital, treating physician's office, outpatient center, or
30 home of the covered patient.
31 (c)1. This subsection does not require a covered

1 patient to have a lymph-node dissection or a ~~the~~ mastectomy in
2 the hospital or stay in the hospital for a fixed period of
3 time following a lymph-node dissection or a ~~the~~ mastectomy.
4 2. This subsection does not prevent a contract from
5 imposing deductibles, coinsurance, or other cost sharing in
6 relation to benefits pursuant to this subsection, except that
7 such cost sharing shall not exceed cost sharing with other
8 benefits.
9 Section 4. The Legislature finds that it is of the
10 utmost public importance that quality mammography services and
11 other diagnostic tools remain available to detect and treat
12 breast cancer. The Office of Program Policy Analysis and
13 Government Accountability shall study issues relating to the
14 availability utilization, quality, and cost of mammography
15 services in all facilities performing mammography. The study
16 shall include, but need not be limited to, examining the
17 following factors that impact availability utilization,
18 quality, and cost: reimbursement fees, copayment fees paid by
19 patients, incidence of lawsuits filed, equipment and liability
20 insurance costs, equipment maintenance and calibration,
21 staffing requirements and training, type and number of
22 facilities performing mammography, facilities surveyed by the
23 Bureau of Radiation Control of the Department of Health,
24 population density of females aged 40 and older in each
25 county, and other factors that relate to the demand and
26 availability of mammography services. The Office of Program
27 Policy Analysis and Government Accountability shall complete
28 its study and submit its report to the Legislature by December
29 15, 2004.
30 Section 5. This act shall take effect July 1, 2004.
31

1 ========== T I T L E A M E N D M E N T ==========
2 And the title is amended as follows:
3 Delete everything before the enacting clause
4
5 and insert:
6 A bill to be entitled
7 An act relating to health care practice
8 parameters; amending ss. 627.64171, 627.66121,
9 and 641.31, F.S.; providing requirements for
10 the length of hospital stay relating to a
11 lymph-node dissection which specified health
12 insurers and health maintenance organizations
13 must cover; limiting application; directing the
14 Office of Program Policy Analysis and
15 Government Accountability to study mammography
16 and report to the Legislature; providing an
17 effective date.
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Bill No. CS for SB 2808

Amendment No. 4 600128

CHAMBER ACTION

Senate House

JUDICIARY

DATE: 4/16/04

TIME: 4:58 pm

Senator Webster moved the following amendment:

Senate Amendment (with title amendment)

On page 118, line 17, through page 121, line 11, delete those lines

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

And the title is amended as follows:

On page 7, line 31, through page 8, line 1, delete those lines

and insert: (b), (c), (d), (f), and (g),

Bill No. CS for SB 2808

Amendment No. 5 600156

CHAMBER ACTION

Senate | House

JUDICIARY

DATE: 4/17/04

TIME: 1:30 pm

Senator Webster moved the following amendment:

Senate Amendment (with title amendment)

On page 42, between lines 11 and 12,

insert:

Section 17. Paragraph (b) of subsection (4) of section 20.19, Florida Statutes, is amended to read:

20.19 Department of Children and Family Services.--There is created a Department of Children and Family Services.

(4) PROGRAM OFFICES AND SUPPORT OFFICES.--

(b) The following program offices are established:

1. Adult Services.

2. Child Care Services.

~~3.--Developmental-Disabilities.~~

3.~~4.~~ Economic Self-Sufficiency Services.

4.~~5.~~ Family Safety.

5.~~6.~~ Mental Health.

6.~~7.~~ Refugee Services.

7.~~8.~~ Substance Abuse.

1 Section 18. Section 20.197, Florida Statutes, is
2 created to read:
3 20.197 Agency for Persons with Disabilities.--There is
4 created the Agency for Persons with Disabilities, housed
5 within the Department of Children and Family Services for
6 administrative purposes only. The agency shall be a separate
7 budget entity not subject to control, supervision, or
8 direction by the Department of Children and Family Services in
9 any manner, including, but not limited to, personnel,
10 purchasing, transactions involving real or personal property,
11 and budgetary matters.
12 (1) The director of the agency shall be the agency
13 head for all purposes and shall be appointed by the Governor
14 and serve at the pleasure of the Governor. The director shall
15 administer the affairs of the agency and establish
16 administrative units as needed and may, within available
17 resources, employ assistants, professional staff, and other
18 employees as necessary to discharge the powers and duties of
19 the agency.
20 (2) The agency shall be responsible for the provision
21 of all services provided to persons with developmental
22 disabilities pursuant to chapter 393, including the operation
23 of all state institutional programs and the programmatic
24 management of Medicaid waivers established to provide services
25 to persons with developmental disabilities.
26 (3) The agency shall engage in such other
27 administrative activities as are deemed necessary to
28 effectively and efficiently address the needs of the agency's
29 clients.
30 (4) The agency shall enter into an interagency
31 agreement that delineates the responsibilities of the Agency

for Health Care Administration for the following:

(a) The terms, and execution of contracts with Medicaid providers for the provision of services provided through Medicaid, including federally approved waiver programs.

(b) Billing, payment, and reconciliation of claims for Medicaid services reimbursed by the agency.

(c) The implementation of utilization management measures, including the prior authorization of services plans and the streamlining and consolidation of waivers services, to ensure the cost-effective provision of needed Medicaid services and to maximize the number of persons with access to such services.

(d) A system of approving each client's plan of care to ensure that the services on the plan of care are those that without which the client would require the services of an intermediate care facility for the developmentally disabled.

Section 19. Section 393.063, Florida Statutes, is amended to read:

393.063 Definitions.--For the purposes of this chapter:

~~(1)--"Active-treatment"-means-the-provision-of-services by-an-interdisciplinary-team-necessary-to-maximize-a-client's individual-independence-or-prevent-regression-or-loss-of functional-status.~~

(1) ~~(2)~~ "Agency" means the Agency for Persons with Disabilities ~~Health-Care-Administration~~.

(2) ~~(3)~~ "Autism" means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals

with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

(3) ~~(4)~~ "Cerebral palsy" means a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.

(4) ~~(5)~~ "Client" means any person determined eligible by the agency ~~department~~ for ~~developmental~~ services under this chapter.

(5) ~~(6)~~ "Client advocate" means a friend or relative of the client, or of the client's immediate family, who advocates for the best interests of the client in any proceedings under this chapter in which the client or his or her family has the right or duty to participate.

(6) ~~(7)~~ "Comprehensive assessment" means the process ~~which is~~ used to determine eligibility for ~~developmental~~ services under this chapter ~~and develop the family or individual support plan. The term includes review and evaluation of information provided by the applicant, the individual receiving supports or services through developmental services, or the family, and others providing supports or services to the individual or family, as well as the use of formal assessment instruments.~~

(7) ~~(8)~~ "Comprehensive transitional education program" means a group of jointly operating centers or units, the collective purpose of which is to provide a sequential series

of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities~~,-as-defined-in-subsection-(12),~~ and who have severe or moderate maladaptive behaviors. However, nothing in this subsection shall require such ~~comprehensive-transitional education~~ programs to provide services only to persons with developmental disabilities~~,-as-defined-in-subsection-(12)~~. All such services shall be temporary in nature and delivered in a structured residential setting with the primary goal of incorporating the normalization principle to establish permanent residence for persons with maladaptive behaviors in facilities not associated with the comprehensive transitional education program. The staff shall include psychologists and teachers who~~,-and-such-staff-personnel~~ shall be available to provide services in each component center or unit of the program. The psychologists shall be individuals who are licensed in this state and certified as behavior analysts in this state, or individuals who ~~meet-the-professional requirements-established-by-the-department-for-district behavior-analysts-and~~ are certified as behavior analysts pursuant to s. 393.17 ~~in-this-state~~.

(a) Comprehensive transitional education programs shall include a minimum of two component centers or units, ~~as defined-in-this-paragraph,~~ one of which shall be either an intensive treatment and educational center or a transitional training and educational center, which provide services to persons with maladaptive behaviors in the following sequential order:

1. Intensive treatment and educational center. This component is a self-contained residential unit providing intensive psychological and educational programming for

1 persons with severe maladaptive behaviors, whose behaviors
2 preclude placement in a less restrictive environment due to
3 the threat of danger or injury to themselves or others.
4 2. Transitional training and educational center. This
5 component is a residential unit for persons with moderate
6 maladaptive behaviors, providing concentrated psychological
7 and educational programming emphasizing a transition toward a
8 less restrictive environment.
9 3. Community transition residence. This component is
10 a residential center providing educational programs and such
11 support services, training, and care as are needed to assist
12 persons with maladaptive behaviors to avoid regression to more
13 restrictive environments while preparing them for more
14 independent living. Continuous-shift staff shall be required
15 for this component.
16 4. Alternative living center. This component is a
17 residential unit providing an educational and family living
18 environment for persons with maladaptive behaviors, in a
19 moderately unrestricted setting. Residential staff shall be
20 required for this component.
21 5. Independent living education center. This
22 component is a facility providing a family living environment
23 for persons with maladaptive behaviors, in a largely
24 unrestricted setting which includes education and monitoring
25 appropriate to support the development of independent living
26 skills ~~by the students~~.
27 (b) Centers or units that are components of a
28 comprehensive transitional education program are subject to
29 the license issued to the comprehensive transitional education
30 program and may be located on either single or multiple sites.
31 (c) Comprehensive transitional education programs

1 shall develop individual education plans for each person with
2 maladaptive behaviors who receives services therein. Such
3 individual education plans shall be developed in accordance
4 with the criteria specified ~~included~~ in ~~Pub.-L.-No.-94-142,~~ 20
5 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300.
6 (d) In no instance shall the total number of persons
7 with maladaptive behaviors being provided services in a
8 comprehensive transitional education program exceed 120.
9 (e) This subsection shall authorize licensure for
10 comprehensive transitional education programs which by July 1,
11 1989:
12 1. Are in actual operation; or
13 2. Own a fee simple interest in real property for
14 which a county or city government has approved zoning allowing
15 for the placement of the facilities described in this
16 subsection, and have registered an intent with the department
17 to operate a comprehensive transitional education program.
18 However, nothing shall prohibit the assignment by such a
19 registrant to another entity at a different site within the
20 state, so long as there is compliance with all criteria of the
21 comprehensive transitional education program and local zoning
22 requirements and provided that each residential facility
23 within the component centers or units of the program
24 authorized under this subparagraph shall not exceed a capacity
25 of 15 persons.
26 ~~(9)--"Day-service"-means-the-care,-protection,-and~~
27 ~~supervision-of-a-client-for-a-period-of-less-than-24-hours-a~~
28 ~~day-on-a-regular-basis-which-supplements-for-the-client,-in~~
29 ~~accordance-with-his-or-her-individual-needs,-daily-care,~~
30 ~~enrichment-opportunities,-and-health-supervision.~~
31 (8) ~~(10)~~ "Day habilitation facility" means any

1 nonresidential facility which provides day habilitation
2 services.
3 (9) "Day habilitation service" means assistance with
4 the acquisition, retention, or improvement in self-help,
5 socialization, and adaptive skills which takes place in a
6 nonresidential setting, separate from the home or facility in
7 which the individual resides. Day habilitation services shall
8 focus on enabling the individual to attain or maintain his or
9 her maximum functional level and shall be coordinated with any
10 physical, occupational, or speech therapies listed in the plan
11 of care.
12 ~~(11)--"Department"-means-the-Department-of-Children-and~~
13 ~~Family-Services.~~
14 (10) ~~(12)~~ "Developmental disability" means a disorder
15 or syndrome that is attributable to retardation, cerebral
16 palsy, autism, spina bifida, or Prader-Willi syndrome and that
17 constitutes a substantial handicap that can reasonably be
18 expected to continue indefinitely.
19 (11) ~~(13)~~ "Developmental disabilities ~~services~~
20 institution" means a state-owned and state-operated facility,
21 formerly known as a "Sunland Center," providing for the care,
22 habilitation, and rehabilitation of clients with developmental
23 disabilities.
24 ~~(14)--"Developmental-training-facility"-means-any~~
25 ~~nonresidential-facility-which-provides-basic-training-and~~
26 ~~habilitation-to-clients.~~
27 (12) ~~(15)~~ "Direct service provider," also known as
28 "caregiver" in chapters 39 and 415 or "caretaker" in
29 provisions relating to employment security checks, means a
30 person 18 years of age or older who has direct contact with
31 individuals with developmental disabilities, or has access to

1 a client's living areas or to a client's funds or personal
2 property, and is not a relative of such ~~unrelated-to-the~~
3 individuals ~~with-developmental-disabilities.~~
4 ~~(a)--The-term-"direct-service-provider"-also-includes~~
5 ~~any-person,-including-members-of-the-direct-service-provider's~~
6 ~~family,-over-12-years-of-age-who-resides-with-the-direct~~
7 ~~service-provider-when:~~
8 ~~1.--The-direct-service-provider-provides-supports-or~~
9 ~~services-in-his-or-her-residence;~~
10 ~~2.--The-direct-service-provider-provides-supports-or~~
11 ~~services-in-a-facility-adjacent-to-his-or-her-residence;-or~~
12 ~~3.--The-person-residing-with-the-direct-service~~
13 ~~provider-has-direct-contact-with-the-individual-with~~
14 ~~developmental-disabilities-during-the-hours-of-provision-of~~
15 ~~supports-or-services.~~
16 ~~(b)--Persons-residing-with-the-direct-service-provider,~~
17 ~~including-family-members,-who-are-between-the-ages-of-12-years~~
18 ~~and-18-years-are-not-required-to-be-fingerprinted,-but-shall~~
19 ~~be-screened-for-delinquency-records.~~
20 ~~(c)--A-volunteer-who-assists-on-an-intermittent-basis~~
21 ~~for-less-than-40-hours-per-month-is-not-a-direct-service~~
22 ~~provider-for-the-purposes-of-screening-if-the-volunteer-is~~
23 ~~under-the-direct-and-constant-supervision-of-persons-who-meet~~
24 ~~the-personnel-requirements-of-s.-393.0655.~~
25 ~~(d)--A-physician,-nurse,-or-other-professional-licensed~~
26 ~~and-regulated-by-the-Department-of-Business-and-Professional~~
27 ~~Regulation-is-not-a-direct-service-provider-for-the-purposes~~
28 ~~of-screening-if-the-service-he-or-she-is-providing-to-a-client~~
29 ~~is-within-the-scope-of-practice-for-which-he-or-she-is~~
30 ~~licensed.~~
31 ~~(e)--A-person-selected-by-the-family-or-the-individual~~

1 ~~with-developmental-disabilities-and-paid-by-the-family-or-the~~
2 ~~individual-to-provide-supports-or-services-is-not-a-direct~~
3 ~~service-provider-for-the-purpose-of-screening.~~
4 ~~(16)--"District"-means-a-service-district-of-the~~
5 ~~department.~~
6 (13) ~~(17)~~ "Domicile" means the place where a client
7 legally resides, which place is his or her permanent home.
8 Domicile may be established as provided in s. 222.17.
9 Domicile may not be established in Florida by a minor who has
10 no parent domiciled in Florida, or by a minor who has no legal
11 guardian domiciled in Florida, or by any alien not classified
12 as a resident alien.
13 (14) ~~(18)~~ "Enclave" means a work station in public or
14 private business or industry where a small group of persons
15 with developmental disabilities is employed and receives
16 training and support services or follow-along services among
17 nonhandicapped workers.
18 (15) ~~(19)~~ "Epilepsy" means a chronic brain disorder of
19 various causes which is characterized by recurrent seizures
20 due to excessive discharge of cerebral neurons. When found
21 concurrently with retardation, autism, or cerebral palsy,
22 epilepsy is considered a secondary disability for which the
23 client is eligible to receive services to ameliorate this
24 condition pursuant ~~according~~ to ~~the-provisions-of~~ this
25 chapter.
26 (16) ~~(20)~~ "Express and informed consent" means consent
27 voluntarily given in writing with sufficient knowledge and
28 comprehension of the subject matter involved to enable the
29 person giving consent to make an understanding and enlightened
30 decision without any element of force, fraud, deceit, duress,
31 or other form of constraint or coercion.

1 (17) ~~(21)~~ "Family care program" means the program
2 established in s. 393.068 ~~an-alternative-to-residential~~
3 ~~placement,-in-which-a-direct-service-provider-provides-a-home~~
4 ~~for-a-client-and-assists-him-or-her-to-the-extent-necessary~~
5 ~~for-the-client-to-participate-in-normal-activities-and-to-meet~~
6 ~~the-demands-of-daily-living.-The-program-provides-the-support~~
7 ~~needed-by-the-client's-family-or-caretaker-to-meet-the~~
8 ~~individual-needs-of-the-client~~.
9 (18) ~~(22)~~ "Follow-along services" means those support
10 services ~~which-shall-be~~ provided to persons with developmental
11 disabilities in all supported employment programs and may
12 include, but are not limited to, family support, assistance in
13 meeting transportation and medical needs, employer
14 intervention, performance evaluation, advocacy, replacement,
15 retraining or promotional assistance, or other similar support
16 services.
17 (19) ~~(23)~~ "Foster care facility" means a residential
18 facility which provides a family living environment including
19 supervision and care necessary to meet the physical,
20 emotional, and social needs of its residents. The capacity of
21 such a facility shall not be more than three residents.
22 (20) ~~(24)~~ "Group home facility" means a residential
23 facility which provides a family living environment including
24 supervision and care necessary to meet the physical,
25 emotional, and social needs of its residents. The capacity of
26 such a facility shall be at least 4 ~~residents~~ but not more
27 than 15 residents. For the purposes of this chapter, group
28 home facilities shall not be considered commercial
29 enterprises.
30 (21) ~~(25)~~ "Guardian advocate" means a person appointed
31 by the circuit court to represent a person with developmental

disabilities in any proceedings brought pursuant to s. 393.12, and excludes the use of the same term as applied to a guardian advocate for mentally ill persons in chapter 394.

(22) ~~(26)~~ "Habilitation" means the process by which a client is assisted to acquire and maintain those life skills which enable the client to cope more effectively with the demands of his or her condition and environment and to raise the level of his or her physical, mental, and social efficiency. It includes, but is not limited to, programs of formal structured education and treatment.

(23) ~~(27)~~ "High-risk child" means, for the purposes of this chapter, a child from birth to 5 years of age with one or more of the following characteristics:

(a) A developmental delay in cognition, language, or physical development.

(b) A child surviving a catastrophic infectious or traumatic illness known to be associated with developmental delay, when funds are specifically appropriated.

(c) A child with a parent or guardian with developmental disabilities ~~who is developmentally disabled and~~ who requires assistance in meeting the child's developmental needs.

(d) A child who has a physical or genetic anomaly associated with developmental disability.

(24) ~~(28)~~ "Intermediate care facility for the developmentally disabled" or "ICF/DD" means a residential facility licensed and certified pursuant to part XI of chapter 400 ~~in accordance with state law, and certified by the Federal Government pursuant to the Social Security Act, as a provider of Medicaid services to persons who are developmentally disabled. The capacity of such a facility shall not be more~~

1 ~~than-120-clients.~~

2 (25) ~~(29)~~ "Job coach" means a person who provides

3 employment-related training at a work site to individuals with

4 developmental disabilities.

5 (26) ~~(30)~~ "Medical/dental services" means medically

6 necessary ~~those~~ services which are provided or ordered for a

7 client by a ~~person~~ licensed physician or dentist and includes

8 ~~pursuant-to-the-provisions-of-chapter-458,-chapter-459,-or~~

9 ~~chapter-466.--Such-services-may-include,-but-are-not-limited~~

10 ~~to,~~ prescription drugs, specialized therapies, nursing

11 supervision, hospitalization, dietary services, prosthetic

12 devices, surgery, specialized equipment and supplies, adaptive

13 equipment, and other services as required to prevent or

14 alleviate a medical or dental condition.

15 (27) ~~(31)~~ "Mobile work crew" means a group of workers

16 employed by an agency that provides services outside the

17 agency, usually under service contracts.

18 (28) ~~(32)~~ "Normalization principle" means the principle

19 of letting the client obtain an existence as close to the

20 normal as possible, making available to the client patterns

21 and conditions of everyday life which are as close as possible

22 to the norm and patterns of the mainstream of society.

23 (29) ~~(33)~~ "Personal services" include, but are not

24 limited to, such services as: individual assistance with or

25 supervision of essential activities of daily living for

26 self-care, including ambulation, bathing, dressing, eating,

27 grooming, and toileting, and other similar services that ~~which~~

28 the agency ~~department~~ may define by rule. "Personal services"

29 shall not be construed to mean the provision of medical,

30 nursing, dental, or mental health services by the staff of a

31 facility, except as provided in this chapter. In addition, an

1 emergency response device installed in the apartment or living
2 area of a resident shall not be classified as a personal
3 service.
4 (30) ~~(34)~~ "Prader-Willi syndrome" means an inherited
5 condition typified by neonatal hypotonia with failure to
6 thrive, hyperphagia or an excessive drive to eat which leads
7 to obesity usually at 18 to 36 months of age, mild to moderate
8 retardation, hypogonadism, short stature, mild facial
9 dysmorphism, and a characteristic neurobehavior.
10 (31) ~~(35)~~ "Reassessment" means a process which
11 periodically develops, through annual review and revision of a
12 client's family or individual support plan, a knowledgeable
13 statement of current needs and past development for each
14 client.
15 ~~(36)--"Rehabilitation-workshop-facility"-means-a-place~~
16 ~~operated-by-a-for-profit-or-nonprofit-agency-engaged-in-the~~
17 ~~manufacture-or-production-of-products-or-provision-of~~
18 ~~services,-which-provides-gainful-rehabilitation-to-severely~~
19 ~~handicapped-persons-until-such-persons-can-become-employed-or~~
20 ~~which-provides-gainful-work-to-persons-who-are-developmentally~~
21 ~~disabled.~~
22 (32) ~~(37)~~ "Relative" means an individual who is
23 connected by affinity or consanguinity to the client and who
24 is 18 years of age or more.
25 (33) ~~(38)~~ "Resident" means any person who is
26 developmentally disabled residing at a residential facility in
27 the state, whether or not such person is a client of the
28 agency ~~department~~.
29 (34) ~~(39)~~ "Residential facility" means a facility
30 providing room and board and personal care for persons with
31 developmental disabilities.

1 (35) "Residential habilitation" means assistance
2 provided in a residential habitation center with acquisition,
3 retention, or improvement in skills related to activities of
4 daily living, such as personal grooming and cleanliness,
5 bedmaking and household chores, eating and the preparation of
6 food, and the social and adaptive skills necessary to enable
7 the individual to reside in a noninstitutional setting.
8 (36) ~~(40)~~ "Residential habilitation center" means a
9 community residential facility that provides residential
10 habilitation. ~~operated-primarily-for-the-diagnosis,-treatment,~~
11 ~~habilitation,-or-rehabilitation-of-its-residents,-which~~
12 ~~facility-provides,-in-a-structured-residential-setting,~~
13 ~~individualized-continuing-evaluation,-planning,-24-hour~~
14 ~~supervision,-and-coordination-and-integration-of-health-or~~
15 ~~rehabilitative-services-to-help-each-resident-reach-his-or-her~~
16 ~~maximum-functioning-capabilities.~~ The capacity of such a
17 facility shall not be fewer ~~less~~ than nine residents. After
18 October 1, 1989, no new residential habilitation centers shall
19 be licensed and the licensed capacity shall not be increased
20 for any existing residential habilitation center.
21 (37) ~~(41)~~ "Respite service" means appropriate,
22 short-term, temporary care that is provided to a person with
23 developmental disabilities to meet the planned or emergency
24 needs of the person ~~with-developmental-disabilities~~ or the
25 family or other direct service provider.
26 (38) ~~(42)~~ "Retardation" means significantly subaverage
27 general intellectual functioning existing concurrently with
28 deficits in adaptive behavior and manifested during the period
29 from conception to age 18. "Significantly subaverage general
30 intellectual functioning," for the purpose of this definition,
31 means performance which is two or more standard deviations

1 from the mean score on a standardized intelligence test
2 specified in the rules of the agency ~~department~~. "Adaptive
3 behavior," for the purpose of this definition, means the
4 effectiveness or degree with which an individual meets the
5 standards of personal independence and social responsibility
6 expected of his or her age, cultural group, and community.
7 ~~(43)--"Screening,"-for-purposes-of-employment,~~
8 ~~contracting,-or-certification,-means-the-act-of-assessing-the~~
9 ~~background-of-direct-service-providers-and-independent-support~~
10 ~~coordinators,-who-are-not-related-to-clients-for-whom-they~~
11 ~~provide-services,-and-includes,-but-is-not-limited-to,~~
12 ~~employment-history-checks,-local-criminal-records-checks~~
13 ~~through-local-law-enforcement-agencies,-fingerprinting-for-all~~
14 ~~purposes-and-checks-in-this-subsection,-statewide-criminal~~
15 ~~records-checks-through-the-Department-of-Law-Enforcement,-and~~
16 ~~federal-criminal-records-checks-through-the-Federal-Bureau-of~~
17 ~~Investigation,-except-that-screening-for-volunteers-included~~
18 ~~under-the-definition-of-personnel-includes-only-local-criminal~~
19 ~~records-checks-through-local-law-enforcement-agencies-for~~
20 ~~current-residence-and-residence-immediately-prior-to~~
21 ~~employment-as-a-volunteer,-if-different,-and-statewide~~
22 ~~criminal-records-correspondence-checks-through-the-Department~~
23 ~~of-Law-Enforcement.~~
24 (39) ~~(44)~~ "Severe self-injurious behavior" means any
25 chronic behavior that results in injury to the person's own
26 body, which includes, but is not limited to, self-hitting,
27 head banging, self-biting, scratching, and the ingestion of
28 harmful or potentially harmful nutritive or nonnutritive
29 substances.
30 (40) ~~(45)~~ "Specialized therapies" means those
31 treatments or activities prescribed by and provided by an

appropriately trained, licensed, or certified professional or staff person and may include, but are not limited to, physical therapy, speech therapy, respiratory therapy, occupational therapy, behavior therapy, physical management services, and related specialized equipment and supplies.

(41) ~~(46)~~ "Spina bifida" means, for purposes of this chapter, a person with a medical diagnosis of spina bifida cystica or myelomeningocele.

(42) ~~(47)~~ "Support coordinator" means a person who is designated by the agency ~~department~~ to assist individuals and families in identifying their ~~desires,~~ capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the delivery of supports and services; advocating on behalf of the individual and family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan.

(43) ~~(48)~~ "Supported employee" means a person ~~whose developmental disability has traditionally kept him or her from integrated, community-based employment and~~ who requires and receives supported employment ~~ongoing support or follow-along~~ services in order to maintain community-based employment.

(44) ~~(49)~~ "Supported employment" means employment located or provided in a normal employment setting which provides at least 20 hours employment per week in an integrated work setting, with earnings paid on a commensurate wage basis, and for which continued support is ~~or follow-along services are~~ needed for ~~continuing~~ job maintenance.

1 (45) ~~(50)~~ "Supported living" means a category of
2 individually determined services designed and coordinated in
3 such a manner as to provide assistance to adult clients who
4 require ongoing supports to live as independently as possible
5 in their own homes, to be integrated into the community, and
6 to participate in community life to the fullest extent
7 possible.
8 (46) ~~(51)~~ "Training" means a planned approach to
9 assisting a client to attain or maintain his or her maximum
10 potential and includes services ranging from sensory
11 stimulation to instruction in skills for independent living
12 and employment.
13 (47) ~~(52)~~ "Treatment" means the prevention,
14 amelioration, or cure of a client's physical and mental
15 disabilities or illnesses.
16 Section 20. Subsections (1), (3), (4), and (5) of
17 section 393.064, Florida Statutes, are amended to read:
18 393.064 Prevention.--
19 (1) The agency ~~Department of Children and Family~~
20 ~~Services~~ shall give priority to the development, planning, and
21 implementation of programs which have the potential to
22 prevent, correct, cure, or reduce the severity of
23 developmental disabilities. The agency ~~department~~ shall
24 direct an interagency ~~interdepartmental~~ and interprogram
25 effort for the continued development of a prevention plan and
26 program. The agency ~~department~~ shall identify, through
27 demonstration projects, through ~~departmental~~ program
28 evaluation, and through monitoring of programs and projects
29 conducted outside of the agency ~~department~~, any medical,
30 social, economic, or educational methods, techniques, or
31 procedures that ~~which~~ have the potential to effectively

1 ameliorate, correct, or cure developmental disabilities. The
2 program ~~department~~ shall determine the costs and benefits that
3 would be associated with such prevention efforts and shall
4 implement, or recommend the implementation of, those methods,
5 techniques, or procedures which are found likely to be
6 cost-beneficial. ~~The-department-in-its-legislative-budget~~
7 ~~request-shall-identify-funding-needs-for-such-prevention~~
8 ~~programs.~~
9 (3) Other agencies of state government shall cooperate
10 with and assist the agency ~~department~~, within available
11 resources, in implementing programs which have the potential
12 to prevent, or reduce the severity of, developmental
13 disabilities and shall consider the findings and
14 recommendations of the agency ~~department~~ in developing and
15 implementing agency programs and formulating agency budget
16 requests.
17 (4) There is created at the developmental services
18 institution in Gainesville a research and education unit.
19 Such unit shall be named the Raymond C. Philips Research and
20 Education Unit. The functions of such unit shall include:
21 (a) Research into the etiology of developmental
22 disabilities.
23 (b) Ensuring that new knowledge is rapidly
24 disseminated throughout the developmental services program of
25 the agency ~~Department-of-Children-and-Family-Services~~.
26 (c) Diagnosis of unusual conditions and syndromes
27 associated with developmental disabilities in clients
28 identified throughout the developmental services programs.
29 (d) Evaluation of families of clients with
30 developmental disabilities of genetic origin in order to
31 provide them with genetic counseling aimed at preventing the

1 recurrence of the disorder in other family members.
2 (e) Ensuring that health professionals in the
3 developmental services institution at Gainesville have access
4 to information systems that will allow them to remain updated
5 on newer knowledge and maintain their postgraduate education
6 standards.
7 (f) Enhancing staff training for professionals
8 throughout the agency ~~department~~ in the areas of genetics and
9 developmental disabilities.
10 (5) The agency ~~Department of Children and Family~~
11 ~~Services~~ shall have the authority, within available resources,
12 to contract for the supervision and management of the Raymond
13 C. Philips Research and Education Unit, and such contract
14 shall include specific program objectives.
15 Section 21. Section 393.0655, Florida Statutes, is
16 amended to read:
17 393.0655 Screening of direct service providers.--
18 (1) MINIMUM STANDARDS.--The agency ~~department~~ shall
19 require level 2 employment screening pursuant to chapter 435~~,~~
20 ~~using the level 2 standards for screening set forth in that~~
21 ~~chapter,~~ for direct service providers who are unrelated to
22 their clients, including support coordinators, and managers
23 and supervisors of residential facilities or comprehensive
24 transitional education programs licensed under s. 393.067 and
25 any other person, including volunteers, who provide care or
26 services, who have access to a client's living areas, or who
27 have access to a client's funds or personal property.
28 Background screening shall include employment history checks
29 as provided in s. 435.03(1) and local criminal records checks
30 through local law enforcement agencies.
31 (a) A volunteer who assists on an intermittent basis

1 for less than 40 hours per month does not have to be screened,
2 if the volunteer is under the direct and constant supervision
3 of persons who meet the screening requirements of this
4 section.
5 (b) Licensed physicians, nurses, or other
6 professionals licensed and regulated by the Department of
7 Health are not subject to background screening pursuant to
8 this section if they are providing a service that is within
9 their scope of licensed practice.
10 (c) A person selected by the family or the individual
11 with developmental disabilities and paid by the family or the
12 individual to provide supports or services is not required to
13 have a background screening under this section.
14 (d) Persons residing with the direct services
15 provider, including family members, are subject to background
16 screening; however, such persons who are 12 to 18 years of age
17 shall be screened for delinquency records only.
18 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency
19 ~~department~~ may grant exemptions from disqualification from
20 working with children or adults with developmental
21 disabilities ~~the developmentally disabled~~ as provided in s.
22 435.07.
23 (3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE
24 CRIMINAL RECORDS CHECKS.--The costs of processing fingerprints
25 and the state criminal records checks shall be borne by the
26 employer or by the employee or individual who is being
27 screened.
28 (4) EXCLUSION FROM OWNING, OPERATING, OR BEING
29 EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL FACILITY;
30 HEARINGS PROVIDED.--
31 (a) The agency ~~department~~ shall deny, suspend,

terminate, or revoke a license, certification, rate agreement, purchase order, or contract, or pursue other remedies provided in s. 393.0673, s. 393.0675, or s. 393.0678 in addition to or in lieu of denial, suspension, termination, or revocation for failure to comply with this section.

(b) When the agency ~~department~~ has reasonable cause to believe that grounds for denial or termination of employment exist, it shall notify, in writing, the employer and the direct service provider affected, stating the specific record which indicates noncompliance with the standards in this section.

(c) The procedures established for hearing under chapter 120 shall be available to the employer and the direct service provider in order to present evidence relating either to the accuracy of the basis of exclusion or to the denial of an exemption from disqualification.

(d) Refusal on the part of an employer to dismiss a direct service provider who has been found to be in noncompliance with standards of this section shall result in automatic denial, termination, or revocation of the license, certification, rate agreement, purchase order, or contract, in addition to any other remedies pursued by the agency ~~department~~.

Section 22. Section 393.066, Florida Statutes, is amended to read:

393.066 Community services and treatment for persons who are developmentally disabled.--

(1) The agency ~~Department of Children and Family Services~~ shall plan, develop, organize, and implement its programs of services and treatment for persons who are developmentally disabled ~~along district lines. The goal of~~

1 ~~such-programs-shall-be~~ to allow clients to live as
2 independently as possible in their own homes or communities
3 and to achieve productive lives as close to normal as
4 possible.
5 ~~(2)--All-programs-of-services-and-treatment-for-clients~~
6 ~~shall-be-administered-through-the-districts-and-shall-serve~~
7 ~~all-clients-regardless-of-the-type-of-residential-setting-in~~
8 ~~which-the-client-lives.~~ All elements of community-based
9 services shall be made available, ~~in-each-service-district~~ and
10 eligibility for these services shall be consistent across the
11 state ~~districts~~. In addition, all purchased services shall be
12 approved by the agency ~~district~~.
13 (2) ~~(3)~~ All services needed shall be purchased instead
14 of provided directly by the agency ~~department~~, when such
15 arrangement is more cost-efficient than having those services
16 provided directly ~~by-the-department~~.
17 (3) ~~(4)~~ Community-based services that are medically
18 necessary to prevent institutionalization shall, to the extent
19 of available resources, include:
20 (a) Day habilitation services, including developmental
21 training services.
22 (b) Family care services.
23 (c) Guardian advocate referral services.
24 (d) Medical/dental services, except that medical
25 services shall not be provided to clients with spina bifida
26 except as specifically appropriated by the Legislature.
27 (e) Parent training.
28 (f) Recreation.
29 (g) Residential services.
30 (h) Respite services.
31 (i) Social services.

1 (j) Specialized therapies.
2 (k) Supported employment, including enclave, job
3 coach, mobile work crew, and follow-along services.
4 (l) Supported living.
5 (m) Training, including behavioral programming.
6 (n) Transportation.
7 (o) Other habilitative and rehabilitative services as
8 needed.
9
10 ~~Services-to-clients-with-spina-bifida-shall-not-include~~
11 ~~medical-services-except-as-appropriated-by-the-Legislature.~~
12 ~~(5)--Provided-it-is-consistent-with-the-intent-of-the~~
13 ~~Legislature,-the-department-shall-prioritize-increased~~
14 ~~appropriations-provided-for-community-based-services-for~~
15 ~~developmentally-disabled-individuals-toward-individualized,~~
16 ~~community-based-supports-and-services-for-consumers-and-their~~
17 ~~families.--Further,-the-department's-5-year-plan-for~~
18 ~~Developmental-Services-shall-reflect-a-priority-toward~~
19 ~~individualized,-community-based-supports-and-services-for~~
20 ~~consumers-and-their-families.~~
21 (4) ~~(6)~~ The agency ~~department~~ shall utilize the
22 services of private businesses, not-for-profit organizations,
23 and units of local government whenever such services are more
24 cost-efficient than such services provided directly by the
25 department, including arrangements for provision of
26 residential facilities.
27 (5) ~~(7)~~ In order to improve the potential for
28 utilization of more cost-effective, community-based
29 residential facilities, the agency ~~department~~ shall promote
30 the statewide development of day habilitation services for
31 clients who live with a direct service provider in a

1 community-based residential facility and who do not require
2 24-hour-a-day care in a hospital or other health care
3 institution, but who may, in the absence of day habilitation
4 services, require admission to a developmental disabilities
5 ~~services~~ institution. Each day service facility shall provide
6 a protective physical environment for clients, ensure that
7 direct service providers meet ~~the~~ minimum screening standards
8 ~~for good moral character~~ as required ~~contained~~ in s. 393.0655,
9 make available to all day habilitation service participants at
10 least one meal on each day of operation, provide facilities to
11 enable participants to obtain needed rest while attending the
12 program, as appropriate, and provide social and educational
13 activities designed to stimulate interest and provide
14 socialization skills.
15 (6) To promote independence and productivity, the
16 agency shall provide supports and services, within available
17 resources, to assist clients enrolled in Medicaid waivers who
18 choose to pursue gainful employment.
19 (7) ~~(8)~~ For the purpose of making needed
20 community-based residential facilities available at the least
21 possible cost to the state, the agency ~~department~~ is
22 authorized to lease privately owned residential facilities
23 under long-term rental agreements, if such rental agreements
24 are projected to be less costly to the state over the useful
25 life of the facility than state purchase or state construction
26 of such a facility. ~~In addition, the department is authorized~~
27 ~~to permit, on any public land to which the department holds~~
28 ~~the lease, construction of a residential facility for which~~
29 ~~the department has entered into a long-term rental agreement~~
30 ~~as specified in this subsection.~~
31 (8) ~~(9)~~ The agency ~~department~~ may adopt rules to ensure

compliance with federal laws or regulations that apply to services provided pursuant to this section.

Section 23. Section 393.0661, Florida Statutes, is amended to read:

393.0661 Home and community-based services delivery system; comprehensive redesign.--The Legislature finds that the home and community-based services delivery system for persons with developmental disabilities and the availability of appropriated funds are two of the critical elements in making services available. Therefore, it is the intent of the Legislature that the Agency for Persons with Disabilities ~~Department-of-Children-and-Family-Services~~ shall develop and implement a comprehensive redesign of the system. The redesign of the home and community-based services system shall include, at a minimum, all actions necessary to achieve an appropriate rate structure, client choice within a specified service package, appropriate assessment strategies, an efficient billing process that contains reconciliation and monitoring components, a redefined role for support coordinators that avoids potential conflicts of interest, and family/client budgets linked to levels of need. ~~Prior-to-the-release-of funds-in-the-lump-sum-appropriation,-the-department-shall present-a-plan-to-the-Executive-Office-of-the-Governor,-the House-Fiscal-Responsibility-Council,-and-the-Senate Appropriations-Committee.-The-plan-must-result-in-a-full implementation-of-the-redesigned-system-no-later-than-July-1, 2003.--At-a-minimum,-the-plan-must-provide-that-the-portions related-to-direct-provider-enrollment-and-billing-will-be operational-no-later-than-March-31,-2003.--The-plan-must further-provide-that-a-more-effective-needs-assessment instrument-will-be-deployed-by-January-1,-2003,-and-that-all~~

1 ~~clients-will-be-assessed-with-this-device-by-June-30,-2003.~~
2 (1) ~~In-no-event-may~~ The agency shall use ~~department~~
3 ~~select~~ an assessment instrument ~~without-appropriate-evidence~~
4 that is ~~it-will-be~~ reliable and valid for identifying the
5 support needs of individuals. ~~Once-such-evidence-has-been~~
6 ~~obtained,-however,~~ The agency may contract with ~~department~~
7 ~~shall-determine-the-feasibility-of-contracting-with-an~~
8 ~~external-vendor-to-apply-the-new-assessment-device-to-all~~
9 ~~clients-receiving-services-through-the-Medicaid-waiver.--In~~
10 ~~lieu-of-using~~ an external vendor or~~,-the-department~~ may use
11 support coordinators to complete client ~~for-the~~ assessments if
12 it develops sufficient safeguards and training to ensure
13 ongoing ~~significantly-improve the~~ inter-rater reliability ~~of~~
14 ~~the-support-coordinators-administering-the-assessment.~~
15 (2) The agency, with the concurrence of the Agency for
16 Health Care Administration, may contract for the determination
17 of medical necessity and establishment of individual budgets.
18 Section 24. Section 393.068, Florida Statutes, is
19 amended to read:
20 393.068 Family care program.--
21 (1) The family care program is established for the
22 purpose of providing services and support to families and
23 individuals with developmental disabilities in order to
24 maintain the individual in the home environment and avoid
25 costly out-of-home residential placement. ~~The-Legislature~~
26 ~~recognizes-the-importance-of-family-support-in-the-long-range~~
27 ~~success-of-deinstitutionalization.~~ Services and support
28 available to families and individuals with developmental
29 disabilities shall emphasize community living and enable
30 individuals with developmental disabilities to enjoy typical
31 lifestyles. ~~Support-and-flexibility-in-coordinating-support~~

1 ~~and-services-are-core-elements-in-caring-for-the-individual~~
2 ~~who-is-developmentally-disabled.~~ One way to accomplish this is
3 to recognize that families are the greatest resource available
4 to individuals who have developmental disabilities and ~~that~~
5 ~~families~~ must be supported in their role as primary care
6 givers.
7 (2) Services and support authorized under this program
8 shall, to the extent of available resources, include the
9 services listed under s. 393.066 ~~s.-393.066(4)~~ and, in
10 addition, shall include, but not be limited to:
11 (a) Attendant care.
12 (b) Barrier-free modifications to the home.
13 (c) Home visitation by agency workers.
14 (d) In-home subsidies.
15 (e) Low-interest loans.
16 ~~(f)--Parent-training.~~
17 ~~(g)--Respite-care.~~
18 (f) ~~(h)~~ Modifications for vehicles used to transport
19 the individual with a developmental disability.
20 (g) ~~(i)~~ Facilitated communication.
21 (h) ~~(j)~~ Family counseling.
22 (i) ~~(k)~~ Equipment and supplies.
23 (j) ~~(l)~~ Self-advocacy training.
24 (k) ~~(m)~~ Roommate services.
25 (l) ~~(n)~~ Integrated community activities.
26 (m) ~~(o)~~ Emergency services.
27 (n) ~~(p)~~ Support coordination.
28 (o) Supported employment.
29 (p) ~~(q)~~ Other support services as identified by the
30 family or individual.
31 ~~(2)--Provided-it-is-consistent-with-the-intent-of-the~~

1 ~~Legislature,-the-department-shall-prioritize-increased~~
2 ~~appropriations-provided-for-family-based-services-for~~
3 ~~developmentally-disabled-individuals-toward-individualized,~~
4 ~~family-based-supports-and-services-for-consumers-and-their~~
5 ~~families.-Further,-the-department's-5-year-plan-for~~
6 ~~developmental-services-shall-reflect-a-priority-toward~~
7 ~~individualized,-family-based-supports-and-services-for~~
8 ~~consumers-and-their-families.~~
9 (3) When it is determined by the agency ~~department~~ to
10 be more cost-effective and in the best interest of the client
11 to maintain such client in the home of a direct service
12 provider, the parent or guardian of the client or, if
13 competent, the client may enroll the client in the family care
14 program. The direct service provider of a client enrolled in
15 the family care program shall be reimbursed according to a
16 rate schedule set by the agency ~~department~~. In-home subsidies
17 cited in paragraph (1)(d) shall be provided according to s.
18 393.0695 and are not subject to any other payment method or
19 rate schedule provided for in this section.
20 (4) All existing community resources available to the
21 client shall be utilized to support program objectives.
22 Additional services may be incorporated into the program as
23 appropriate and to the extent that resources are available.
24 The agency ~~department~~ is authorized to accept gifts and grants
25 in order to carry out the program.
26 (5) The agency ~~department~~ may contract for the
27 provision of any portion of the services required by the
28 program, except for in-home subsidies cited in paragraph
29 (2)(d) ~~(1)(d)~~, which shall be provided pursuant to s.
30 393.0695. Otherwise, purchase of service contracts shall be
31 used whenever the services so provided are more cost-efficient

1 than those provided by the agency ~~department~~.
2 (6) When possible, services shall be obtained under
3 the "Florida Comprehensive Annual Services Program Plan under
4 Title XX of the Social Security Act" and the "Florida Plan for
5 Medical Assistance under Title XIX of the Social Security
6 Act."
7 (7) To provide a range of personal services for the
8 client, the use of volunteers shall be maximized. The agency
9 ~~department~~ shall assure appropriate insurance coverage to
10 protect volunteers from personal liability while acting within
11 the scope of their volunteer assignments under the program.
12 ~~(8)--The department shall submit to the President of~~
13 ~~the Senate and the Speaker of the House of Representatives, as~~
14 ~~part of the biennial plan required by s. 393.14, an evaluation~~
15 ~~report summarizing the progress of the family care program.~~
16 ~~The report shall include the information and data necessary~~
17 ~~for an accurate analysis of the costs and benefits associated~~
18 ~~with the establishment and operation of the programs that were~~
19 ~~established.~~
20 Section 25. Subsections (1) and (3) of section
21 393.0695, Florida Statutes, are amended to read:
22 393.0695 Provision of in-home subsidies.--
23 (1) The agency may pay ~~department shall develop by~~
24 ~~October 1, 1991, a plan for paying~~ in-home subsidies to
25 clients enrolled in the family care program or supported
26 living when it is determined to be more cost-effective and in
27 the best interest of the client to provide a cash supplement
28 to the client's income to enable the client to remain in the
29 family home or the client's own home. Payments may be made to
30 the parent or guardian of the client or, if the client is
31 competent, directly to the client.

1 (3) In-home subsidies must be based on an individual
2 determination of need and must not exceed maximum amounts set
3 by the agency ~~department~~ and reassessed by the agency annually
4 ~~department-quarterly~~.
5 Section 26. Subsection (1), paragraph (a) of
6 subsection (2), paragraph (a) of subsection (4), paragraphs
7 (a), (d), and (h) of subsection (5), paragraph (a) of
8 subsection (6), paragraphs (d) and (e) of subsection (8), and
9 subsection (13) of section 393.11, Florida Statutes, are
10 amended to read:
11 393.11 Involuntary admission to residential
12 services.--
13 (1) JURISDICTION.--When a person is mentally retarded
14 and requires involuntary admission to residential services
15 provided by the agency ~~developmental-services-program-of-the~~
16 ~~Department-of-Children-and-Family-Services~~, the circuit court
17 of the county in which the person resides shall have
18 jurisdiction to conduct a hearing and enter an order
19 involuntarily admitting the person in order that the person
20 may receive the care, treatment, habilitation, and
21 rehabilitation which the person needs. For the purpose of
22 identifying mental retardation, diagnostic capability shall be
23 established by ~~in-every-program-function-of~~ the agency
24 ~~department-in-the-districts,-including,-but-not-limited-to,~~
25 ~~programs-provided-by-children-and-families,-delinquency~~
26 ~~services,-alcohol,-drug-abuse,-and-mental-health,-and-economic~~
27 ~~services,-and-by-the-Department-of-Labor-and-Employment~~
28 ~~Security~~. Except as otherwise specified, the proceedings under
29 this section shall be governed by the Florida Rules of Civil
30 Procedure.
31 (2) PETITION.--

1 (a) A petition for involuntary admission to
2 residential services may be executed by a petitioning
3 commission. For proposed involuntary admission to residential
4 services arising out of chapter 916, the petition may be filed
5 by a petitioning commission, the agency ~~department~~, the state
6 attorney of the circuit from which the defendant was
7 committed, or the defendant's attorney.
8 (4) DEVELOPMENTAL SERVICES PARTICIPATION.--
9 (a) Upon receiving the petition, the court shall
10 immediately order the developmental services program of the
11 agency ~~department~~ to examine the person being considered for
12 involuntary admission to residential services.
13 (5) EXAMINING COMMITTEE.--
14 (a) Upon receiving the petition, the court shall
15 immediately appoint an examining committee to examine the
16 person being considered for involuntary admission to
17 residential services of the developmental services program of
18 the agency ~~department~~.
19 (d) Members of the committee shall not be employees of
20 the agency ~~department~~ or be associated with each other in
21 practice or in employer-employee relationships. Members of
22 the committee shall not have served as members of the
23 petitioning commission. Members of the committee shall not be
24 employees of the members of the petitioning commission or be
25 associated in practice with members of the commission.
26 (h) The agency ~~department~~ shall develop and prescribe
27 by rule one or more standard forms to be used as a guide for
28 members of the examining committee.
29 (6) COUNSEL; GUARDIAN AD LITEM.--
30 (a) The person with mental retardation shall be
31 represented by counsel at all stages of the judicial

1 proceeding. In the event the person is indigent and cannot
2 afford counsel, the court shall appoint a public defender not
3 less than 20 working days before the scheduled hearing. The
4 person's counsel shall have full access to the records of the
5 service provider and the agency ~~department~~. In all cases, the
6 attorney shall represent the rights and legal interests of the
7 person with mental retardation, regardless of who may initiate
8 the proceedings or pay the attorney's fee.
9 (8) ORDER.--
10 (d) If an order of involuntary admission to
11 residential services provided by the developmental services
12 program of the agency ~~department~~ is entered by the court, a
13 copy of the written order shall be served upon the person, the
14 person's counsel, the agency ~~department~~, and the state
15 attorney and the person's defense counsel, if applicable. The
16 order of involuntary admission sent to the agency ~~department~~
17 shall also be accompanied by a copy of the examining
18 committee's report and other reports contained in the court
19 file.
20 (e) Upon receiving the order, the agency ~~department~~
21 shall, within 45 days, provide the court with a copy of the
22 person's family or individual support plan and copies of all
23 examinations and evaluations, outlining the treatment and
24 rehabilitative programs. The agency ~~department~~ shall document
25 that the person has been placed in the most appropriate, least
26 restrictive and cost-beneficial residential facility. A copy
27 of the family or individual support plan and other
28 examinations and evaluations shall be served upon the person
29 and the person's counsel at the same time the documents are
30 filed with the court.
31 (13) HABEAS CORPUS.--At any time and without notice,

any person involuntarily admitted to the developmental services program of the agency ~~department~~, or the person's parent or legal guardian in his or her behalf, is entitled to a writ of habeas corpus to question the cause, legality, and appropriateness of the person's involuntary admission. Each person, or the person's parent or legal guardian, shall receive specific written notice of the right to petition for a writ of habeas corpus at the time of his or her involuntary placement.

Section 27. Paragraphs (a), (b), and (d) of subsection (2), subsection (3), paragraphs (b), (g), (i), and (j) of subsection (4), and subsection (6) of section 393.13, Florida Statutes, are amended to read:

393.13 Personal treatment of persons who are developmentally disabled.--

(2) LEGISLATIVE INTENT.--

(a) The Legislature finds and declares that the system of care provided ~~which the state provides~~ to individuals who are developmentally disabled must be designed to meet the needs of the clients as well as protect the integrity of their legal and human rights. ~~Further, the current system of care for persons who are developmentally disabled is in need of substantial improvement in order to provide truly meaningful treatment and habilitation.~~

(b) The Legislature further finds and declares that the design and delivery of treatment and services to persons who are developmentally disabled should be directed by the principles of normalization and therefore should:

1. Abate the use of large institutions.

2. Continue the development of community-based services which provide reasonable alternatives to

1 institutionalization in settings that are least restrictive to
2 the client.
3 3. Provide training and education to individuals who
4 are developmentally disabled which will maximize their
5 potential to lead independent and productive lives and which
6 will afford opportunities for outward mobility from
7 institutions.
8 4. Reduce the use of sheltered workshops and other
9 noncompetitive employment day activities and promote
10 opportunities for gainful employment for persons with
11 developmental disabilities who choose to seek such employment.
12 (d) It is the intent of the Legislature:
13 1. To articulate the existing legal and human rights
14 of persons who are developmentally disabled so that they may
15 be exercised and protected. Persons with developmental
16 disabilities shall have all the rights enjoyed by citizens of
17 the state and the United States.
18 2. To provide a mechanism for the identification,
19 evaluation, and treatment of persons with developmental
20 disabilities.
21 3. To divert those individuals from institutional
22 commitment who, by virtue of comprehensive assessment, can be
23 placed in less costly, more effective community environments
24 and programs.
25 ~~4.--To-develop-a-plan-which-will-indicate-the-most~~
26 ~~effective-and-efficient-manner-in-which-to-implement-treatment~~
27 ~~programs-which-are-meaningful-to-individuals-with~~
28 ~~developmental-disabilities,-while-safeguarding-and-respecting~~
29 ~~the-legal-and-human-rights-of-such-individuals.~~
30 4.~~5.--Once-the-plan-developed-under-the-provisions-of~~
31 ~~subparagraph-4.--is-presented-to-the-Legislature,~~ To fund

1 improvements in the program in accordance with the
2 availability of state resources and yearly priorities
3 determined by the Legislature.
4 5.~~6.~~ To ensure that persons with developmental
5 disabilities receive treatment and habilitation which fosters
6 the developmental potential of the individual.
7 6.~~7.~~ To provide programs for the proper habilitation
8 and treatment of persons with developmental disabilities which
9 shall include, but not be limited to, comprehensive
10 medical/dental care, education, recreation, specialized
11 therapies, training, social services, transportation,
12 guardianship, family care programs, day habilitation services,
13 and habilitative and rehabilitative services suited to the
14 needs of the individual regardless of age, degree of
15 disability, or handicapping condition. No person with
16 developmental disabilities shall be deprived of these
17 enumerated services by reason of inability to pay.
18 7.~~8.~~ To fully effectuate the normalization principle
19 through the establishment of community services for persons
20 with developmental disabilities as a viable and practical
21 alternative to institutional care at each stage of individual
22 life development. If care in a residential facility becomes
23 necessary, it shall be in the least restrictive setting.
24 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL
25 DISABILITIES.--The rights described in this subsection shall
26 apply to all persons with developmental disabilities, whether
27 or not such persons are clients of the agency ~~department~~.
28 (a) Persons with developmental disabilities shall have
29 a right to dignity, privacy, and humane care, including the
30 right to be free from sexual abuse in residential facilities.
31 (b) Persons with developmental disabilities shall have

1 the right to religious freedom and practice. Nothing shall
2 restrict or infringe on a person's right to religious
3 preference and practice.
4 (c) Persons with developmental disabilities shall
5 receive services, within available sources, which protect the
6 personal liberty of the individual and which are provided in
7 the least restrictive conditions necessary to achieve the
8 purpose of treatment.
9 (d) Persons who are developmentally disabled shall
10 have a right to participate in an appropriate program of
11 quality education and training services, within available
12 resources, regardless of chronological age or degree of
13 disability. Such persons may be provided with instruction in
14 sex education, marriage, and family planning.
15 (e) Persons who are developmentally disabled shall
16 have a right to social interaction and to participate in
17 community activities.
18 (f) Persons who are developmentally disabled shall
19 have a right to physical exercise and recreational
20 opportunities.
21 (g) Persons who are developmentally disabled shall
22 have a right to be free from harm, including unnecessary
23 physical, chemical, or mechanical restraint, isolation,
24 excessive medication, abuse, or neglect.
25 (h) Persons who are developmentally disabled shall
26 have a right to consent to or refuse treatment, subject to the
27 provisions of s. 393.12(2)(a) or chapter 744.
28 (i) No otherwise qualified person shall, by reason of
29 having a developmental disability, be excluded from
30 participation in, or be denied the benefits of, or be subject
31 to discrimination under, any program or activity which

1 receives public funds, and all prohibitions set forth under
2 any other statute shall be actionable under this statute.
3 (j) No otherwise qualified person shall, by reason of
4 having a developmental disability, be denied the right to vote
5 in public elections.
6 (4) CLIENT RIGHTS.--For purposes of this subsection,
7 the term "client," as defined in s. 393.063, shall also
8 include any person served in a facility licensed pursuant to
9 s. 393.067.
10 (b) Each client has the right to the possession and
11 use of his or her own clothing and personal effects, except in
12 those specific instances where the use of some of these items
13 as reinforcers is essential for training the client as part of
14 an appropriately approved behavioral program. The chief
15 administrator of the facility may take temporary custody of
16 such effects when it is essential to do so for medical or
17 safety reasons. Custody of such personal effects shall be
18 promptly recorded in the client's record, and a receipt for
19 such effects shall be immediately given to the client, if
20 competent, or the client's parent or legal guardian.
21 1. All money belonging to a client held by the agency
22 ~~department~~ shall be held in compliance with s. 402.17(2).
23 2. All interest on money received and held for the
24 personal use and benefit of a client shall be the property of
25 that client and shall not accrue to the general welfare of all
26 clients or be used to defray the cost of residential care.
27 Interest so accrued shall be used or conserved for the
28 personal use or benefit of the individual client as provided
29 in s. 402.17(2).
30 3. Upon the discharge or death of a client, a final
31 accounting shall be made of all personal effects and money

1 belonging to the client held by the agency ~~department~~. All
2 such personal effects and money, including interest, shall be
3 promptly turned over to the client or his or her heirs.
4 (g) No client shall be subjected to a treatment
5 program to eliminate bizarre or unusual behaviors without
6 first being examined by a physician who in his or her best
7 judgment determines that such behaviors are not organically
8 caused.
9 1. Treatment programs involving the use of noxious or
10 painful stimuli shall be prohibited.
11 2. All alleged violations of this paragraph shall be
12 reported immediately to the chief administrative officer of
13 the facility or the district administrator, the agency
14 ~~department~~ head, and the Florida local advocacy council. A
15 thorough investigation of each incident shall be conducted and
16 a written report of the finding and results of such
17 investigation shall be submitted to the chief administrative
18 officer of the facility or the district administrator and to
19 the agency ~~department~~ head within 24 hours of the occurrence
20 or discovery of the incident.
21 3. The agency ~~department~~ shall adopt ~~promulgate~~ by
22 rule a system for the oversight of behavioral programs. Such
23 system shall establish guidelines and procedures governing the
24 design, approval, implementation, and monitoring of all
25 behavioral programs involving clients. The system shall
26 ensure statewide and local review by committees of
27 professionals certified as behavior analysts pursuant to s.
28 393.17. No behavioral program shall be implemented unless
29 reviewed according to the rules established by the agency
30 ~~department~~ under this section. Nothing stated in this section
31 shall prohibit the review of programs by the Florida statewide

1 or local advocacy councils.
2 (i) Clients shall have the right to be free from
3 unnecessary physical, chemical, or mechanical restraint.
4 Restraints shall be employed only in emergencies or to protect
5 the client from imminent injury to himself or herself or
6 others. Restraints shall not be employed as punishment, for
7 the convenience of staff, or as a substitute for a
8 habilitative plan. Restraints shall impose the least possible
9 restrictions consistent with their purpose and shall be
10 removed when the emergency ends. Restraints shall not cause
11 physical injury to the client and shall be designed to allow
12 the greatest possible comfort.
13 1. Mechanical supports used in normative situations to
14 achieve proper body position and balance shall not be
15 considered restraints, but shall be prescriptively designed
16 and applied under the supervision of a qualified professional
17 with concern for principles of good body alignment,
18 circulation, and allowance for change of position.
19 2. Totally enclosed cribs and barred enclosures shall
20 be considered restraints.
21 3. Daily reports on the employment of physical,
22 chemical, or mechanical restraints by those specialists
23 authorized in the use of such restraints shall be made to the
24 appropriate chief administrator of the facility, and a monthly
25 summary of such reports shall be relayed to the district
26 administrator and the Florida local advocacy council. The
27 reports shall summarize all such cases of restraints, the type
28 used, the duration of usage, and the reasons therefor.
29 Districts shall submit districtwide quarterly reports of these
30 summaries to the state Developmental Disabilities Program
31 Office.

1 4. The agency ~~department~~ shall post a copy of the
2 rules adopted ~~promulgated~~ under this section in each living
3 unit of residential facilities. A copy of the rules adopted
4 ~~promulgated~~ under this section shall be given to all staff
5 members of licensed facilities and made a part of all
6 preservice and inservice training programs.
7 (j)1. Each client shall have a central record. The
8 record shall include data pertaining to admission and such
9 other information as may be required under rules of the agency
10 ~~department~~.
11 2. Unless waived by the client, if competent, or the
12 client's parent or legal guardian if the client is
13 incompetent, the client's central record shall be confidential
14 and exempt from the provisions of s. 119.07(1), and no part of
15 it shall be released except:
16 a. The record may be released to physicians,
17 attorneys, and government agencies having need of the record
18 to aid the client, as designated by the client, if competent,
19 or the client's parent or legal guardian, if the client is
20 incompetent.
21 b. The record shall be produced in response to a
22 subpoena or released to persons authorized by order of court,
23 excluding matters privileged by other provisions of law.
24 c. The record or any part thereof may be disclosed to
25 a qualified researcher, a staff member of the facility, or an
26 employee of the agency ~~department~~ when the administrator of
27 the facility or the director ~~secretary~~ of the agency
28 ~~department~~ deems it necessary for the treatment of the client,
29 maintenance of adequate records, compilation of treatment
30 data, or evaluation of programs.
31 d. Information from the records may be used for

1 statistical and research purposes if the information is
2 abstracted in such a way to protect the identity of
3 individuals.
4 3. All central records for each client in residential
5 facilities shall be kept on uniform forms distributed by the
6 agency ~~department~~. The central record shall accurately
7 summarize each client's history and present condition.
8 4. The client, if competent, or the client's parent or
9 legal guardian if the client is incompetent, shall be supplied
10 with a copy of the client's central record upon request.
11 (6) NOTICE OF RIGHTS.--Each person with developmental
12 disabilities, if competent, or parent or legal guardian of
13 such person if the person is incompetent, shall promptly
14 receive from the agency ~~Department-of-Children-and-Family~~
15 ~~Services~~ or the Department of Education a written copy of this
16 act. Each person with developmental disabilities able to
17 comprehend shall be promptly informed, in the language or
18 other mode of communication which such person understands, of
19 the above legal rights of persons with developmental
20 disabilities.
21 Section 28. Section 393.17, Florida Statutes, is
22 amended to read:
23 393.17 Behavioral programs; certification of behavior
24 analysts~~;-fees~~.--The agency may recognize the certification of
25 behavior analysts awarded by a nonprofit corporation whose
26 mission is to meet professional credentialing needs identified
27 by behavior analysts, state governments, and consumers of
28 behavior analysis services and whose work has the support of
29 the Association for Behavior Analysis International. ~~The~~
30 ~~department-shall-by-rule-implement-a-certification-program-to~~
31 ~~ensure-that-qualified-persons-oversee-the-design-and~~

1 ~~implementation-of-behavioral-programs-for-persons-who-are~~
2 ~~developmentally-disabled.--Certification-and-recertification~~
3 ~~minimum-standards-must-comply-with-departmental-rules-and-must~~
4 ~~include,-for-initial-certification,-examination-of~~
5 ~~competencies-in-applying-behavior-analysis-with-persons-who~~
6 ~~are-developmentally-disabled-within-established-competency~~
7 ~~clusters.--These-competency-clusters-shall-include,-but-not-be~~
8 ~~limited-to,-behavioral-assessments,-observation-and-recording,~~
9 ~~behavioral-program-development-and-monitoring,-and-other-areas~~
10 ~~as-determined-by-professional-practitioners-of-behavior~~
11 ~~analysis.--Fees-shall-be-charged-for-certification-not-to~~
12 ~~exceed-the-cost-of-development-and-administration-of-the~~
13 ~~examination-and-periodic-renewal-of-certification.--The~~
14 ~~department-shall-establish-by-rule-the-procedures-for~~
15 ~~certification-and-certification-renewal.~~
16 Section 29. Section 393.22, Florida Statutes, is
17 amended to read:
18 393.22 ~~Transfer-of-appropriations,-barriers-to~~
19 ~~services,~~ Financial commitment to <u>community services</u>
20 programs.--
21 ~~(1)--No-funds-appropriated-for-developmental-services~~
22 ~~programs-shall-be-transferred-pursuant-to-s.-216.292,-unless~~
23 ~~there-is-a-finding-by-the-secretary-that-treatment-programs~~
24 ~~for-developmental-disabilities-will-not-be-adversely-affected~~
25 ~~by-the-transfer.~~
26 ~~(2)--Development-of-programs-for-other-disabilities~~
27 ~~shall-not-effectuate-a-reduction-or-dilution-of-the-ongoing~~
28 ~~financial-commitment-of-the-state-through-appropriations-for~~
29 ~~programs-and-services-for-persons-with-mental-retardation,~~
30 ~~cerebral-palsy,-autism,-or-spina-bifida.~~
31 ~~(3)~~ <u>In order to</u> ~~The-Department-of-Children-and-Family~~

1 ~~Services-and-the-Agency-for-Health-Care-Administration-jointly~~
2 ~~shall~~ ensure that whenever a number of persons move from an
3 institution serving persons with developmental disabilities
4 which is sufficient to allow an entire residential unit within
5 that institution to be closed, no less than 80 percent of the
6 direct costs of providing services to persons who had resided
7 in that unit shall be reallocated for community services.
8 Section 30. Section 393.502, Florida Statutes, is
9 amended to read:
10 393.502 Family care councils.--
11 (1) CREATION.--There shall be established and located
12 within each service area of the agency ~~district-of-the~~
13 ~~department~~ a ~~district~~ family care council.
14 (2) MEMBERSHIP.--
15 (a) Each local ~~district~~ family care council shall
16 consist of at least 10 and no more than 15 members recommended
17 by a majority vote of the local ~~district~~ family care council
18 and appointed by the Governor.
19 (b) At least three of the members of the council must
20 be consumers. One such member shall be a consumer who received
21 ~~developmental~~ services within the 4 years prior to the date of
22 recommendation, or the legal guardian of such a consumer. The
23 remainder of the council members shall be parents, guardians,
24 or siblings of persons with developmental disabilities who
25 qualify for ~~developmental~~ services pursuant to this chapter.
26 (c) A person who is currently serving on another board
27 or council of the agency ~~department~~ may not be appointed to a
28 local ~~district~~ family care council.
29 (d) Employees of the agency ~~department~~ are not
30 eligible to serve on a local ~~district~~ family care council.
31 (e) Persons related by consanguinity or affinity

1 within the third degree shall not serve on the same local
2 ~~district~~ family care council at the same time.
3 (f) A chair for the council shall be chosen by the
4 council members to serve for 1 year. A person may serve no
5 more than four 1-year terms as chair.
6 (3) TERMS; VACANCIES.--
7 (a) Council members shall be appointed for a 3-year
8 term, except as provided in subsection (8), and may be
9 reappointed to one additional term.
10 (b) A member who has served two consecutive terms
11 shall not be eligible to serve again until 12 months have
12 elapsed since ending his or her service on the local ~~district~~
13 council.
14 (c) Upon expiration of a term or in the case of any
15 other vacancy, the local ~~district~~ council shall, by majority
16 vote, recommend to the Governor for appointment a person for
17 each vacancy. ~~If the Governor does not act on the council's~~
18 ~~recommendations within 45 days after receiving them, the~~
19 ~~persons recommended shall be considered to be appointed.~~
20 (4) COMMITTEE APPOINTMENTS.--The chair of the local
21 ~~district~~ family care council may appoint persons to serve on
22 council committees. Such persons may include former members of
23 the council and persons not eligible to serve on the council.
24 (5) TRAINING.--
25 (a) The agency ~~department~~, in consultation with the
26 local ~~district~~ councils, shall establish a training program
27 for local ~~district~~ family care council members. Each local
28 area ~~district~~ shall provide the training program when new
29 persons are appointed to the local ~~district~~ council and at
30 other times as the secretary deems necessary.
31 (b) The training shall assist the council members to

1 understand the laws, rules, and policies applicable to their
2 duties and responsibilities.
3 (c) All persons appointed to a local ~~district~~ council
4 must complete this training within 90 days after their
5 appointment. A person who fails to meet this requirement shall
6 be considered to have resigned from the council.
7 (6) MEETINGS.--Council members shall serve on a
8 voluntary basis without payment for their services but shall
9 be reimbursed for per diem and travel expenses as provided for
10 in s. 112.061. The council shall meet at least six times per
11 year.
12 (7) PURPOSE.--The purpose of the local ~~district~~ family
13 care councils shall be to advise the agency ~~department and its~~
14 ~~district advisory boards~~, to develop a plan for the delivery
15 of ~~developmental services~~ family support services within the
16 local area ~~district~~, and to monitor the implementation and
17 effectiveness of services and support provided under the plan.
18 The primary functions of the local ~~district~~ family care
19 councils shall be to:
20 (a) Assist in providing information and outreach to
21 families.
22 (b) Review the effectiveness of service ~~developmental~~
23 ~~services~~ programs and make recommendations with respect to
24 program implementation.
25 (c) Advise the agency ~~district developmental services~~
26 ~~administrators~~ with respect to policy issues relevant to the
27 community and family support system in the local area
28 ~~district~~.
29 (d) Meet and share information with other local
30 ~~district~~ family care councils.
31 (8) NEW COUNCILS.--When a local ~~district~~ family care

1 council is established for the first time in a local area
2 ~~district~~, the Governor shall appoint the first four council
3 members, who shall serve 3-year terms. These members shall
4 submit to the Governor, within 90 days after their
5 appointment, recommendations for at least six additional
6 members, selected by majority vote. ~~If-the-Governor-does-not~~
7 ~~act-on-the-recommendations-within-45-days-after-receiving~~
8 ~~them,--the-persons-recommended-shall-be-considered-to-be~~
9 ~~appointed.--Those-members-recommended-for-appointment-by-the~~
10 ~~Governor-shall-serve-for-2-years.~~
11 (9) FUNDING; FINANCIAL REVIEW.--The local ~~district~~
12 family care council may apply for, receive, and accept grants,
13 gifts, donations, bequests, and other payments from any public
14 or private entity or person. Each local ~~district~~ council is
15 ~~shall-be~~ subject to an annual financial review by ~~district~~
16 staff assigned by the agency ~~district-administrator~~. Each
17 local ~~district~~ council shall exercise care and prudence in the
18 expenditure of funds. The local ~~district~~ family care councils
19 shall comply with state expenditure requirements.
20 Section 31. Section 408.301, Florida Statutes, is
21 amended to read:
22 408.301 Legislative findings.--The Legislature has
23 found that access to quality, affordable, health care for all
24 Floridians is an important goal for the state. The Legislature
25 recognizes that there are Floridians with special health care
26 and social needs which require particular attention. The
27 people served by the Department of Children and Family
28 Services, the Agency for Persons with Disabilities, ~~and~~ the
29 Department of Health, and the Department of Elderly Affairs
30 are examples of citizens with special needs. The Legislature
31 further recognizes that the Medicaid program is an intricate

1 part of the service delivery system for the special needs
2 citizens ~~served by or through the Department of Children and~~
3 ~~Family Services and the Department of Health~~. However, the
4 Agency for Health Care Administration is not a service
5 provider and does not develop or direct programs for the
6 special needs citizens ~~served by or through the Department of~~
7 ~~Children and Family Services and the Department of Health~~.
8 Therefore, it is the intent of the Legislature that the Agency
9 for Health Care Administration work closely with the
10 Department of Children and Family Services, the Agency for
11 Persons with Disabilities, ~~and~~ the Department of Health, and
12 the Department of Elderly Affairs in developing plans for
13 assuring access to all Floridians in order to assure that the
14 needs of special citizens are met.
15 Section 32. Section 408.302, Florida Statutes, is
16 amended to read:
17 408.302 Interagency agreement.--
18 (1) The Agency for Health Care Administration shall
19 enter into an interagency agreement with the Department of
20 Children and Family Services, the Agency for Persons with
21 Disabilities, ~~and~~ the Department of Health, and the Department
22 of Elderly Affairs to assure coordination and cooperation in
23 serving special needs citizens. The agreement shall include
24 the requirement that the secretaries or directors ~~secretary~~ of
25 the Department of Children and Family Services, the Agency for
26 Persons with Disabilities, ~~and the secretary of~~ the Department
27 of Health, and the Department of Elderly Affairs approve,
28 prior to adoption, any rule developed by the Agency for Health
29 Care Administration where such rule has a direct impact on the
30 mission of the respective state agencies ~~Department of~~
31 ~~Children and Family Services and the Department of Health~~,

1 their programs, or their budgets.
2 (2) For rules which indirectly impact on the mission
3 of the Department of Children and Family Services, the Agency
4 for Persons with Disabilities, ~~and~~ the Department of Health,
5 and the Department of Elderly Affairs, their programs, or
6 their budgets, the concurrence of the respective secretaries
7 or directors ~~secretary of the Department of Children and~~
8 ~~Family Services and the secretary of the Department of Health~~
9 on the rule is required.
10 (3) For all other rules developed by the Agency for
11 Health Care Administration, coordination with the Department
12 of Children and Family Services, the Agency for Persons with
13 Disabilities, ~~and~~ the Department of Health, and the Department
14 of Elderly Affairs is encouraged.
15 (4) The interagency agreement shall also include any
16 other provisions necessary to ensure a continued cooperative
17 working relationship between the Agency for Health Care
18 Administration and the Department of Children and Family
19 Services, the Agency for Persons with Disabilities, ~~and~~ the
20 Department of Health, and the Department of Elderly Affairs as
21 each strives to meet the needs of the citizens of Florida.
22 Section 33. Subsection (13) of section 409.906,
23 Florida Statutes, is amended to read:
24 409.906 Optional Medicaid services.--Subject to
25 specific appropriations, the agency may make payments for
26 services which are optional to the state under Title XIX of
27 the Social Security Act and are furnished by Medicaid
28 providers to recipients who are determined to be eligible on
29 the dates on which the services were provided. Any optional
30 service that is provided shall be provided only when medically
31 necessary and in accordance with state and federal law.

1 Optional services rendered by providers in mobile units to
2 Medicaid recipients may be restricted or prohibited by the
3 agency. Nothing in this section shall be construed to prevent
4 or limit the agency from adjusting fees, reimbursement rates,
5 lengths of stay, number of visits, or number of services, or
6 making any other adjustments necessary to comply with the
7 availability of moneys and any limitations or directions
8 provided for in the General Appropriations Act or chapter 216.
9 If necessary to safeguard the state's systems of providing
10 services to elderly and disabled persons and subject to the
11 notice and review provisions of s. 216.177, the Governor may
12 direct the Agency for Health Care Administration to amend the
13 Medicaid state plan to delete the optional Medicaid service
14 known as "Intermediate Care Facilities for the Developmentally
15 Disabled." Optional services may include:
16 (13) HOME AND COMMUNITY-BASED SERVICES.--The agency
17 may pay for home-based or community-based services that are
18 rendered to a recipient in accordance with a federally
19 approved waiver program. The agency may limit or eliminate
20 coverage for certain ~~Project-AIDS-Care-Waiver~~ services,
21 preauthorize high-cost or highly utilized services, or make
22 any other adjustments necessary to comply with any limitations
23 or directions provided for in the General Appropriations Act.
24 Section 34. Sections 393.14, 393.165, 393.166, and
25 393.505, Florida Statutes, are repealed.
26 Section 35. (1) Effective October 1, 2004, the
27 developmental disabilities program and the developmental
28 services institutions in the Department of Children and Family
29 Services shall be transferred to the Agency for Persons with
30 Disabilities by a type two transfer pursuant to section 20.06,
31 Florida Statutes. Prior to that date:

1 (a) The Agency for Persons with Disabilities and the
2 Department of Children and Family Services, in consultation
3 with the Department of Management Services, shall determine
4 the number of positions and resources within the department
5 dedicated to the developmental disabilities program which
6 shall be transferred to the agency and will develop an
7 agreement that delineates who within the department will
8 provide administrative support to the agency.
9 (b) The Director of the Agency for Persons with
10 Disabilities, in consultation with the Secretaries of the
11 Department of Children and Family Services and the Agency for
12 Health Care Administration or their designees, shall prepare a
13 transition plan that must address, at a minimum, building
14 leases, information support systems, cash ownership and
15 transfer, administrative support functions, inventory and
16 transfers of equipment and structures, expenditure transfers,
17 budget authority and positions, and certifications forward.
18 This plan shall be submitted by September 1, 2004, to the
19 Executive Office of the Governor, the President of the Senate,
20 and the Speaker of the House of Representatives.
21 (c) The Agency for Persons with Disabilities and the
22 Department of Children and Family Services shall work with the
23 Agency for Health Care Administration to develop a plan that
24 ensures that all of the necessary electronic and paper-based
25 data of the Developmental Disabilities program is accessible
26 to the Medicaid program and that all electronic records will
27 be migrated to a new data system that is compatible with the
28 Florida Medicaid Management Information System.
29 (d) The Agency for Persons with Disabilities and the
30 Agency for Health Care Administration shall develop a plan for
31 the orderly relocation of the noncentral-office staff of the

1 Agency for Persons with Disabilities to the area offices of
2 the Agency for Health Care Administration. Such plan shall
3 include a schedule that takes into consideration the
4 availability of space, the expiration of current leases, and
5 the initiation of new leases that can accommodate the
6 relocated staff, as well as appropriate reimbursement for
7 collocation costs, including office space and other operating
8 expenses.
9 (2) Effective October 1, 2004, the agency shall enter
10 into an interagency agreement with the Department of Children
11 and Family Services for the provision of the necessary
12 day-to-day administrative and operational needs of the agency,
13 including, but not limited to, personnel, purchasing,
14 information technology support, legal support, and other
15 related services. This interagency agreement shall continue
16 until the agency no longer requires the provision of services
17 through such agreement.
18 (3) This act does not affect the validity of any
19 judicial or administrative proceeding pending on October 30,
20 2004, and the Agency for Persons with Disabilities is
21 substituted as a real party in interest with respect to any
22 proceeding pending on that date which involves the
23 developmental services programs of the Department of Children
24 and Family Services.
25 Section 36. The Office of Program Policy Analysis and
26 Government Accountability shall identify and evaluate
27 statewide entities receiving state funding for the purpose of
28 addressing the interests of, but not directly providing
29 services for, persons with disabilities.
30 (1) The purpose of the analysis shall be to provide
31 information with respect to:

1 (a) The extent to which activities of these entities
2 are coordinated;
3 (b) The similarities and differences in the
4 organizational missions of these entities; and
5 (c) The amount of state funds provided to these
6 entities for the purpose of addressing the interests of
7 persons with disabilities, the uses of these funds, and
8 whether they duplicate the efforts of other private or
9 federally funded entities.
10 (2) The report shall be completed and provided to the
11 Governor and Legislature by December 2005.
12 Section 37. Subsection (1) of section 92.53, Florida
13 Statutes, is amended to read:
14 92.53 Videotaping of testimony of victim or witness
15 under age 16 or person with mental retardation.--
16 (1) On motion and hearing in camera and a finding that
17 there is a substantial likelihood that a victim or witness who
18 is under the age of 16 or who is a person with mental
19 retardation as defined in s. 393.063 ~~s.--393.063(42)~~ would
20 suffer at least moderate emotional or mental harm due to the
21 presence of the defendant if the child or person with mental
22 retardation is required to testify in open court, or that such
23 victim or witness is otherwise unavailable as defined in s.
24 90.804(1), the trial court may order the videotaping of the
25 testimony of the victim or witness in a case, whether civil or
26 criminal in nature, in which videotaped testimony is to be
27 utilized at trial in lieu of trial testimony in open court.
28 Section 38. Subsections (1), (2), and (3), paragraph
29 (i) of subsection (4), subsection (5), paragraphs (a), (b),
30 (c), (d), (f), and (g) of subsection (6), and subsections (8),
31 (9), (10), (11), (12), (13), (14), and (17) of section

1 393.067, Florida Statutes, are amended to read:
2 393.067 Licensure of residential facilities and
3 comprehensive transitional education programs.--
4 (1) The agency ~~department~~ shall provide through its
5 licensing authority a system of provider qualifications,
6 standards, training criteria for meeting standards, and
7 monitoring for residential facilities and comprehensive
8 transitional education programs.
9 (2) The agency ~~department~~ shall conduct inspections
10 and reviews of residential facilities and comprehensive
11 transitional education programs annually.
12 (3) An application for a license for a residential
13 facility or a comprehensive transitional education program
14 shall be made to the agency ~~Department-of-Children-and-Family~~
15 ~~Services~~ on a form furnished by it and shall be accompanied by
16 the appropriate license fee. A license issued to a residential
17 facility or a comprehensive transitional education program as
18 described in this section is not a professional license of any
19 individual. Receipt of a license under this section does not
20 create a property right in the recipient. A license is a
21 public trust and a privilege and is not an entitlement. This
22 privilege must guide the finder of fact or trier of law during
23 any administrative or court proceeding initiated by the
24 agency.
25 (4) The application shall be under oath and shall
26 contain the following:
27 (i) Such other information as the agency ~~department~~
28 determines is necessary to carry out the provisions of this
29 chapter.
30 (5) The applicant shall submit evidence which
31 establishes the good moral character of the manager or

1 supervisor of the facility or program and the direct service
2 providers in the facility or program and its component centers
3 or units. A license may be issued if all the screening
4 materials have been timely submitted; however, a license may
5 not be issued or renewed if any of the direct service
6 providers have failed the screening required by s. 393.0655.
7 (a)1. A licensed residential facility or comprehensive
8 transitional education program which applies for renewal of
9 its license shall submit to the agency ~~department~~ a list of
10 direct service providers who have worked on a continuous basis
11 at the applicant facility or program since submitting
12 fingerprints to the agency or the Department of Children and
13 Family Services, identifying those direct service providers
14 for whom a written assurance of compliance was provided by the
15 agency or department and identifying those direct service
16 providers who have recently begun working at the facility or
17 program and are awaiting the results of the required
18 fingerprint check along with the date of the submission of
19 those fingerprints for processing. The agency ~~department~~ shall
20 by rule determine the frequency of requests to the Department
21 of Law Enforcement to run state criminal records checks for
22 such direct service providers except for those direct service
23 providers awaiting the results of initial fingerprint checks
24 for employment at the applicant facility or program. The
25 agency ~~department~~ shall review the records of the direct
26 service providers at the applicant facility or program with
27 respect to the crimes specified in s. 393.0655 and shall
28 notify the facility or program of its findings. When
29 disposition information is missing on a criminal record, it is
30 ~~shall be~~ the responsibility of the person being screened, upon
31 request of the agency ~~department~~, to obtain and supply within

1 30 days the missing disposition information to the agency
2 ~~department~~. Failure to supply the missing information within
3 30 days or to show reasonable efforts to obtain such
4 information shall result in automatic disqualification.
5 2. The applicant shall sign an affidavit under penalty
6 of perjury stating that all new direct service providers have
7 been fingerprinted and that the facility's or program's
8 remaining direct service providers have worked at the
9 applicant facility or program on a continuous basis since
10 being initially screened at that facility or program or have a
11 written assurance of compliance from the agency or department.
12 (b) As a prerequisite for issuance of the initial
13 license to a residential facility or comprehensive
14 transitional education program:
15 1. The applicant shall submit to the agency ~~department~~
16 a complete set of fingerprints, taken by an authorized law
17 enforcement agency or an employee of the agency ~~department~~ who
18 is trained to take fingerprints, for the manager, supervisor,
19 or direct service providers of the facility or program;
20 2. The agency ~~department~~ shall submit the fingerprints
21 to the Department of Law Enforcement for state processing and
22 for federal processing by the Federal Bureau of Investigation;
23 and
24 3. The agency ~~department~~ shall review the record of
25 the manager or supervisor with respect to the crimes specified
26 in s. 393.0655(1) and shall notify the applicant of its
27 findings. When disposition information is missing on a
28 criminal record, it is ~~shall be~~ the responsibility of the
29 manager or supervisor, upon request of the agency ~~department~~,
30 to obtain and supply within 30 days the missing disposition
31 information to the agency ~~department~~. Failure to supply the

1 missing information within 30 days or to show reasonable
2 efforts to obtain such information shall result in automatic
3 disqualification.
4 (c) The agency ~~department~~ or a residential facility or
5 comprehensive transitional education program may not use the
6 criminal records or juvenile records of a person obtained
7 under this subsection for any purpose other than determining
8 if that person meets the minimum standards for good moral
9 character for a manager or supervisor of, or direct service
10 provider in, such a facility or program. The criminal records
11 or juvenile records obtained by the agency ~~department~~ or a
12 residential facility or comprehensive transitional education
13 program for determining the moral character of a manager,
14 supervisor, or direct service provider are exempt from s.
15 119.07(1).
16 (6) Each applicant for licensure as an intermediate
17 care facility for the developmentally disabled must comply
18 with the following requirements:
19 (a) Upon receipt of a completed, signed, and dated
20 application, the agency shall require background screening, in
21 accordance with the level 2 standards for screening set forth
22 in chapter 435, of the managing employee, or other similarly
23 titled individual who is responsible for the daily operation
24 of the facility, and of the financial officer, or other
25 similarly titled individual who is responsible for the
26 financial operation of the center, including billings for
27 resident care and services. The applicant must comply with
28 the procedures for level 2 background screening as set forth
29 in chapter 435, as well as the requirements of s. 435.03(3).
30 (b) The agency may require background screening of any
31 other individual who is an applicant if the agency has

1 probable cause to believe that he or she has been convicted of
2 a crime or has committed any other offense prohibited under
3 the level 2 standards for screening set forth in chapter 435.
4 (c) Proof of compliance with the level 2 background
5 screening requirements of chapter 435 which has been submitted
6 within the previous 5 years in compliance with any other
7 health care licensure requirements of this state is acceptable
8 in fulfillment of the requirements of paragraph (a).
9 (d) A provisional license may be granted to an
10 applicant when each individual required by this section to
11 undergo background screening has met the standards for the
12 Department of Law Enforcement background check, but the agency
13 has not yet received background screening results from the
14 Federal Bureau of Investigation, or a request for a
15 disqualification exemption has been submitted to the agency as
16 set forth in chapter 435, but a response has not yet been
17 issued. A standard license may be granted to the applicant
18 upon the agency's receipt of a report of the results of the
19 Federal Bureau of Investigation background screening for each
20 individual required by this section to undergo background
21 screening which confirms that all standards have been met, or
22 upon the granting of a disqualification exemption by the
23 agency as set forth in chapter 435. Any other person who is
24 required to undergo level 2 background screening may serve in
25 his or her capacity pending the agency's receipt of the report
26 from the Federal Bureau of Investigation. However, the person
27 may not continue to serve if the report indicates any
28 violation of background screening standards and a
29 disqualification exemption has not been requested of and
30 granted by the agency as set forth in chapter 435.
31 (f) Each applicant must submit to the agency a

1 description and explanation of any conviction of an offense
2 prohibited under the level 2 standards of chapter 435 by a
3 member of the board of directors of the applicant, its
4 officers, or any individual owning 5 percent or more of the
5 applicant. This requirement does not apply to a director of a
6 not-for-profit corporation or organization if the director
7 serves solely in a voluntary capacity for the corporation or
8 organization, does not regularly take part in the day-to-day
9 operational decisions of the corporation or organization,
10 receives no remuneration for his or her services on the
11 corporation or organization's board of directors, and has no
12 financial interest and has no family members with a financial
13 interest in the corporation or organization, provided that the
14 director and the not-for-profit corporation or organization
15 include in the application a statement affirming that the
16 director's relationship to the corporation satisfies the
17 requirements of this paragraph.
18 (g) A license may not be granted to an applicant if
19 the applicant or managing employee has been found guilty of,
20 regardless of adjudication, or has entered a plea of nolo
21 contendere or guilty to, any offense prohibited under the
22 level 2 standards for screening set forth in chapter 435,
23 unless an exemption from disqualification has been granted by
24 the agency as set forth in chapter 435.
25 (8) The agency ~~department~~ shall adopt ~~promulgate~~ rules
26 establishing minimum standards for licensure of residential
27 facilities and comprehensive transitional education programs,
28 including rules requiring facilities and programs to train
29 staff to detect and prevent sexual abuse of residents and
30 clients, minimum standards of quality and adequacy of care,
31 and uniform firesafety standards established by the State Fire

1 Marshal which are appropriate to the size of the facility or
2 of the component centers or units of the program.
3 (9) The agency ~~department~~ and the Agency for Health
4 Care Administration, after consultation with the Department of
5 Community Affairs, shall adopt rules for residential
6 facilities under the respective regulatory jurisdiction of
7 each establishing minimum standards for the preparation and
8 annual update of a comprehensive emergency management plan. At
9 a minimum, the rules must provide for plan components that
10 address emergency evacuation transportation; adequate
11 sheltering arrangements; postdisaster activities, including
12 emergency power, food, and water; postdisaster transportation;
13 supplies; staffing; emergency equipment; individual
14 identification of residents and transfer of records; and
15 responding to family inquiries. The comprehensive emergency
16 management plan for all comprehensive transitional education
17 programs and for homes serving individuals who have complex
18 medical conditions is subject to review and approval by the
19 local emergency management agency. During its review, the
20 local emergency management agency shall ensure that the
21 following agencies, at a minimum, are given the opportunity to
22 review the plan: the Agency for Health Care Administration,
23 the Agency for Persons with Disabilities ~~Department of~~
24 ~~Children and Family Services~~, and the Department of Community
25 Affairs. Also, appropriate volunteer organizations must be
26 given the opportunity to review the plan. The local emergency
27 management agency shall complete its review within 60 days and
28 either approve the plan or advise the facility of necessary
29 revisions.
30 (10) The agency ~~department~~ may conduct unannounced
31 inspections to determine compliance by residential facilities

and comprehensive transitional education programs with the applicable provisions of this chapter and the rules adopted pursuant hereto, including the rules adopted for training staff of a facility or a program to detect and prevent sexual abuse of residents and clients. The facility or program shall make copies of inspection reports available to the public upon request.

(11) An alternative living center and an independent living education center, as defined in s. 393.063 ~~s. 393.063(8)~~, shall be subject to the provisions of s. 419.001, except that such centers shall be exempt from the 1,000-foot-radius requirement of s. 419.001(2) if:

(a) Such centers are located on a site zoned in a manner so that all the component centers of a comprehensive transition education center may be located thereon; or

(b) There are no more than three such centers within said radius of 1,000 feet.

(12) Each residential facility or comprehensive transitional education program licensed by the agency ~~department~~ shall forward annually to the agency ~~department~~ a true and accurate sworn statement of its costs of providing care to clients funded by the agency ~~department~~.

(13) The agency ~~department~~ may audit the records of any residential facility or comprehensive transitional education program that ~~which~~ it has reason to believe may not be in full compliance with the provisions of this section; provided that, any financial audit of such facility or program shall be limited to the records of clients funded by the agency ~~department~~.

(14) The agency ~~department~~ shall establish, for the purpose of control of licensure costs, a uniform management

information system and a uniform reporting system with uniform definitions and reporting categories.

(17) The agency ~~department~~ shall not be required to contract with new facilities licensed after October 1, 1989, pursuant to this chapter. Pursuant to chapter 287, the agency ~~department~~ shall continue to contract within available resources for residential services with facilities licensed prior to October 1, 1989, if such facilities comply with the provisions of this chapter and all other applicable laws and regulations.

Section 39. Subsection (9) of section 397.405, Florida Statutes, is amended to read:

397.405 Exemptions from licensure.--The following are exempt from the licensing provisions of this chapter:

(9) Facilities licensed under s. 393.063 ~~s.--393.063(8)~~ that, in addition to providing services to persons who are developmentally disabled as defined therein, also provide services to persons developmentally at risk as a consequence of exposure to alcohol or other legal or illegal drugs while in utero.

The exemptions from licensure in this section do not apply to any service provider that receives an appropriation, grant, or contract from the state to operate as a service provider as defined in this chapter or to any substance abuse program regulated pursuant to s. 397.406. Furthermore, this chapter may not be construed to limit the practice of a physician licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a psychotherapist licensed under chapter 491 who provides substance abuse treatment, so long as the physician, psychologist, or psychotherapist does

1 not represent to the public that he or she is a licensed
2 service provider and does not provide services to clients
3 pursuant to part V of this chapter. Failure to comply with any
4 requirement necessary to maintain an exempt status under this
5 section is a misdemeanor of the first degree, punishable as
6 provided in s. 775.082 or s. 775.083.
7 Section 40. Paragraph (b) of subsection (5) of section
8 400.464, Florida Statutes, is amended to read:
9 400.464 Home health agencies to be licensed;
10 expiration of license; exemptions; unlawful acts; penalties.--
11 (5) The following are exempt from the licensure
12 requirements of this part:
13 (b) Home health services provided by a state agency,
14 either directly or through a contractor with:
15 1. The Department of Elderly Affairs.
16 2. The Department of Health, a community health
17 center, or a rural health network that furnishes home visits
18 for the purpose of providing environmental assessments, case
19 management, health education, personal care services, family
20 planning, or followup treatment, or for the purpose of
21 monitoring and tracking disease.
22 3. Services provided to persons who have developmental
23 disabilities, as defined in s. 393.063 ~~s.--393.063(12)~~.
24 4. Companion and sitter organizations that were
25 registered under s. 400.509(1) on January 1, 1999, and were
26 authorized to provide personal services under s. 393.063(33)
27 under a developmental services provider certificate on January
28 1, 1999, may continue to provide such services to past,
29 present, and future clients of the organization who need such
30 services, notwithstanding the provisions of this act.
31 5. The Department of Children and Family Services.

1 Section 41. Paragraph (d) of subsection (1) of section
2 419.001, Florida Statutes, is amended to read:
3 419.001 Site selection of community residential
4 homes.--
5 (1) For the purposes of this section, the following
6 definitions shall apply:
7 (d) "Resident" means any of the following: a frail
8 elder as defined in s. 400.618; a physically disabled or
9 handicapped person as defined in s. 760.22(7)(a); a
10 developmentally disabled person as defined in s. 393.063 ~~s.~~
11 ~~393.063(12)~~; a nondangerous mentally ill person as defined in
12 s. 394.455(18); or a child as defined in s. 39.01(14), s.
13 984.03(9) or (12), or s. 985.03(8).
14 Section 42. Section 914.16, Florida Statutes, is
15 amended to read:
16 914.16 Child abuse and sexual abuse of victims under
17 age 16 or persons with mental retardation; limits on
18 interviews.--The chief judge of each judicial circuit, after
19 consultation with the state attorney and the public defender
20 for the judicial circuit, the appropriate chief law
21 enforcement officer, and any other person deemed appropriate
22 by the chief judge, shall provide by order reasonable limits
23 on the number of interviews that a victim of a violation of s.
24 794.011, s. 800.04, or s. 827.03 who is under 16 years of age
25 or a victim of a violation of s. 794.011, s. 800.02, s.
26 800.03, or s. 825.102 who is a person with mental retardation
27 as defined in s. 393.063 ~~s.--393.063(42)~~ must submit to for law
28 enforcement or discovery purposes. The order shall, to the
29 extent possible, protect the victim from the psychological
30 damage of repeated interrogations while preserving the rights
31 of the public, the victim, and the person charged with the

1 violation.
2 Section 43. Subsection (2) of section 914.17, Florida
3 Statutes, is amended to read:
4 914.17 Appointment of advocate for victims or
5 witnesses who are minors or persons with mental retardation.--
6 (2) An advocate shall be appointed by the court to
7 represent a person with mental retardation as defined in s.
8 393.063 ~~s.--393.063(42)~~ in any criminal proceeding if the
9 person with mental retardation is a victim of or witness to
10 abuse or neglect, or if the person with mental retardation is
11 a victim of a sexual offense or a witness to a sexual offense
12 committed against a minor or person with mental retardation.
13 The court may appoint an advocate in any other criminal
14 proceeding in which a person with mental retardation is
15 involved as either a victim or a witness. The advocate shall
16 have full access to all evidence and reports introduced during
17 the proceedings, may interview witnesses, may make
18 recommendations to the court, shall be noticed and have the
19 right to appear on behalf of the person with mental
20 retardation at all proceedings, and may request additional
21 examinations by medical doctors, psychiatrists, or
22 psychologists. It is the duty of the advocate to perform the
23 following services:
24 (a) To explain, in language understandable to the
25 person with mental retardation, all legal proceedings in which
26 the person shall be involved;
27 (b) To act, as a friend of the court, to advise the
28 judge, whenever appropriate, of the person with mental
29 retardation's ability to understand and cooperate with any
30 court proceedings; and
31 (c) To assist the person with mental retardation and

the person's family in coping with the emotional effects of the crime and subsequent criminal proceedings in which the person with mental retardation is involved.

Section 44. Subsection (1) of section 918.16, Florida Statutes, is amended to read:

918.16 Sex offenses; testimony of person under age 16 or person with mental retardation; testimony of victim; courtroom cleared; exceptions.--

(1) Except as provided in subsection (2), in the trial of any case, civil or criminal, when any person under the age of 16 or any person with mental retardation as defined in s. 393.063 ~~s.--393.063(42)~~ is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, court reporters, and, at the request of the victim, victim or witness advocates designated by the state attorney's office.

Section 45. Subsections (3) and (4) of section 393.0641, Florida Statutes, are amended to read:

393.0641 Program for the prevention and treatment of severe self-injurious behavior.--

(3) The agency ~~department~~ may contract for the provision of any portion or all of the services required by the program.

(4) The agency has ~~department shall have~~ the authority to license this program and shall adopt ~~promulgate~~ rules to implement the program.

Section 46. Section 393.065, Florida Statutes, is amended to read:

393.065 Application and eligibility determination.--

1 (1) Application for services shall be made in writing
2 to the agency ~~Department-of-Children-and-Family-Services~~, in
3 the district in which the applicant resides. Employees of the
4 agency's ~~department's~~ developmental services program shall
5 review each applicant for eligibility within 45 days after the
6 date the application is signed for children under 6 years of
7 age and within 60 days after the date the application is
8 signed for all other applicants. When necessary to
9 definitively identify individual conditions or needs, the
10 agency ~~department~~ shall provide a comprehensive assessment.
11 Only individuals whose domicile is in Florida are ~~shall be~~
12 eligible for services. Information accumulated by other
13 agencies, including professional reports and collateral data,
14 shall be considered in this process when available.
15 (2) In order to provide immediate services or crisis
16 intervention to applicants, the agency ~~department~~ shall
17 arrange for emergency eligibility determination, with a full
18 eligibility review to be accomplished within 45 days of the
19 emergency eligibility determination.
20 (3) The agency ~~department~~ shall notify each applicant,
21 in writing, of its eligibility decision. Any applicant
22 determined by the agency ~~department~~ to be ineligible for
23 developmental services has ~~shall have~~ the right to appeal this
24 decision pursuant to ss. 120.569 and 120.57.
25 (4) The agency ~~department~~ shall assess the level of
26 need and medical necessity for prospective residents of
27 intermediate-care facilities for the developmentally disabled
28 after October 1, 1999. The agency ~~department~~ may enter into an
29 agreement with the Department of Elderly Affairs for its
30 Comprehensive Assessment and Review for Long-Term-Care
31 Services (CARES) program to conduct assessments to determine

1 the level of need and medical necessity for long-term-care
2 services under this chapter. To the extent permissible under
3 federal law, the assessments must be funded under Title XIX of
4 the Social Security Act.
5 Section 47. Section 393.0651, Florida Statutes, is
6 amended to read:
7 393.0651 Family or individual support plan.--The
8 agency ~~department~~ shall provide for an appropriate family
9 support plan for children ages birth to 18 years of age and an
10 individual support plan for each client. The parent or
11 guardian of the client or, if competent, the client, or, when
12 appropriate, the client advocate, shall be consulted in the
13 development of the plan and shall receive a copy of the plan.
14 Each plan shall include the most appropriate, least
15 restrictive, and most cost-beneficial environment for
16 accomplishment of the objectives for client progress and a
17 specification of all services authorized. The plan shall
18 include provisions for the most appropriate level of care for
19 the client. Within the specification of needs and services for
20 each client, when residential care is necessary, the agency
21 ~~department~~ shall move toward placement of clients in
22 residential facilities based within the client's community.
23 The ultimate goal of each plan, whenever possible, shall be to
24 enable the client to live a dignified life in the least
25 restrictive setting, be that in the home or in the community.
26 For children under 6 years of age, the family support plan
27 shall be developed within the 45-day application period as
28 specified in s. 393.065(1); for all applicants 6 years of age
29 or older, the family or individual support plan shall be
30 developed within the 60-day period as specified in that
31 subsection.

1 (1) The agency ~~department~~ shall develop and specify by
2 rule the core components of support plans to be used by each
3 district.
4 (2)(a) The family or individual support plan shall be
5 integrated with the individual education plan (IEP) for all
6 clients who are public school students entitled to a free
7 appropriate public education under the Individuals with
8 Disabilities Education Act, I.D.E.A., as amended. The family
9 or individual support plan and IEP shall be implemented to
10 maximize the attainment of educational and habilitation goals.
11 If the IEP for a student enrolled in a public school program
12 indicates placement in a public or private residential program
13 is necessary to provide special education and related services
14 to a client, the local education agency shall provide for the
15 costs of that service in accordance with the requirements of
16 the Individuals with Disabilities Education Act, I.D.E.A., as
17 amended. This shall not preclude local education agencies and
18 the agency ~~department~~ from sharing the residential service
19 costs of students who are clients and require residential
20 placement. Under no circumstances shall clients entitled to a
21 public education or their parents be assessed a fee by the
22 agency ~~department~~ under s. 402.33 for placement in a
23 residential program.
24 (b) For clients who are entering or exiting the school
25 system, an interdepartmental staffing team composed of
26 representatives of the agency ~~department~~ and the local school
27 system shall develop a written transitional living and
28 training plan with the participation of the client or with the
29 parent or guardian of the client, or the client advocate, as
30 appropriate.
31 (3) Each family or individual support plan shall be

1 facilitated through case management designed solely to advance
2 the individual needs of the client.
3 (4) In the development of the family or individual
4 support plan, a client advocate may be appointed by the
5 support planning team for a client who is a minor or for a
6 client who is not capable of express and informed consent
7 when:
8 (a) The parent or guardian cannot be identified;
9 (b) The whereabouts of the parent or guardian cannot
10 be discovered; or
11 (c) The state is the only legal representative of the
12 client.
13
14 Such appointment shall not be construed to extend the powers
15 of the client advocate to include any of those powers
16 delegated by law to a legal guardian.
17 (5) The agency ~~department~~ shall place a client in the
18 most appropriate and least restrictive, and cost-beneficial,
19 residential facility according to his or her individual
20 habilitation plan. The parent or guardian of the client or, if
21 competent, the client, or, when appropriate, the client
22 advocate, and the administrator of the residential facility to
23 which placement is proposed shall be consulted in determining
24 the appropriate placement for the client. Considerations for
25 placement shall be made in the following order:
26 (a) Client's own home or the home of a family member
27 or direct service provider.
28 (b) Foster care facility.
29 (c) Group home facility.
30 (d) Intermediate care facility for the developmentally
31 disabled.

1 (e) Other facilities licensed by the agency ~~department~~
2 which offer special programs for people with developmental
3 disabilities.
4 (f) Developmental services institution.
5 (6) In developing a client's annual family or
6 individual support plan, the individual or family with the
7 assistance of the support planning team shall identify
8 measurable objectives for client progress and shall specify a
9 time period expected for achievement of each objective.
10 (7) The individual, family, and support coordinator
11 shall review progress in achieving the objectives specified in
12 each client's family or individual support plan, and shall
13 revise the plan annually, following consultation with the
14 client, if competent, or with the parent or guardian of the
15 client, or, when appropriate, the client advocate. The agency
16 ~~department~~ shall annually report in writing to the client, if
17 competent, or to the parent or guardian of the client, or to
18 the client advocate, when appropriate, with respect to the
19 client's habilitative and medical progress.
20 (8) Any client, or any parent of a minor client, or
21 guardian, authorized guardian advocate, or client advocate for
22 a client, who is substantially affected by the client's
23 initial family or individual support plan, or the annual
24 review thereof, shall have the right to file a notice to
25 challenge the decision pursuant to ss. 120.569 and 120.57.
26 Notice of such right to appeal shall be included in all
27 support plans provided by the agency ~~department~~.
28 Section 48. Section 393.0673, Florida Statutes, is
29 amended to read:
30 393.0673 Denial, suspension, revocation of license;
31 moratorium on admissions; administrative fines; procedures.--

1 (1) The agency ~~Department of Children and Family~~
2 ~~Services~~ may deny, revoke, or suspend a license or impose an
3 administrative fine, not to exceed $1,000 per violation per
4 day, for a violation of any provision of s. 393.0655 or s.
5 393.067 or rules adopted pursuant thereto. All hearings shall
6 be held within the county in which the licensee or applicant
7 operates or applies for a license to operate a facility as
8 defined herein.
9 (2) The agency ~~department~~, as a part of any final
10 order issued by it under the provisions of this chapter, may
11 impose such fine as it deems proper, except that such fine may
12 not exceed $1,000 for each violation. Each day a violation of
13 this chapter occurs constitutes a separate violation and is
14 subject to a separate fine, but in no event may the aggregate
15 amount of any fine exceed $10,000. Fines paid by any facility
16 licensee under the provisions of this subsection shall be
17 deposited in the Resident Protection Trust Fund and expended
18 as provided in s. 400.063.
19 (3) The agency ~~department~~ may issue an order
20 immediately suspending or revoking a license when it
21 determines that any condition in the facility presents a
22 danger to the health, safety, or welfare of the residents in
23 the facility.
24 (4) The agency ~~department~~ may impose an immediate
25 moratorium on admissions to any facility when the department
26 determines that any condition in the facility presents a
27 threat to the health, safety, or welfare of the residents in
28 the facility.
29 Section 49. Subsections (1) and (3) of section
30 393.0675, Florida Statutes, are amended to read:
31 393.0675 Injunctive proceedings authorized.--

1 (1) The agency ~~Department of Children and Family~~
2 ~~Services~~ may institute injunctive proceedings in a court of
3 competent jurisdiction to:
4 (a) Enforce the provisions of this chapter or any
5 minimum standard, rule, regulation, or order issued or entered
6 pursuant thereto; or
7 (b) Terminate the operation of facilities licensed
8 pursuant to this chapter when any of the following conditions
9 exist:
10 1. Failure by the facility to take preventive or
11 corrective measures in accordance with any order of the agency
12 ~~department~~.
13 2. Failure by the facility to abide by any final order
14 of the agency ~~department~~ once it has become effective and
15 binding.
16 3. Any violation by the facility constituting an
17 emergency requiring immediate action as provided in s.
18 393.0673.
19 (3) The agency ~~department~~ may institute proceedings
20 for an injunction in a court of competent jurisdiction to
21 terminate the operation of a provider of supports or services
22 if such provider has willfully and knowingly refused to comply
23 with the screening requirement for direct service providers or
24 has refused to terminate direct service providers found not to
25 be in compliance with the requirements for good moral
26 character.
27 Section 50. Subsection (1), paragraphs (b), (c), and
28 (d) of subsection (2), and paragraph (e) of subsection (3) of
29 section 393.0678, Florida Statutes, are amended to read:
30 393.0678 Receivership proceedings.--
31 (1) The agency ~~department~~ may petition a court of

1 competent jurisdiction for the appointment of a receiver for
2 an intermediate care facility for the developmentally
3 disabled, a residential habilitation center, or a group home
4 facility owned and operated by a corporation or partnership
5 when any of the following conditions exist:
6 (a) Any person is operating a facility without a
7 license and refuses to make application for a license as
8 required by s. 393.067 or, in the case of an intermediate care
9 facility for the developmentally disabled, as required by ss.
10 393.067 and 400.062.
11 (b) The licensee is closing the facility or has
12 informed the department that it intends to close the facility;
13 and adequate arrangements have not been made for relocation of
14 the residents within 7 days, exclusive of weekends and
15 holidays, of the closing of the facility.
16 (c) The agency ~~department~~ determines that conditions
17 exist in the facility which present an imminent danger to the
18 health, safety, or welfare of the residents of the facility or
19 which present a substantial probability that death or serious
20 physical harm would result therefrom. Whenever possible, the
21 agency ~~department~~ shall facilitate the continued operation of
22 the program.
23 (d) The licensee cannot meet its financial obligations
24 to provide food, shelter, care, and utilities. Evidence such
25 as the issuance of bad checks or the accumulation of
26 delinquent bills for such items as personnel salaries, food,
27 drugs, or utilities constitutes prima facie evidence that the
28 ownership of the facility lacks the financial ability to
29 operate the home in accordance with the requirements of this
30 chapter and all rules promulgated thereunder.
31 (2)

1 (b) A hearing shall be conducted within 5 days of the
2 filing of the petition, at which time all interested parties
3 shall have the opportunity to present evidence pertaining to
4 the petition. The agency ~~department~~ shall notify the owner or
5 operator of the facility named in the petition of its filing
6 and the date set for the hearing.
7 (c) The court shall grant the petition only upon
8 finding that the health, safety, or welfare of residents of
9 the facility would be threatened if a condition existing at
10 the time the petition was filed is permitted to continue. A
11 receiver may not be appointed ex parte unless the court
12 determines that one or more of the conditions in subsection
13 (1) exist; that the facility owner or operator cannot be
14 found; that all reasonable means of locating the owner or
15 operator and notifying him or her of the petition and hearing
16 have been exhausted; or that the owner or operator after
17 notification of the hearing chooses not to attend. After such
18 findings, the court may appoint any person qualified by
19 education, training, or experience to carry out the
20 responsibilities of receiver pursuant to this section, except
21 that the court may not appoint any owner or affiliate of the
22 facility which is in receivership. Before the appointment as
23 receiver of a person who is the operator, manager, or
24 supervisor of another facility, the court shall determine that
25 the person can reasonably operate, manage, or supervise more
26 than one facility. The receiver may be appointed for up to 90
27 days with the option of petitioning the court for 30-day
28 extensions. The receiver may be selected from a list of
29 persons qualified to act as receivers developed by the agency
30 ~~department~~ and presented to the court with each petition for
31 receivership. Under no circumstances may the agency ~~department~~

1 or designated agency ~~departmental~~ employee be appointed as a
2 receiver for more than 60 days; however, the agency
3 ~~departmental~~ receiver may petition the court for 30-day
4 extensions. The court shall grant an extension upon a showing
5 of good cause. The agency ~~department~~ may petition the court
6 to appoint a substitute receiver.
7 (d) During the first 60 days of the receivership, the
8 agency ~~department~~ may not take action to decertify or revoke
9 the license of a facility unless conditions causing imminent
10 danger to the health and welfare of the residents exist and a
11 receiver has been unable to remove those conditions. After
12 the first 60 days of receivership, and every 60 days
13 thereafter until the receivership is terminated, the agency
14 ~~department~~ shall submit to the court the results of an
15 assessment of the ability of the facility to assure the safety
16 and care of the residents. If the conditions at the facility
17 or the intentions of the owner indicate that the purpose of
18 the receivership is to close the facility rather than to
19 facilitate its continued operation, the agency ~~department~~
20 shall place the residents in appropriate alternate residential
21 settings as quickly as possible. If, in the opinion of the
22 court, the agency ~~department~~ has not been diligent in its
23 efforts to make adequate arrangements for placement, the court
24 shall find the agency ~~department~~ to be in contempt and shall
25 order the agency ~~department~~ to submit its plans for moving the
26 residents.
27 (3) The receiver shall make provisions for the
28 continued health, safety, and welfare of all residents of the
29 facility and:
30 (e) May use the building, fixtures, furnishings, and
31 any accompanying consumable goods in the provision of care and

1 services to residents and to any other persons receiving
2 services from the facility at the time the petition for
3 receivership was filed. The receiver shall collect payments
4 for all goods and services provided to residents or others
5 during the period of the receivership at the same rate of
6 payment charged by the owner at the time the petition for
7 receivership was filed, or at a fair and reasonable rate
8 otherwise approved by the court for private, paying residents.
9 The receiver may apply to the agency ~~department~~ for a rate
10 increase for residents under Title XIX of the Social Security
11 Act if the facility is not receiving the state reimbursement
12 cap and if expenditures justify an increase in the rate.
13 Section 51. Section 393.071, Florida Statutes, is
14 amended to read:
15 393.071 Client fees.--The agency ~~Department of~~
16 ~~Children and Family Services~~ shall charge fees for services
17 provided to clients in accordance with s. 402.33.
18 Section 52. Subsection (2) of section 393.075, Florida
19 Statutes, is amended to read:
20 393.075 General liability coverage.--
21 (2) The Division of Risk Management of the Department
22 of Financial Services shall provide coverage through the
23 agency ~~Department of Children and Family Services~~ to any
24 person who owns or operates a foster care facility or group
25 home facility solely for the agency ~~Department of Children and~~
26 ~~Family Services~~, who cares for children placed by
27 developmental services staff of the agency ~~department~~, and who
28 is licensed pursuant to s. 393.067 to provide such supervision
29 and care in his or her place of residence. The coverage shall
30 be provided from the general liability account of the State
31 Risk Management Trust Fund. The coverage is limited to

1 general liability claims arising from the provision of
2 supervision and care of children in a foster care facility or
3 group home facility pursuant to an agreement with the agency
4 ~~department~~ and pursuant to guidelines established through
5 policy, rule, or statute. Coverage shall be subject to the
6 limits provided in ss. 284.38 and 284.385, and the exclusions
7 set forth therein, together with other exclusions as may be
8 set forth in the certificate of coverage issued by the trust
9 fund. A person covered under the general liability account
10 pursuant to this subsection shall immediately notify the
11 Division of Risk Management of the Department of Financial
12 Services of any potential or actual claim.
13 Section 53. Section 393.115, Florida Statutes, is
14 amended to read:
15 393.115 Discharge.--
16 (1) DISCHARGE AT THE AGE OF MAJORITY.--
17 (a) When any residential client reaches his or her
18 18th birthday, the agency ~~department~~ shall give the resident
19 or legal guardian the option to continue residential services
20 or to be discharged from residential services.
21 (b) If the resident appears to meet the criteria for
22 involuntary admission to residential services, as defined in
23 s. 393.11, the agency ~~department~~ shall file a petition to
24 determine the appropriateness of continued residential
25 placement on an involuntary basis. The agency ~~department~~ shall
26 file the petition for involuntary admission in the county in
27 which the client resides. If the resident was originally
28 involuntarily admitted to residential services pursuant to s.
29 393.11, then the agency ~~department~~ shall file the petition in
30 the court having continuing jurisdiction over the case.
31 (c) Nothing in this section shall in any way limit or

1 restrict the resident's right to a writ of habeas corpus or
2 the right of the agency ~~department~~ to transfer a resident
3 receiving residential care to a program of appropriate
4 services provided by the agency ~~department~~ when such program
5 is the appropriate habilitative setting for the resident.
6 (2) DISCHARGE AFTER CRIMINAL OR JUVENILE
7 COMMITMENT.--Any person with developmental disabilities
8 committed to the custody of the agency ~~department~~ pursuant to
9 the provisions of the applicable criminal or juvenile court
10 law shall be discharged in accordance with the requirements of
11 the applicable criminal or juvenile court law.
12 Section 54. Subsection (3) of section 393.12, Florida
13 Statutes, is amended to read:
14 393.12 Capacity; appointment of guardian advocate.--
15 (3) COURT COSTS.--In all proceedings under this
16 section, no court costs shall be charged against the agency
17 ~~department~~.
18 Section 55. Section 393.125, Florida Statutes, is
19 amended to read:
20 393.125 Hearing rights.--
21 (1) REVIEW OF AGENCY ~~DEPARTMENT~~ DECISIONS.--
22 (a) Any developmental services applicant or client, or
23 his or her parent, guardian, guardian advocate, or authorized
24 representative, who has any substantial interest determined by
25 the agency ~~department~~, has ~~shall have~~ the right to request an
26 administrative hearing pursuant to ss. 120.569 and 120.57.
27 (b) Notice of the right to an administrative hearing
28 shall be given, both verbally and in writing, to the applicant
29 or client, and his or her parent, guardian, guardian advocate,
30 or authorized representative, at the same time that the agency
31 ~~department~~ gives the applicant or client notice of the

1 agency's ~~department's~~ action. The notice shall be given, both
2 verbally and in writing, in the language of the client or
3 applicant and in English.
4 (c) A request for a hearing under this section shall
5 be made to the agency ~~department~~, in writing, within 30 days
6 of the applicant's or client's receipt of the notice.
7 (2) REVIEW OF PROVIDER DECISIONS.--The agency
8 ~~department~~ shall adopt ~~promulgate~~ rules to establish uniform
9 guidelines for the agency ~~department~~ and service providers
10 relevant to termination, suspension, or reduction of client
11 services by the service provider. The rules shall ensure the
12 due process rights of service providers and clients.
13 Section 56. Subsections (3), (4), (5), and (6) of
14 section 393.15, Florida Statutes, are amended to read:
15 393.15 Legislative intent; Community Resources
16 Development Trust Fund.--
17 (3) There is created a Community Resources Development
18 Trust Fund in the State Treasury to be used by the agency
19 ~~Department-of-Children-and-Family-Services~~ for the purpose of
20 granting loans to eligible programs for the initial costs of
21 development of the programs. Loans shall be made only to
22 those facilities which are in compliance with the zoning
23 regulations of the local community. Costs of development may
24 include structural modification, the purchase of equipment and
25 fire and safety devices, preoperational staff training, and
26 the purchase of insurance. Such costs shall not include the
27 actual construction of a facility.
28 (4) The agency ~~department~~ may grant to an eligible
29 program a lump-sum loan in one payment not to exceed the cost
30 to the program of providing 2 months' services, care, or
31 maintenance to each person who is developmentally disabled to

1 be placed in the program by the agency ~~department~~, or the
2 actual cost of firesafety renovations to a facility required
3 by the state, whichever is greater. Loans granted to programs
4 shall not be in lieu of payment for maintenance, services, or
5 care provided, but shall stand separate and distinct. The
6 agency ~~department~~ shall adopt ~~promulgate~~ rules, as provided in
7 chapter 120, to determine the standards under which a program
8 shall be eligible to receive a loan as provided in this
9 section and criteria for the equitable allocation of loan
10 trust funds when eligible applications exceed the funds
11 available.
12 (5) Any loan granted by the agency ~~department~~ under
13 this section shall be repaid by the program within 5 years. A
14 program that ~~which~~ operates as a nonprofit corporation meeting
15 the requirements of s. 501(c)(3) of the Internal Revenue Code,
16 and that ~~which~~ seeks forgiveness of its loan shall submit to
17 the agency ~~department~~ a statement setting forth the service it
18 has provided during the year together with such other
19 information as the agency ~~department~~ by rule shall require,
20 and, upon approval of each such annual statement, the agency
21 ~~department~~ shall forgive 20 percent of the principal of any
22 such loan granted after June 30, 1975.
23 (6) If any program that ~~which~~ has received a loan
24 under this section ceases to accept, or provide care,
25 services, or maintenance to persons placed in the program by
26 the department, or if such program files ~~shall file~~ papers of
27 bankruptcy, at that point in time the loan shall become an
28 interest-bearing loan at the rate of 5 percent per annum on
29 the entire amount of the initial loan which shall be repaid
30 within a 1-year period from the date on which the program
31 ceases to provide care, services, or maintenance, or files

1 papers in bankruptcy, and the amount of the loan due plus
2 interest shall constitute a lien in favor of the state against
3 all real and personal property of the program. The lien shall
4 be perfected by the appropriate officer of the agency
5 ~~department~~ by executing and acknowledging a statement of the
6 name of the program and the amount due on the loan and a copy
7 of the promissory note, which shall be recorded by the agency
8 ~~department~~ with the clerk of the circuit court in the county
9 wherein the program is located. If the program has filed a
10 petition for bankruptcy, the agency ~~department~~ shall file and
11 enforce the lien in the bankruptcy proceedings. Otherwise,
12 the lien shall be enforced in the manner provided in s.
13 85.011. All funds received by the agency ~~department~~ from the
14 enforcement of the lien shall be deposited in the Community
15 Resources Development Trust Fund.
16 Section 57. Subsection (1) of section 393.501, Florida
17 Statutes, is amended to read:
18 393.501 Rulemaking.--
19 (1) The agency ~~department~~ shall adopt rules to carry
20 out the provisions of this chapter.
21 Section 58. Section 393.503, Florida Statutes, is
22 amended to read:
23 393.503 Respite and family care subsidy expenditures;
24 funding.--The agency ~~Department of Children and Family~~
25 ~~Services~~ shall determine the amount of expenditures per fiscal
26 year for the respite and family care subsidy to families and
27 individuals with developmental disabilities living in their
28 own homes. This information shall be made available to the
29 family care councils and to others requesting the information.
30 The family care councils shall review the expenditures and
31 make recommendations to the agency ~~department~~ with respect to

1 any new funds that are made available for family care.
2 Section 59. Subsection (2) of section 393.506, Florida
3 Statutes, is amended to read:
4 393.506 Administration of medication.--
5 (2) Each facility, institution, or program must
6 include in its policies and procedures a plan for training
7 designated staff to ensure the safe handling, storage, and
8 administration of prescription medication. These policies and
9 procedures must be approved by the agency ~~department~~ before
10 unlicensed direct care services staff assist with medication.
11
12 (Redesignate subsequent sections.)
13
14
15 ========== T I T L E A M E N D M E N T ==========
16 And the title is amended as follows:
17 On page 3, line 8, after the semicolon,
18
19 insert:
20 amending s. 20.19, F.S.; removing the
21 developmental disabilities program from the
22 Department of Children and Family Services;
23 creating s. 20.197, F.S.; establishing the
24 Agency for Persons with Disabilities for the
25 purpose of providing services to persons with
26 developmental disabilities, including
27 institutional services; directing the agency to
28 execute interagency agreements with the Agency
29 for Health Care Administration for the
30 financial management of the Medicaid waivers
31 and the Department of Children and Family

1 Services for administrative support; amending
2 s. 393.063, F.S.; updating definitions and
3 deleting obsolete definitions; amending s.
4 393.064, F.S.; deleting requirements that the
5 agency's legislative budget request include
6 funding for prevention; amending s. 393.0655,
7 F.S.; requiring Level 2 screening for specified
8 service providers; amending s. 393.066, F.S.;
9 removing requirement that services be
10 administered and approved by the districts;
11 modifying a requirement to provide certain
12 services; deleting a requirement for a 5-year
13 plan relating to community-based services;
14 adding a requirement to assist clients in
15 gaining employment; repealing obsolete
16 requirement authorizing the state to lease or
17 construct residential facilities; deleting
18 authorization to adopt rules ensuring
19 compliance with federal rules; amending s.
20 393.0661, F.S.; deleting an obsolete provision;
21 modifying provisions relating to an assessment
22 instrument; adding requirements for adoption of
23 rate methodologies; amending s. 393.068, F.S.;
24 making service provision subject to available
25 resources; updating list of services to be
26 provided; deleting provision referring to
27 5-year plans; amending s. 393.0695, F.S.;
28 requiring in-home subsidy amounts to be
29 reassessed annually; amending s. 393.11, F.S.;
30 deleting provisions referring to districts,
31 department programs, and the nonexistent

1 Department of Labor and Employment Security;
2 amending s. 393.13, F.S.; deleting obsolete
3 provisions; adding legislative intent relating
4 to reducing the use of sheltered workshops;
5 amending s. 393.17, F.S.; authorizing the
6 agency to contract for the certification of
7 behavioral analysts; deleting provisions
8 relating to a certification program and
9 provisions allowing fees; amending s. 393.22,
10 F.S.; deleting prohibition preventing transfer
11 of funds and ensuring financial commitment for
12 specified developmental conditions; amending s.
13 393.502, F.S.; removing reference to districts;
14 deleting a provision permitting appointment of
15 family care council members if the Governor
16 does not act; amending ss. 408.301, 408.302,
17 F.S.; amending legislative intent to add the
18 Agency for Persons with Disabilities and the
19 Department of Elderly Affairs as agencies that
20 the Agency for Health Care Administration must
21 enter into interagency agreement with regarding
22 persons with special needs; amending s.
23 409.906, F.S.; clarifying powers of the Agency
24 for Health Care Administration with respect to
25 limiting coverage for certain services;
26 repealing s. 393.14, F.S.; requiring a
27 multiyear plan; repealing s. 393.165, F.S.,
28 relating to ICF/DDs; repealing s. 393.166,
29 F.S., relating to homes for special services;
30 repealing s. 393.505, F.S., relating to
31 comprehensive day treatment service projects;

1 transferring programs and institutions relating
2 to developmental disabilities from the
3 Department of Children and Family Services to
4 the Agency for Persons with Disabilities;
5 providing duties of those agencies as well as
6 the Department of Management Services;
7 providing for substitution of parties in
8 administrative and judicial proceedings;
9 providing duties of the Office of Program
10 Policy Analysis and Government Accountability;
11 providing for a report; amending ss. 92.53,
12 397.405, 400.464, 419.001, 914.16, 914.17,
13 918.16, F.S.; conforming cross-references;
14 amending s. 393.067, F.S.; conforming to
15 changes made by the act; providing that a
16 license issued to a residential facility or a
17 comprehensive transitional education program
18 does not create a property right in the
19 recipient; amending ss. 393.0641, 393.065,
20 393.0651, 393.0673, 393.0675, 393.0678,
21 393.071, 393.075, 393.115, 393.12, 393.125,
22 393.15, 393.501, 393.503, 393.506, F.S.;
23 conforming to the changes made by the act;
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Bill No. CS for SB 2808

Amendment No. 6 984446

CHAMBER ACTION

Senate | House

JUDICIARY

DATE: 4/16/04

TIME: 4:58 pm

Senator Webster moved the following amendment:

Senate Amendment (with title amendment)

On page 42, line 12, through

page 72, line 17, delete those lines

and insert:

Section 17. Section 393.135, Florida Statutes, is created to read:

393.135 Sexual misconduct prohibited; reporting required; penalties.--

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

(a) "Employee" includes any person under contract with the agency or the Agency for Health Care Administration and any paid staff member, volunteer, or intern of the agency or the Agency for Health Care Administration or any person under contract with the agency or the Agency for Health Care Administration or any person providing care or support to a client on behalf of the agency or the Agency for Health Care Administration or their providers.

(b) "Sexual activity" means:

1. The oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object;

2. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator;

3. Intentionally masturbating in the presence of another person;

4. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person; or

5. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

(c) "Sexual misconduct" means any sexual activity between an employee and a client, regardless of the consent of the client. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee.

(2) An employee who engages in sexual misconduct with an individual with a developmental disability who:

(a) Is in the custody of the agency;

(b) Resides in a residential facility, including any comprehensive transitional education program, developmental disabilities institution, foster care facility, group home facility, intermediate care facility for the developmentally disabled, or residential habilitation center; or

(c) Receives services from a family care program

1 commits a felony of the second degree, punishable as provided
2 in s. 775.082, s. 775.083, or s. 775.084. An employee may be
3 found guilty of violating this subsection without having
4 committed the crime of sexual battery.
5 (3) The consent of the client to sexual activity is
6 not a defense to prosecution under this section.
7 (4) This section does not apply to an employee who:
8 (a) Is legally married to the client; or
9 (b) Had no reason to believe that the person with whom
10 the employee engaged in sexual misconduct is a client
11 receiving services as described in subsection (2).
12 (5) An employee who witnesses sexual misconduct, or
13 who otherwise knows or has reasonable cause to suspect that a
14 person has engaged in sexual misconduct, shall immediately
15 report the incident to the Department of Children and Family
16 Services' central abuse hotline and to law enforcement. Such
17 employee shall also prepare, date, and sign an independent
18 report that specifically describes the nature of the sexual
19 misconduct, the location and time of the incident, and the
20 persons involved. The employee shall deliver the report to the
21 supervisor or program director, who is responsible for
22 providing copies to the agency's inspector general. The
23 inspector general shall immediately conduct an appropriate
24 administrative investigation, and, if there is probable cause
25 to believe that sexual misconduct has occurred, the inspector
26 general shall notify the state attorney in the circuit in
27 which the incident occurred.
28 (6)(a) Any person who is required to make a report
29 under this section and who knowingly or willfully fails to do
30 so, or who knowingly or willfully prevents another person from
31 doing so, commits a misdemeanor of the first degree,

1 punishable as provided in s. 775.082 or s. 775.083.
2 (b) Any person who knowingly or willfully submits
3 inaccurate, incomplete, or untruthful information with respect
4 to a report required under this section commits a misdemeanor
5 of the first degree, punishable as provided in s. 775.082 or
6 s. 775.083.
7 (c) Any person who knowingly or willfully coerces or
8 threatens any other person with the intent to alter testimony
9 or a written report regarding an incident of sexual misconduct
10 commits a felony of the third degree, punishable as provided
11 in s. 775.082, s. 775.083, or s. 775.084.
12 (7) The provisions and penalties set forth in this
13 section are in addition to any other civil, administrative, or
14 criminal action provided by law which may be applied against
15 an employee.
16 Section 18. Section 394.4593, Florida Statutes, is
17 created to read:
18 394.4593 Sexual misconduct prohibited; reporting
19 required; penalties.--
20 (1) As used in this section, the term:
21 (a) "Employee" includes any person under contract with
22 the department and any paid staff member, volunteer, or intern
23 of the department or any person under contract with the
24 department or any person providing care or support to a
25 patient on behalf of the department or its providers.
26 (b) "Sexual activity" means:
27 1. The oral, anal, or vaginal penetration by, or union
28 with, the sexual organ of another or the anal or vaginal
29 penetration of another by any other object;
30 2. Intentionally touching in a lewd or lascivious
31 manner the breasts, genitals, the genital area, or buttocks,

1 or the clothing covering them, of a person, or forcing or
2 enticing a person to touch the perpetrator;
3 3. Intentionally masturbating in the presence of
4 another person;
5 4. Intentionally exposing the genitals in a lewd or
6 lascivious manner in the presence of another person; or
7 5. Intentionally committing any other sexual act that
8 does not involve actual physical or sexual contact with the
9 victim, including, but not limited to, sadomasochistic abuse,
10 sexual bestiality, or the simulation of any act involving
11 sexual activity in the presence of a victim.
12 (c) "Sexual misconduct" means any sexual activity
13 between an employee and a patient, regardless of the consent
14 of the patient. The term does not include an act done for a
15 bona fide medical purpose or an internal search conducted in
16 the lawful performance of duty by an employee.
17 (2) An employee who engages in sexual misconduct with
18 a patient who:
19 (a) Is in the custody of the department; or
20 (b) Resides in a receiving facility as defined in s.
21 394.455(26) or a treatment facility as defined in s.
22 394.455(30),
23
24 commits a felony of the second degree, punishable as provided
25 in s. 775.082, s. 775.083, or s. 775.084. An employee may be
26 found guilty of violating this subsection without having
27 committed the crime of sexual battery.
28 (3) The consent of the patient to sexual activity is
29 not a defense to prosecution under this section.
30 (4) This section does not apply to an employee who:
31 (a) Is legally married to the patient; or

1 (b) Had no reason to believe that the person with whom
2 the employee engaged in sexual misconduct is a patient
3 receiving services as described in subsection (2).
4 (5) An employee who witnesses sexual misconduct, or
5 who otherwise knows or has reasonable cause to suspect that a
6 person has engaged in sexual misconduct, shall immediately
7 report the incident to the department's central abuse hotline
8 and to law enforcement. Such employee shall also prepare,
9 date, and sign an independent report that specifically
10 describes the nature of the sexual misconduct, the location
11 and time of the incident, and the persons involved. The
12 employee shall deliver the report to the supervisor or program
13 director, who is responsible for providing copies to the
14 department's inspector general. The inspector general shall
15 immediately conduct an appropriate administrative
16 investigation, and, if there is probable cause to believe that
17 sexual misconduct has occurred, the inspector general shall
18 notify the state attorney in the circuit in which the incident
19 occurred.
20 (6)(a) Any person who is required to make a report
21 under this section and who knowingly or willfully fails to do
22 so, or who knowingly or willfully prevents another person from
23 doing so, commits a misdemeanor of the first degree,
24 punishable as provided in s. 775.082 or s. 775.083.
25 (b) Any person who knowingly or willfully submits
26 inaccurate, incomplete, or untruthful information with respect
27 to a report required under this section commits a misdemeanor
28 of the first degree, punishable as provided in s. 775.082 or
29 s. 775.083.
30 (c) Any person who knowingly or willfully coerces or
31 threatens any other person with the intent to alter testimony

1 or a written report regarding an incident of sexual misconduct
2 commits a felony of the third degree, punishable as provided
3 in s. 775.082, s. 775.083, or s. 775.084.
4 (7) The provisions and penalties set forth in this
5 section are in addition to any other civil, administrative, or
6 criminal action provided by law which may be applied against
7 an employee.
8 Section 19. Section 916.1075, Florida Statutes, is
9 created to read:
10 916.1075 Sexual misconduct prohibited; reporting
11 required; penalties.--
12 (1) As used in this section, the term:
13 (a) "Employee" includes any person under contract with
14 the department or the Agency for Persons with Disabilities and
15 any paid staff member, volunteer, or intern of the department
16 or the Agency for Persons with Disabilities or any person
17 under contract with the department or the Agency for Persons
18 with Disabilities or any person providing care or support to a
19 client on behalf of the department or the Agency for Persons
20 with Disabilities or their providers.
21 (b) "Sexual activity" means:
22 1. The oral, anal, or vaginal penetration by, or union
23 with, the sexual organ of another or the anal or vaginal
24 penetration of another by any other object;
25 2. Intentionally touching in a lewd or lascivious
26 manner the breasts, genitals, the genital area, or buttocks,
27 or the clothing covering them, of a person, or forcing or
28 enticing a person to touch the perpetrator;
29 3. Intentionally masturbating in the presence of
30 another person;
31 4. Intentionally exposing the genitals in a lewd or

1 lascivious manner in the presence of another person; or
2 5. Intentionally committing any other sexual act that
3 does not involve actual physical or sexual contact with the
4 victim, including, but not limited to, sadomasochistic abuse,
5 sexual bestiality, or the simulation of any act involving
6 sexual activity in the presence of a victim.
7 (c) "Sexual misconduct" means any sexual activity
8 between an employee and a client, regardless of the consent of
9 the client. The term does not include an act done for a bona
10 fide medical purpose or an internal search conducted in the
11 lawful performance of duty by an employee.
12 (2) An employee who engages in sexual misconduct with
13 a client who resides in a civil or forensic state mental
14 health treatment facility commits a felony of the second
15 degree, punishable as provided in s. 775.082, s. 775.083, or
16 s. 775.084. An employee may be found guilty of violating this
17 subsection without having committed the crime of sexual
18 battery.
19 (3) The consent of the client to sexual activity is
20 not a defense to prosecution under this section.
21 (4) This section does not apply to an employee who:
22 (a) Is legally married to the client; or
23 (b) Had no reason to believe that the person with whom
24 the employee engaged in sexual misconduct is a client
25 receiving services as described in subsection (2).
26 (5) An employee who witnesses sexual misconduct, or
27 who otherwise knows or has reasonable cause to suspect that a
28 person has engaged in sexual misconduct, shall immediately
29 report the incident to the department's central abuse hotline
30 or law enforcement. Such employee shall also prepare, date,
31 and sign an independent report that specifically describes the

1 nature of the sexual misconduct, the location and time of the
2 incident, and the persons involved. The employee shall deliver
3 the report to the supervisor or program director, who is
4 responsible for providing copies to either the department's or
5 Agency for Persons with Disabilities' inspector general as
6 appropriate. The inspector general shall immediately conduct
7 an appropriate administrative investigation, and, if there is
8 probable cause to believe that sexual misconduct has occurred,
9 the inspector general shall notify the state attorney in the
10 circuit in which the incident occurred.
11 (6)(a) Any person who is required to make a report
12 under this section and who knowingly or willfully fails to do
13 so, or who knowingly or willfully prevents another person from
14 doing so, commits a misdemeanor of the first degree,
15 punishable as provided in s. 775.082 or s. 775.083.
16 (b) Any person who knowingly or willfully submits
17 inaccurate, incomplete, or untruthful information with respect
18 to a report required under this section commits a misdemeanor
19 of the first degree, punishable as provided in s. 775.082 or
20 s. 775.083.
21 (c) Any person who knowingly or willfully coerces or
22 threatens any other person with the intent to alter testimony
23 or a written report regarding an incident of sexual misconduct
24 commits a felony of the third degree, punishable as provided
25 in s. 775.082, s. 775.083, or s. 775.084.
26 (7) The provisions and penalties set forth in this
27 section are in addition to any other civil, administrative, or
28 criminal action provided by law which may be applied against
29 an employee.
30 Section 20. Subsection (2) of section 435.03, Florida
31 Statutes, is amended to read:

1 435.03 Level 1 screening standards.--
2 (2) Any person for whom employment screening is
3 required by statute must not have been found guilty of,
4 regardless of adjudication, or entered a plea of nolo
5 contendere or guilty to, any offense prohibited under any of
6 the following provisions of the Florida Statutes or under any
7 similar statute of another jurisdiction:
8 (a) Section 393.135, relating to sexual misconduct
9 with certain developmentally disabled clients and reporting of
10 such sexual misconduct.
11 (b) Section 394.4593, relating to sexual misconduct
12 with certain mental health patients and reporting of such
13 sexual misconduct.
14 (c) ~~(a)~~ Section 415.111, relating to abuse, neglect, or
15 exploitation of a vulnerable adult.
16 (d) ~~(b)~~ Section 782.04, relating to murder.
17 (e) ~~(c)~~ Section 782.07, relating to manslaughter,
18 aggravated manslaughter of an elderly person or disabled
19 adult, or aggravated manslaughter of a child.
20 (f) ~~(d)~~ Section 782.071, relating to vehicular
21 homicide.
22 (g) ~~(e)~~ Section 782.09, relating to killing of an
23 unborn child by injury to the mother.
24 (h) ~~(f)~~ Section 784.011, relating to assault, if the
25 victim of the offense was a minor.
26 (i) ~~(g)~~ Section 784.021, relating to aggravated
27 assault.
28 (j) ~~(h)~~ Section 784.03, relating to battery, if the
29 victim of the offense was a minor.
30 (k) ~~(i)~~ Section 784.045, relating to aggravated
31 battery.

1 (l) ~~(j)~~ Section 787.01, relating to kidnapping.
2 (m) ~~(k)~~ Section 787.02, relating to false imprisonment.
3 (n) ~~(l)~~ Section 794.011, relating to sexual battery.
4 (o) ~~(m)~~ Former s. 794.041, relating to prohibited acts
5 of persons in familial or custodial authority.
6 (p) ~~(n)~~ Chapter 796, relating to prostitution.
7 (q) ~~(o)~~ Section 798.02, relating to lewd and lascivious
8 behavior.
9 (r) ~~(p)~~ Chapter 800, relating to lewdness and indecent
10 exposure.
11 (s) ~~(q)~~ Section 806.01, relating to arson.
12 (t) ~~(r)~~ Chapter 812, relating to theft, robbery, and
13 related crimes, if the offense was a felony.
14 (u) ~~(s)~~ Section 817.563, relating to fraudulent sale of
15 controlled substances, only if the offense was a felony.
16 (v) ~~(t)~~ Section 825.102, relating to abuse, aggravated
17 abuse, or neglect of an elderly person or disabled adult.
18 (w) ~~(u)~~ Section 825.1025, relating to lewd or
19 lascivious offenses committed upon or in the presence of an
20 elderly person or disabled adult.
21 (x) ~~(v)~~ Section 825.103, relating to exploitation of an
22 elderly person or disabled adult, if the offense was a felony.
23 (y) ~~(w)~~ Section 826.04, relating to incest.
24 (z) ~~(x)~~ Section 827.03, relating to child abuse,
25 aggravated child abuse, or neglect of a child.
26 (aa) ~~(y)~~ Section 827.04, relating to contributing to
27 the delinquency or dependency of a child.
28 (bb) ~~(z)~~ Former s. 827.05, relating to negligent
29 treatment of children.
30 (cc) ~~(aa)~~ Section 827.071, relating to sexual
31 performance by a child.

1 (dd) ~~(bb)~~ Chapter 847, relating to obscene literature.
2 (ee) ~~(cc)~~ Chapter 893, relating to drug abuse
3 prevention and control, only if the offense was a felony or if
4 any other person involved in the offense was a minor.
5 (ff) Section 916.0175, relating to sexual misconduct
6 with certain forensic clients and reporting of such sexual
7 misconduct.
8 Section 21. Subsection (2) of section 435.04, Florida
9 Statutes, is amended to read:
10 435.04 Level 2 screening standards.--
11 (2) The security background investigations under this
12 section must ensure that no persons subject to the provisions
13 of this section have been found guilty of, regardless of
14 adjudication, or entered a plea of nolo contendere or guilty
15 to, any offense prohibited under any of the following
16 provisions of the Florida Statutes or under any similar
17 statute of another jurisdiction:
18 (a) Section 393.135, relating to sexual misconduct
19 with certain developmentally disabled clients and reporting of
20 such sexual misconduct.
21 (b) Section 394.4593, relating to sexual misconduct
22 with certain mental health patients and reporting of such
23 sexual misconduct.
24 (c) ~~(a)~~ Section 415.111, relating to adult abuse,
25 neglect, or exploitation of aged persons or disabled adults.
26 (d) ~~(b)~~ Section 782.04, relating to murder.
27 (e) ~~(c)~~ Section 782.07, relating to manslaughter,
28 aggravated manslaughter of an elderly person or disabled
29 adult, or aggravated manslaughter of a child.
30 (f) ~~(d)~~ Section 782.071, relating to vehicular
31 homicide.

1 (g) ~~(e)~~ Section 782.09, relating to killing of an
2 unborn child by injury to the mother.
3 (h) ~~(f)~~ Section 784.011, relating to assault, if the
4 victim of the offense was a minor.
5 (i) ~~(g)~~ Section 784.021, relating to aggravated
6 assault.
7 (j) ~~(h)~~ Section 784.03, relating to battery, if the
8 victim of the offense was a minor.
9 (k) ~~(i)~~ Section 784.045, relating to aggravated
10 battery.
11 (l) ~~(j)~~ Section 784.075, relating to battery on a
12 detention or commitment facility staff.
13 (m) ~~(k)~~ Section 787.01, relating to kidnapping.
14 (n) ~~(l)~~ Section 787.02, relating to false imprisonment.
15 (o) ~~(m)~~ Section 787.04(2), relating to taking,
16 enticing, or removing a child beyond the state limits with
17 criminal intent pending custody proceedings.
18 (p) ~~(n)~~ Section 787.04(3), relating to carrying a child
19 beyond the state lines with criminal intent to avoid producing
20 a child at a custody hearing or delivering the child to the
21 designated person.
22 (q) ~~(o)~~ Section 790.115(1), relating to exhibiting
23 firearms or weapons within 1,000 feet of a school.
24 (r) ~~(p)~~ Section 790.115(2)(b), relating to possessing
25 an electric weapon or device, destructive device, or other
26 weapon on school property.
27 (s) ~~(q)~~ Section 794.011, relating to sexual battery.
28 (t) ~~(r)~~ Former s. 794.041, relating to prohibited acts
29 of persons in familial or custodial authority.
30 (u) ~~(s)~~ Chapter 796, relating to prostitution.
31 (v) ~~(t)~~ Section 798.02, relating to lewd and lascivious

1 behavior.

2 (w) {u} Chapter 800, relating to lewdness and indecent
3 exposure.

4 (x) {v} Section 806.01, relating to arson.

5 (y) {w} Chapter 812, relating to theft, robbery, and
6 related crimes, if the offense is a felony.

7 (z) {x} Section 817.563, relating to fraudulent sale of
8 controlled substances, only if the offense was a felony.

9 (aa) {y} Section 825.102, relating to abuse, aggravated
10 abuse, or neglect of an elderly person or disabled adult.

11 (bb) {z} Section 825.1025, relating to lewd or
12 lascivious offenses committed upon or in the presence of an
13 elderly person or disabled adult.

14 (cc) {aa} Section 825.103, relating to exploitation of
15 an elderly person or disabled adult, if the offense was a
16 felony.

17 (dd) {bb} Section 826.04, relating to incest.

18 (ee) {cc} Section 827.03, relating to child abuse,
19 aggravated child abuse, or neglect of a child.

20 (ff) {dd} Section 827.04, relating to contributing to
21 the delinquency or dependency of a child.

22 (gg) {ee} Former s. 827.05, relating to negligent
23 treatment of children.

24 (hh) {ff} Section 827.071, relating to sexual
25 performance by a child.

26 (ii) {gg} Section 843.01, relating to resisting arrest
27 with violence.

28 (jj) {hh} Section 843.025, relating to depriving a law
29 enforcement, correctional, or correctional probation officer
30 means of protection or communication.

31 (kk) {ii} Section 843.12, relating to aiding in an

1 escape.

2 (ll) ~~(jj)~~ Section 843.13, relating to aiding in the
3 escape of juvenile inmates in correctional institutions.

4 (mm) ~~(kk)~~ Chapter 847, relating to obscene literature.

5 (nn) ~~(ll)~~ Section 874.05(1), relating to encouraging or
6 recruiting another to join a criminal gang.

7 (oo) ~~(mm)~~ Chapter 893, relating to drug abuse
8 prevention and control, only if the offense was a felony or if
9 any other person involved in the offense was a minor.

10 (pp) Section 916.0175, relating to sexual misconduct
11 with certain forensic clients and reporting of such sexual
12 misconduct.

13 (qq) ~~(nn)~~ Section 944.35(3), relating to inflicting
14 cruel or inhuman treatment on an inmate resulting in great
15 bodily harm.

16 (rr) ~~(oo)~~ Section 944.46, relating to harboring,
17 concealing, or aiding an escaped prisoner.

18 (ss) ~~(pp)~~ Section 944.47, relating to introduction of
19 contraband into a correctional facility.

20 (tt) ~~(qq)~~ Section 985.4045, relating to sexual
21 misconduct in juvenile justice programs.

22 (uu) ~~(rr)~~ Section 985.4046, relating to contraband
23 introduced into detention facilities.

24 Section 22. Section 943.0585, Florida Statutes, is
25 amended to read:

26 943.0585 Court-ordered expunction of criminal history
27 records.--The courts of this state have jurisdiction over
28 their own procedures, including the maintenance, expunction,
29 and correction of judicial records containing criminal history
30 information to the extent such procedures are not inconsistent
31 with the conditions, responsibilities, and duties established

1 by this section. Any court of competent jurisdiction may order
2 a criminal justice agency to expunge the criminal history
3 record of a minor or an adult who complies with the
4 requirements of this section. The court shall not order a
5 criminal justice agency to expunge a criminal history record
6 until the person seeking to expunge a criminal history record
7 has applied for and received a certificate of eligibility for
8 expunction pursuant to subsection (2). A criminal history
9 record that relates to a violation of s. 393.135, s. 394.4593,
10 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.
11 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
12 s. 847.0145, s. 893.135, s. 916.1075, or a violation
13 enumerated in s. 907.041 may not be expunged, without regard
14 to whether adjudication was withheld, if the defendant was
15 found guilty of or pled guilty or nolo contendere to the
16 offense, or if the defendant, as a minor, was found to have
17 committed, or pled guilty or nolo contendere to committing,
18 the offense as a delinquent act. The court may only order
19 expunction of a criminal history record pertaining to one
20 arrest or one incident of alleged criminal activity, except as
21 provided in this section. The court may, at its sole
22 discretion, order the expunction of a criminal history record
23 pertaining to more than one arrest if the additional arrests
24 directly relate to the original arrest. If the court intends
25 to order the expunction of records pertaining to such
26 additional arrests, such intent must be specified in the
27 order. A criminal justice agency may not expunge any record
28 pertaining to such additional arrests if the order to expunge
29 does not articulate the intention of the court to expunge a
30 record pertaining to more than one arrest. This section does
31 not prevent the court from ordering the expunction of only a

1 portion of a criminal history record pertaining to one arrest
2 or one incident of alleged criminal activity. Notwithstanding
3 any law to the contrary, a criminal justice agency may comply
4 with laws, court orders, and official requests of other
5 jurisdictions relating to expunction, correction, or
6 confidential handling of criminal history records or
7 information derived therefrom. This section does not confer
8 any right to the expunction of any criminal history record,
9 and any request for expunction of a criminal history record
10 may be denied at the sole discretion of the court.
11 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY
12 RECORD.--Each petition to a court to expunge a criminal
13 history record is complete only when accompanied by:
14 (a) A certificate of eligibility for expunction issued
15 by the department pursuant to subsection (2).
16 (b) The petitioner's sworn statement attesting that
17 the petitioner:
18 1. Has never, prior to the date on which the petition
19 is filed, been adjudicated guilty of a criminal offense or
20 comparable ordinance violation or adjudicated delinquent for
21 committing a felony or a misdemeanor specified in s.
22 943.051(3)(b).
23 2. Has not been adjudicated guilty of, or adjudicated
24 delinquent for committing, any of the acts stemming from the
25 arrest or alleged criminal activity to which the petition
26 pertains.
27 3. Has never secured a prior sealing or expunction of
28 a criminal history record under this section, former s.
29 893.14, former s. 901.33, or former s. 943.058, or from any
30 jurisdiction outside the state.
31 4. Is eligible for such an expunction to the best of

his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction.

3. That the criminal history record does not relate to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,

1 s. 893.135, s. 916.1075, or a violation enumerated in s.
2 907.041, where the defendant was found guilty of, or pled
3 guilty or nolo contendere to any such offense, or that the
4 defendant, as a minor, was found to have committed, or pled
5 guilty or nolo contendere to committing, such an offense as a
6 delinquent act, without regard to whether adjudication was
7 withheld.
8 (b) Remits a $75 processing fee to the department for
9 placement in the Department of Law Enforcement Operating Trust
10 Fund, unless such fee is waived by the executive director.
11 (c) Has submitted to the department a certified copy
12 of the disposition of the charge to which the petition to
13 expunge pertains.
14 (d) Has never, prior to the date on which the
15 application for a certificate of eligibility is filed, been
16 adjudicated guilty of a criminal offense or comparable
17 ordinance violation or adjudicated delinquent for committing a
18 felony or a misdemeanor specified in s. 943.051(3)(b).
19 (e) Has not been adjudicated guilty of, or adjudicated
20 delinquent for committing, any of the acts stemming from the
21 arrest or alleged criminal activity to which the petition to
22 expunge pertains.
23 (f) Has never secured a prior sealing or expunction of
24 a criminal history record under this section, former s.
25 893.14, former s. 901.33, or former s. 943.058.
26 (g) Is no longer under court supervision applicable to
27 the disposition of the arrest or alleged criminal activity to
28 which the petition to expunge pertains.
29 (h) Is not required to wait a minimum of 10 years
30 prior to being eligible for an expunction of such records
31 because all charges related to the arrest or criminal activity

1 to which the petition to expunge pertains were dismissed prior
2 to trial, adjudication, or the withholding of adjudication.
3 Otherwise, such criminal history record must be sealed under
4 this section, former s. 893.14, former s. 901.33, or former s.
5 943.058 for at least 10 years before such record is eligible
6 for expunction.
7 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--
8 (a) In judicial proceedings under this section, a copy
9 of the completed petition to expunge shall be served upon the
10 appropriate state attorney or the statewide prosecutor and
11 upon the arresting agency; however, it is not necessary to
12 make any agency other than the state a party. The appropriate
13 state attorney or the statewide prosecutor and the arresting
14 agency may respond to the court regarding the completed
15 petition to expunge.
16 (b) If relief is granted by the court, the clerk of
17 the court shall certify copies of the order to the appropriate
18 state attorney or the statewide prosecutor and the arresting
19 agency. The arresting agency is responsible for forwarding the
20 order to any other agency to which the arresting agency
21 disseminated the criminal history record information to which
22 the order pertains. The department shall forward the order to
23 expunge to the Federal Bureau of Investigation. The clerk of
24 the court shall certify a copy of the order to any other
25 agency which the records of the court reflect has received the
26 criminal history record from the court.
27 (c) For an order to expunge entered by a court prior
28 to July 1, 1992, the department shall notify the appropriate
29 state attorney or statewide prosecutor of an order to expunge
30 which is contrary to law because the person who is the subject
31 of the record has previously been convicted of a crime or

1 comparable ordinance violation or has had a prior criminal
2 history record sealed or expunged. Upon receipt of such
3 notice, the appropriate state attorney or statewide prosecutor
4 shall take action, within 60 days, to correct the record and
5 petition the court to void the order to expunge. The
6 department shall seal the record until such time as the order
7 is voided by the court.
8 (d) On or after July 1, 1992, the department or any
9 other criminal justice agency is not required to act on an
10 order to expunge entered by a court when such order does not
11 comply with the requirements of this section. Upon receipt of
12 such an order, the department must notify the issuing court,
13 the appropriate state attorney or statewide prosecutor, the
14 petitioner or the petitioner's attorney, and the arresting
15 agency of the reason for noncompliance. The appropriate state
16 attorney or statewide prosecutor shall take action within 60
17 days to correct the record and petition the court to void the
18 order. No cause of action, including contempt of court, shall
19 arise against any criminal justice agency for failure to
20 comply with an order to expunge when the petitioner for such
21 order failed to obtain the certificate of eligibility as
22 required by this section or such order does not otherwise
23 comply with the requirements of this section.
24 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
25 criminal history record of a minor or an adult which is
26 ordered expunged by a court of competent jurisdiction pursuant
27 to this section must be physically destroyed or obliterated by
28 any criminal justice agency having custody of such record;
29 except that any criminal history record in the custody of the
30 department must be retained in all cases. A criminal history
31 record ordered expunged that is retained by the department is

1 confidential and exempt from the provisions of s. 119.07(1)
2 and s. 24(a), Art. I of the State Constitution and not
3 available to any person or entity except upon order of a court
4 of competent jurisdiction. A criminal justice agency may
5 retain a notation indicating compliance with an order to
6 expunge.
7 (a) The person who is the subject of a criminal
8 history record that is expunged under this section or under
9 other provisions of law, including former s. 893.14, former s.
10 901.33, and former s. 943.058, may lawfully deny or fail to
11 acknowledge the arrests covered by the expunged record, except
12 when the subject of the record:
13 1. Is a candidate for employment with a criminal
14 justice agency;
15 2. Is a defendant in a criminal prosecution;
16 3. Concurrently or subsequently petitions for relief
17 under this section or s. 943.059;
18 4. Is a candidate for admission to The Florida Bar;
19 5. Is seeking to be employed or licensed by or to
20 contract with the Department of Children and Family Services
21 or the Department of Juvenile Justice or to be employed or
22 used by such contractor or licensee in a sensitive position
23 having direct contact with children, the developmentally
24 disabled, the aged, or the elderly as provided in s.
25 110.1127(3), s. 393.063 ~~s. 393.063(15)~~, s. 394.4572(1), s.
26 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
27 415.102(4), s. 916.106(10) and (13), s. 985.407, or chapter
28 400; or
29 6. Is seeking to be employed or licensed by the Office
30 of Teacher Education, Certification, Staff Development, and
31 Professional Practices of the Department of Education, any

1 district school board, or any local governmental entity that
2 licenses child care facilities.
3 (b) Subject to the exceptions in paragraph (a), a
4 person who has been granted an expunction under this section,
5 former s. 893.14, former s. 901.33, or former s. 943.058 may
6 not be held under any provision of law of this state to commit
7 perjury or to be otherwise liable for giving a false statement
8 by reason of such person's failure to recite or acknowledge an
9 expunged criminal history record.
10 (c) Information relating to the existence of an
11 expunged criminal history record which is provided in
12 accordance with paragraph (a) is confidential and exempt from
13 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
14 State Constitution, except that the department shall disclose
15 the existence of a criminal history record ordered expunged to
16 the entities set forth in subparagraphs (a)1., 4., 5., and 6.
17 for their respective licensing and employment purposes, and to
18 criminal justice agencies for their respective criminal
19 justice purposes. It is unlawful for any employee of an entity
20 set forth in subparagraph (a)1., subparagraph (a)4.,
21 subparagraph (a)5., or subparagraph (a)6. to disclose
22 information relating to the existence of an expunged criminal
23 history record of a person seeking employment or licensure
24 with such entity or contractor, except to the person to whom
25 the criminal history record relates or to persons having
26 direct responsibility for employment or licensure decisions.
27 Any person who violates this paragraph commits a misdemeanor
28 of the first degree, punishable as provided in s. 775.082 or
29 s. 775.083.
30 (5) STATUTORY REFERENCES.--Any reference to any other
31 chapter, section, or subdivision of the Florida Statutes in

1 this section constitutes a general reference under the
2 doctrine of incorporation by reference.
3 Section 23. Section 943.059, Florida Statutes, is
4 amended to read:
5 943.059 Court-ordered sealing of criminal history
6 records.--The courts of this state shall continue to have
7 jurisdiction over their own procedures, including the
8 maintenance, sealing, and correction of judicial records
9 containing criminal history information to the extent such
10 procedures are not inconsistent with the conditions,
11 responsibilities, and duties established by this section. Any
12 court of competent jurisdiction may order a criminal justice
13 agency to seal the criminal history record of a minor or an
14 adult who complies with the requirements of this section. The
15 court shall not order a criminal justice agency to seal a
16 criminal history record until the person seeking to seal a
17 criminal history record has applied for and received a
18 certificate of eligibility for sealing pursuant to subsection
19 (2). A criminal history record that relates to a violation of
20 s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03,
21 s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839,
22 s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
23 916.1075, or a violation enumerated in s. 907.041 may not be
24 sealed, without regard to whether adjudication was withheld,
25 if the defendant was found guilty of or pled guilty or nolo
26 contendere to the offense, or if the defendant, as a minor,
27 was found to have committed or pled guilty or nolo contendere
28 to committing the offense as a delinquent act. The court may
29 only order sealing of a criminal history record pertaining to
30 one arrest or one incident of alleged criminal activity,
31 except as provided in this section. The court may, at its sole

1 discretion, order the sealing of a criminal history record
2 pertaining to more than one arrest if the additional arrests
3 directly relate to the original arrest. If the court intends
4 to order the sealing of records pertaining to such additional
5 arrests, such intent must be specified in the order. A
6 criminal justice agency may not seal any record pertaining to
7 such additional arrests if the order to seal does not
8 articulate the intention of the court to seal records
9 pertaining to more than one arrest. This section does not
10 prevent the court from ordering the sealing of only a portion
11 of a criminal history record pertaining to one arrest or one
12 incident of alleged criminal activity. Notwithstanding any law
13 to the contrary, a criminal justice agency may comply with
14 laws, court orders, and official requests of other
15 jurisdictions relating to sealing, correction, or confidential
16 handling of criminal history records or information derived
17 therefrom. This section does not confer any right to the
18 sealing of any criminal history record, and any request for
19 sealing a criminal history record may be denied at the sole
20 discretion of the court.
21 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each
22 petition to a court to seal a criminal history record is
23 complete only when accompanied by:
24 (a) A certificate of eligibility for sealing issued by
25 the department pursuant to subsection (2).
26 (b) The petitioner's sworn statement attesting that
27 the petitioner:
28 1. Has never, prior to the date on which the petition
29 is filed, been adjudicated guilty of a criminal offense or
30 comparable ordinance violation or adjudicated delinquent for
31 committing a felony or a misdemeanor specified in s.

1 943.051(3)(b).
2 2. Has not been adjudicated guilty of or adjudicated
3 delinquent for committing any of the acts stemming from the
4 arrest or alleged criminal activity to which the petition to
5 seal pertains.
6 3. Has never secured a prior sealing or expunction of
7 a criminal history record under this section, former s.
8 893.14, former s. 901.33, former s. 943.058, or from any
9 jurisdiction outside the state.
10 4. Is eligible for such a sealing to the best of his
11 or her knowledge or belief and does not have any other
12 petition to seal or any petition to expunge pending before any
13 court.
14
15 Any person who knowingly provides false information on such
16 sworn statement to the court commits a felony of the third
17 degree, punishable as provided in s. 775.082, s. 775.083, or
18 s. 775.084.
19 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
20 petitioning the court to seal a criminal history record, a
21 person seeking to seal a criminal history record shall apply
22 to the department for a certificate of eligibility for
23 sealing. The department shall, by rule adopted pursuant to
24 chapter 120, establish procedures pertaining to the
25 application for and issuance of certificates of eligibility
26 for sealing. The department shall issue a certificate of
27 eligibility for sealing to a person who is the subject of a
28 criminal history record provided that such person:
29 (a) Has submitted to the department a certified copy
30 of the disposition of the charge to which the petition to seal
31 pertains.

1 (b) Remits a $75 processing fee to the department for
2 placement in the Department of Law Enforcement Operating Trust
3 Fund, unless such fee is waived by the executive director.
4 (c) Has never, prior to the date on which the
5 application for a certificate of eligibility is filed, been
6 adjudicated guilty of a criminal offense or comparable
7 ordinance violation or adjudicated delinquent for committing a
8 felony or a misdemeanor specified in s. 943.051(3)(b).
9 (d) Has not been adjudicated guilty of or adjudicated
10 delinquent for committing any of the acts stemming from the
11 arrest or alleged criminal activity to which the petition to
12 seal pertains.
13 (e) Has never secured a prior sealing or expunction of
14 a criminal history record under this section, former s.
15 893.14, former s. 901.33, or former s. 943.058.
16 (f) Is no longer under court supervision applicable to
17 the disposition of the arrest or alleged criminal activity to
18 which the petition to seal pertains.
19 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.--
20 (a) In judicial proceedings under this section, a copy
21 of the completed petition to seal shall be served upon the
22 appropriate state attorney or the statewide prosecutor and
23 upon the arresting agency; however, it is not necessary to
24 make any agency other than the state a party. The appropriate
25 state attorney or the statewide prosecutor and the arresting
26 agency may respond to the court regarding the completed
27 petition to seal.
28 (b) If relief is granted by the court, the clerk of
29 the court shall certify copies of the order to the appropriate
30 state attorney or the statewide prosecutor and to the
31 arresting agency. The arresting agency is responsible for

1 forwarding the order to any other agency to which the
2 arresting agency disseminated the criminal history record
3 information to which the order pertains. The department shall
4 forward the order to seal to the Federal Bureau of
5 Investigation. The clerk of the court shall certify a copy of
6 the order to any other agency which the records of the court
7 reflect has received the criminal history record from the
8 court.
9 (c) For an order to seal entered by a court prior to
10 July 1, 1992, the department shall notify the appropriate
11 state attorney or statewide prosecutor of any order to seal
12 which is contrary to law because the person who is the subject
13 of the record has previously been convicted of a crime or
14 comparable ordinance violation or has had a prior criminal
15 history record sealed or expunged. Upon receipt of such
16 notice, the appropriate state attorney or statewide prosecutor
17 shall take action, within 60 days, to correct the record and
18 petition the court to void the order to seal. The department
19 shall seal the record until such time as the order is voided
20 by the court.
21 (d) On or after July 1, 1992, the department or any
22 other criminal justice agency is not required to act on an
23 order to seal entered by a court when such order does not
24 comply with the requirements of this section. Upon receipt of
25 such an order, the department must notify the issuing court,
26 the appropriate state attorney or statewide prosecutor, the
27 petitioner or the petitioner's attorney, and the arresting
28 agency of the reason for noncompliance. The appropriate state
29 attorney or statewide prosecutor shall take action within 60
30 days to correct the record and petition the court to void the
31 order. No cause of action, including contempt of court, shall

1 arise against any criminal justice agency for failure to
2 comply with an order to seal when the petitioner for such
3 order failed to obtain the certificate of eligibility as
4 required by this section or when such order does not comply
5 with the requirements of this section.
6 (e) An order sealing a criminal history record
7 pursuant to this section does not require that such record be
8 surrendered to the court, and such record shall continue to be
9 maintained by the department and other criminal justice
10 agencies.
11 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
12 criminal history record of a minor or an adult which is
13 ordered sealed by a court of competent jurisdiction pursuant
14 to this section is confidential and exempt from the provisions
15 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
16 and is available only to the person who is the subject of the
17 record, to the subject's attorney, to criminal justice
18 agencies for their respective criminal justice purposes, or to
19 those entities set forth in subparagraphs (a)1., 4., 5., and
20 6. for their respective licensing and employment purposes.
21 (a) The subject of a criminal history record sealed
22 under this section or under other provisions of law, including
23 former s. 893.14, former s. 901.33, and former s. 943.058, may
24 lawfully deny or fail to acknowledge the arrests covered by
25 the sealed record, except when the subject of the record:
26 1. Is a candidate for employment with a criminal
27 justice agency;
28 2. Is a defendant in a criminal prosecution;
29 3. Concurrently or subsequently petitions for relief
30 under this section or s. 943.0585;
31 4. Is a candidate for admission to The Florida Bar;

1 5. Is seeking to be employed or licensed by or to
2 contract with the Department of Children and Family Services
3 or the Department of Juvenile Justice or to be employed or
4 used by such contractor or licensee in a sensitive position
5 having direct contact with children, the developmentally
6 disabled, the aged, or the elderly as provided in s.
7 110.1127(3), s. 393.063 ~~s. 393.063(15)~~, s. 394.4572(1), s.
8 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s.
9 415.102(4), s. 415.103, s. 916.106(10) and (13), s. 985.407,
10 or chapter 400; or
11 6. Is seeking to be employed or licensed by the Office
12 of Teacher Education, Certification, Staff Development, and
13 Professional Practices of the Department of Education, any
14 district school board, or any local governmental entity which
15 licenses child care facilities.
16 (b) Subject to the exceptions in paragraph (a), a
17 person who has been granted a sealing under this section,
18 former s. 893.14, former s. 901.33, or former s. 943.058 may
19 not be held under any provision of law of this state to commit
20 perjury or to be otherwise liable for giving a false statement
21 by reason of such person's failure to recite or acknowledge a
22 sealed criminal history record.
23 (c) Information relating to the existence of a sealed
24 criminal record provided in accordance with the provisions of
25 paragraph (a) is confidential and exempt from the provisions
26 of s. 119.07(1) and s. 24(a), Art. I of the State
27 Constitution, except that the department shall disclose the
28 sealed criminal history record to the entities set forth in
29 subparagraphs (a)1., 4., 5., and 6. for their respective
30 licensing and employment purposes. It is unlawful for any
31 employee of an entity set forth in subparagraph (a)1.,

1 subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.
2 to disclose information relating to the existence of a sealed
3 criminal history record of a person seeking employment or
4 licensure with such entity or contractor, except to the person
5 to whom the criminal history record relates or to persons
6 having direct responsibility for employment or licensure
7 decisions. Any person who violates the provisions of this
8 paragraph commits a misdemeanor of the first degree,
9 punishable as provided in s. 775.082 or s. 775.083.
10 (5) STATUTORY REFERENCES.--Any reference to any other
11 chapter, section, or subdivision of the Florida Statutes in
12 this section constitutes a general reference under the
13 doctrine of incorporation by reference.
14
15
16 ========== T I T L E A M E N D M E N T ==========
17 And the title is amended as follows:
18 On page 3, line 9, through
19 page 5, line 16, delete those lines
20
21 and insert:
22 creating ss. 393.135, 394.4593, and 916.1075,
23 F.S.; defining the terms "employee," "sexual
24 activity," and "sexual misconduct"; providing
25 that it is a second-degree felony for an
26 employee to engage in sexual misconduct with
27 certain developmentally disabled clients,
28 certain mental health patients, or certain
29 forensic clients; providing certain exceptions;
30 requiring certain employees to report sexual
31 misconduct to the central abuse hotline of the

1 department and to law enforcement; providing
2 for notification to the inspector general of
3 the department or agency; providing that it is
4 a first-degree misdemeanor to knowingly and
5 willfully fail to make a report as required, or
6 to prevent another from doing so, or to submit
7 inaccurate or untruthful information; providing
8 that it is a third-degree felony to coerce or
9 threaten another person to alter testimony or a
10 report with respect to an incident of sexual
11 misconduct; providing criminal penalties;
12 providing that the penalties are in addition to
13 other actions provided in law; amending s.
14 435.03, F.S.; expanding level 1 screening
15 standards to include criminal offenses related
16 to sexual misconduct with certain
17 developmentally disabled clients, mental health
18 patients, or forensic clients and the reporting
19 of such sexual misconduct; amending s. 435.04,
20 F.S.; expanding level 2 screening standards to
21 include the offenses related to sexual
22 misconduct with certain developmentally
23 disabled clients, mental health patients, or
24 forensic clients and the reporting of such
25 sexual misconduct; amending s. 943.0585, F.S.,
26 relating to court-ordered expunction of
27 criminal history records, for the purpose of
28 incorporating the amendment to s. 943.059,
29 F.S., in a reference thereto; providing that
30 certain criminal history records relating to
31 sexual misconduct with developmentally disabled

1 clients, mental health patients, or forensic
2 clients, or the reporting of such sexual
3 misconduct, shall not be expunged; providing
4 that the application for eligibility for
5 expunction certify that the criminal history
6 record does not relate to an offense involving
7 sexual misconduct with certain developmentally
8 disabled clients, mental health patients, or
9 forensic clients, or the reporting of such
10 sexual misconduct; conforming cross-references;
11 amending s. 943.059, F.S., relating to
12 court-ordered sealing of criminal history
13 records, for the purpose of incorporating the
14 amendment to s. 943.0585, F.S., in a reference
15 thereto; providing that certain criminal
16 history records relating to sexual misconduct
17 with developmentally disabled clients, mental
18 health patients, or forensic clients, or the
19 reporting of such sexual misconduct, shall not
20 be sealed; providing that the application for
21 eligibility for sealing certify that the
22 criminal history record does not relate to an
23 offense involving sexual misconduct with
24 certain developmentally disabled clients,
25 mental health patients, or forensic clients, or
26 the reporting of such sexual misconduct;
27 conforming cross-references;
28
29
30
31

Bill No. CS for SB 2808

Amendment No. 7 521642

CHAMBER ACTION

Senate House

JUDICIARY
DATE: 4/16/04
TIME: 4:58 pm

Senator Webster moved the following amendment:

Senate Amendment (with title amendment)

On page 164, line 13, through
page 175, line 23, delete those lines

and insert:

Section 86. (1) In the Department of Children and Family Services' Economic Self-Sufficiency Services Program Office, the department may provide its eligibility determination functions either with department staff or through contract with one or more private vendors, with the following restrictions:

(a) With the exception of information technology, a contract may not include a geographic area larger than a combined seven districts or combined three zones without the prior approval of the Legislative Budget Commission;

(b) All jobs made available through any contract must be located within the United States, with preference given to contractors whose jobs will be provided to residents of this state; and

1 (c) Department employees must provide the functions in
2 at least two districts or one zone.
3 (2) This section shall take effect upon this act
4 becoming a law.
5 Section 87. Subsection (3) of section 39.304, Florida
6 Statutes, is amended to read:
7 39.304 Photographs, medical examinations, X rays, and
8 medical treatment of abused, abandoned, or neglected child.--
9 (3) Any facility licensed under chapter 395 shall
10 provide to the department, its agent, a law enforcement
11 agency, or a child protection team that contracts with the
12 department any photograph or report on examinations made or X
13 rays taken under ~~pursuant to~~ this section, or copies thereof,
14 for the purpose of investigation or assessment of cases of
15 abuse, abandonment, neglect, or exploitation of children.
16 Section 88. Section 39.302, Florida Statutes, is
17 amended to read:
18 39.302 Protective investigations of institutional
19 child abuse, abandonment, or neglect.--
20 (1) The department shall conduct a child protective
21 investigation of each report of institutional child abuse,
22 abandonment, or neglect. Upon receipt of a report that
23 alleges that an employee or agent of the department, or any
24 other entity or person covered by s. 39.01(31) or (47), acting
25 in an official capacity, has committed an act of child abuse,
26 abandonment, or neglect, the department shall initiate a child
27 protective investigation within the timeframe established by
28 the central abuse hotline pursuant to s. 39.201(5).
29 (a) Upon initiation of the child protective
30 investigation, the department shall ~~and~~ orally notify the
31 appropriate ~~state attorney,~~ law enforcement agency~~,~~ and

1 licensing or oversight agency of the allegation of child
2 abuse, abandonment, or neglect. ~~These agencies shall~~
3 ~~immediately conduct~~ A joint investigation shall be conducted,
4 unless independent investigations are more feasible. When
5 conducting a joint investigation, these agencies shall be
6 entitled to full access to the information gathered by the
7 department in the course of the investigation, as allowed by
8 law.
9 (b) The department shall inform the owner or operator
10 of the facility of the report. When conducting investigations
11 onsite or having face-to-face interviews with the child, such
12 investigation visits shall be unannounced unless it is
13 determined by the department or its agent that such
14 unannounced visits would threaten the safety of the child. The
15 department shall notify the child's parent or legal custodian
16 of the allegation within 48 hours after commencement of the
17 investigation. If determined necessary or if there is a need
18 for further services, an on-site visit to the child's place of
19 residence shall be conducted as part of the protective
20 investigation. ~~When a facility is exempt from licensing, the~~
21 ~~department shall inform the owner or operator of the facility~~
22 ~~of the report. Each agency conducting a joint investigation~~
23 ~~shall be entitled to full access to the information gathered~~
24 ~~by the department in the course of the investigation. A~~
25 ~~protective investigation must include an onsite visit of the~~
26 ~~child's place of residence. In all cases, the department shall~~
27 ~~make a full written report to the state attorney within 3~~
28 ~~working days after making the oral report. A criminal~~
29 ~~investigation shall be coordinated, whenever possible, with~~
30 ~~the child protective investigation of the department. Any~~
31 ~~interested person who has information regarding the offenses~~

1 ~~described-in-this-subsection-may-forward-a-statement-to-the~~
2 ~~state-attorney-as-to-whether-prosecution-is-warranted-and~~
3 ~~appropriate.-Within-15-days-after-the-completion-of-the~~
4 ~~investigation,-the-state-attorney-shall-report-the-findings-to~~
5 ~~the-department-and-shall-include-in-such-report-a~~
6 ~~determination-of-whether-or-not-prosecution-is-justified-and~~
7 ~~appropriate-in-view-of-the-circumstances-of-the-specific-case.~~
8 (2)(a) If in the course of the child protective
9 investigation, the department finds that ~~a-subject-of-a~~
10 ~~report,-by-continued-contact-with-children-in-care,~~
11 ~~constitutes~~ a threatened harm to the physical health, mental
12 health, or welfare of the child continues to exist, the agency
13 or department responsible for the ongoing regulation or
14 oversight of the particular facility shall ensure that the
15 facility immediately implements the actions identified by the
16 department in order to respond to the immediate safety
17 concern. Such actions may include, but are not limited to,
18 restricting ~~children,-the-department-may-restrict~~ a subject's
19 access to the child ~~children~~ pending the outcome of the
20 investigation. The agency or department responsible for the
21 ongoing regulation or oversight of the facility shall ensure
22 that the facility continues the implemented action pending the
23 outcome of the investigation. The department or its agent
24 shall employ the least restrictive means necessary to
25 safeguard the physical health, mental health, and welfare of
26 the children in care. This authority applies ~~shall-apply~~ only
27 to a child protective investigation ~~investigations~~ in which
28 there is some evidence that child abuse, abandonment, or
29 neglect has occurred and must be authorized by the protective
30 investigative supervisor. A subject of a report whose access
31 to the child ~~children~~ in care has been restricted and a

1 facility that is required to implement an action to respond to
2 the immediate safety concern pursuant to this subsection are
3 ~~is~~ entitled to petition the circuit court for judicial review.
4 The court shall enter written findings of fact based upon the
5 preponderance of evidence that child abuse, abandonment, or
6 neglect did occur and that the department's restrictive action
7 ~~against-a-subject-of-the-report~~ was justified in order to
8 safeguard the physical health, mental health, and welfare of
9 the child ~~children~~ in care. The restrictive action of the
10 department shall be effective for no more than 90 days without
11 a judicial finding supporting the actions of the department.
12 (b) Upon completion of the department's child
13 protective investigation, the department may recommend
14 corrective action to the facility, and to the agency or
15 department with ongoing regulation or oversight, in order to
16 prevent further abusive acts. The department may also make
17 application to the circuit court for continued restrictive
18 action against any person necessary to safeguard the physical
19 health, mental health, and welfare of the children in care.
20 ~~(3)--Pursuant-to-the-restrictive-actions-described-in~~
21 ~~subsection-(2),-in-cases-of-institutional-abuse,-abandonment,~~
22 ~~or-neglect-in-which-the-removal-of-a-subject-of-a-report-will~~
23 ~~result-in-the-closure-of-the-facility,-and-when-requested-by~~
24 ~~the-owner-of-the-facility,-the-department-may-provide~~
25 ~~appropriate-personnel-to-assist-in-maintaining-the-operation~~
26 ~~of-the-facility.-The-department-may-provide-assistance-when-it~~
27 ~~can-be-demonstrated-by-the-owner-that-there-are-no-reasonable~~
28 ~~alternatives-to-such-action.-The-length-of-the-assistance~~
29 ~~shall-be-agreed-upon-by-the-owner-and-the-department,-however,~~
30 ~~the-assistance-shall-not-be-for-longer-than-the-course-of-the~~
31 ~~restrictive-action-imposed-pursuant-to-subsection-(2).---The~~

1 ~~owner-shall-reimburse-the-department-for-the-assistance-of~~
2 ~~personnel-provided.~~
3 (3) ~~(4)~~ The department shall notify the Florida local
4 advocacy council in the appropriate district of the department
5 as to every report of institutional child abuse, abandonment,
6 or neglect in the district in which a client of the department
7 is alleged or shown to have been abused, abandoned, or
8 neglected, which notification shall be made within 48 hours
9 after the department commences its investigation.
10 (4) ~~(5)~~ The department shall notify the state attorney
11 and the appropriate law enforcement agency of any case of
12 ~~other~~ child abuse, abandonment, or neglect ~~case~~ in which
13 criminal conduct is suspected or for any other reason, a
14 criminal investigation is deemed appropriate by the
15 department. A criminal investigation shall be coordinated,
16 whenever possible, with the child protective investigation of
17 the department.
18 ~~(6)--In-cases-of-institutional-child-abuse,~~
19 ~~abandonment,-or-neglect-in-which-the-multiplicity-of-reports~~
20 ~~of-abuse,-abandonment,-or-neglect-or-the-severity-of-the~~
21 ~~allegations-indicates-the-need-for-specialized-investigation~~
22 ~~by-the-department-in-order-to-afford-greater-safeguards-for~~
23 ~~the-physical-health,-mental-health,-and-welfare-of-the~~
24 ~~children-in-care,-the-department-shall-provide-a-team-of~~
25 ~~persons-specially-trained-in-the-areas-of-child-abuse,~~
26 ~~abandonment,-and-neglect-investigations,-diagnosis,-and~~
27 ~~treatment-to-assist-the-local-office-of-the-department-in~~
28 ~~expediting-its-investigation-and-in-making-recommendations-for~~
29 ~~restrictive-actions-and-to-assist-in-other-ways-deemed~~
30 ~~necessary-by-the-department-in-order-to-carry-out-the~~
31 ~~provisions-of-this-section.--The-specially-trained-team-shall~~

1 ~~also provide assistance to any investigation of the~~
2 ~~allegations by local law enforcement and the Department of Law~~
3 ~~Enforcement.~~
4 (5) The department shall adopt by rule procedures for
5 child protective investigations within each type of facility
6 subject to this section. The rule must include, but need not
7 be limited to, procedures for the conduct of investigations
8 within the facilities; the use of child safety assessments
9 that are specific to each broad category of institution; the
10 sharing of information among and collaboration between the
11 department, the facilities, and the licensing or oversight
12 agencies; and the implementation of this section.
13 Section 89. The Department of Children and Family
14 Services shall develop and adopt by rule minimum requirements
15 for hiring and training child protective staff. The rules
16 shall provide minimum requirements for:
17 (1) Education and experience for child protective
18 investigators and child protective investigative supervisors,
19 as recommended in the Protective Investigator Retention
20 Workgroup report dated December 31, 2003, and for screening
21 and hiring, including, but not limited to, exposure to the job
22 functions prior to actual employment, thorough background
23 checks, use of an effective characteristic-based screening
24 tool, and involvement of the supervisor in the selection
25 decision; and
26 (2) Training processes, which must include, but need
27 not be limited to, requirements for preservice training and
28 certification, requirements for local-service-area-specific
29 training that incorporates a strong on-the-job training
30 component and requires a protected caseload for newly hired
31 employees, and the provision of specialty or advanced

1 training, including training in the investigation of
2 institutional child abuse.
3 Section 90. The Department of Children and Family
4 Services shall submit a report by December 31, 2004, to the
5 Governor, the President of the Senate, and the Speaker of the
6 House of Representatives regarding the implementation of the
7 recommendations of Interim Project Report 2004-113 and the
8 Protective Investigator Retention Workgroup Report dated
9 December 31, 2003. Specifically, this report must contain:
10 (1) A full program design, as a pilot project, for an
11 alternative response system in Florida which is based, to the
12 extent possible, on the model recommended in the Protective
13 Investigator Retention Workgroup Report, including detailed
14 requirements of the multiple elements involved in the proposed
15 system, the expectations of each of the entities, possible
16 sites for the pilot project, and an evaluation component. This
17 alternative response system shall provide for different levels
18 of investigative activities, including a streamlined track, a
19 family assessment track, and a traditional investigative
20 track. The program design shall be developed in collaboration
21 with all potential stakeholders, including, but not limited
22 to, district protective investigative staff, the sheriffs'
23 offices conducting child protective investigations, and
24 community-based-care lead agencies.
25 (2) The results of an examination of the information
26 needed by the court at each stage of a dependency case and
27 recommendations for any revisions to the information that is
28 required to be provided or for revisions in the timing of the
29 submission of such information to the court. This examination
30 and development of recommendations shall be conducted jointly
31 with the Steering Committee of Families and Children of the

1 Supreme Court.
2 (3) The status of the development of rules to
3 institute minimum hiring and training requirements for child
4 protective staff.
5 (4) The actions taken to implement the remaining
6 recommendations of the Protective Investigative Retention
7 Workgroup.
8 Section 91. Subsections (3), (4), (5), and (6) of
9 section 61.21, Florida Statutes, are amended to read:
10 61.21 Parenting course authorized; fees; required
11 attendance authorized; contempt.--
12 (3) Each course provider offering a parenting course
13 pursuant to this section must be approved by the Department of
14 Children and Family Services. The provider and course must
15 comply with this section and the rules developed under this
16 section.
17 (a) The Department of Children and Family Services
18 shall provide each judicial circuit with a statewide list of
19 approved course providers and sites at which the parent
20 education and family stabilization course may be completed.
21 Each judicial circuit must make information regarding all
22 approved course providers available to all parents.
23 (b) Parent education and family stabilization course
24 providers may charge a reasonable fee for each course
25 participant. The Department of Children and Family Services
26 shall include on the list of approved course providers and
27 sites for each circuit at least one site in that circuit where
28 the parent education and family stabilization course may be
29 completed on a sliding fee scale, if available.
30 (c) The Department of Children and Family Services
31 shall include on the list of approved course providers,

1 without limitation as to the area of the state for which the
2 course is approved, a minimum of one statewide approved course
3 to be provided through the Internet and one statewide approved
4 course to be provided through correspondence. The purpose of
5 the Internet and correspondence courses is to ensure that the
6 parent education and stabilization course is available in the
7 home county of each state resident and to those out-of-state
8 persons subject to this section.
9 (d) The Department of Children and Family Services may
10 remove a provider from the list of approved course providers
11 for noncompliance with the requirements of this section or the
12 rules adopted under this section.
13 (e) The Department of Children and Family Services
14 shall adopt rules to implement subsections (2) and (3).
15 (4) ~~(3)~~ All parties to a dissolution of marriage
16 proceeding with minor children or a paternity action which
17 involves issues of parental responsibility shall be required
18 to complete the Parent Education and Family Stabilization
19 Course prior to the entry by the court of a final judgment.
20 The court may excuse a party from attending the parenting
21 course for good cause.
22 (5) ~~(4)~~ All parties required to complete a parenting
23 course under this section shall begin the course as
24 expeditiously as possible after filing for dissolution of
25 marriage and shall file proof of compliance with the court
26 prior to the entry of the final judgment.
27 (6) ~~(5)~~ All parties to a modification of a final
28 judgment involving shared parental responsibilities, custody,
29 or visitation may be required to complete a court-approved
30 parenting course prior to the entry of an order modifying the
31 final judgment.

1 ~~(6)--The department shall provide each judicial circuit~~
2 ~~with a list of approved course providers and sites at which~~
3 ~~the parent education and family stabilization course required~~
4 ~~by this section may be completed. The department shall also~~
5 ~~include on the list of course providers and sites at least one~~
6 ~~site in each circuit at which the parent education and family~~
7 ~~stabilization course may be completed on a sliding fee scale,~~
8 ~~if available.~~
9 Section 92. Paragraphs (a) and (c) of subsection (2)
10 of section 839.13, Florida Statutes, are amended to read:
11 839.13 Falsifying records.--
12 (2)(a) Any person who knowingly falsifies, alters,
13 destroys, defaces, overwrites, removes, or discards ~~by~~
14 ~~altering, destroying, defacing, overwriting, removing, or~~
15 ~~discarding~~ an official record relating to an individual in the
16 care and custody of a state agency, which act has the
17 potential to detrimentally affect the health, safety, or
18 welfare of that individual, commits a felony of the third
19 degree, punishable as provided in s. 775.082, s. 775.083, or
20 s. 775.084. For the purposes of this paragraph, the term "care
21 and custody" includes, but is not limited to, a child abuse
22 protective investigation, protective supervision, foster care
23 and related services, or a protective investigation or
24 protective supervision of a vulnerable adult, as defined in
25 chapter 39, chapter 409, or chapter 415.
26 (c) Any person who knowingly falsifies, alters,
27 destroys, defaces, overwrites, removes, or discards ~~by~~
28 ~~altering, destroying, defacing, overwriting, removing, or~~
29 ~~discarding~~ records of the Department of Children and Family
30 Services or its contract provider with the intent to conceal a
31 fact material to a child abuse protective investigation,

1 protective supervision, foster care and related services, or a
2 protective investigation or protective supervision of a
3 vulnerable adult, as defined in chapter 39, chapter 409, or
4 chapter 415, commits a felony of the third degree, punishable
5 as provided in s. 775.082, s. 775.083, or s. 775.084. Nothing
6 in this paragraph prohibits prosecution for a violation of
7 paragraph (a) or paragraph (b) involving records described in
8 this paragraph.
9 Section 93. Section 39.0016, Florida Statutes, is
10 created to read:
11 39.0016 Education of abused, neglected, and abandoned
12 children.--
13 (1) As used in this section, the term:
14 (a) "Children known to the department" means children
15 who are found to be dependent or children in shelter care.
16 (b) "Department" means the Department of Children and
17 Family Services or a community-based care lead agency acting
18 on behalf of the Department of Children and Family Services,
19 as appropriate.
20 (2) The provisions of this section establish goals and
21 not rights. This section does not require the delivery of any
22 particular service or level of service in excess of existing
23 appropriations. A person may not maintain a cause of action
24 against the state or any of its subdivisions, agencies,
25 contractors, subcontractors, or agents based upon this section
26 becoming law or failure by the Legislature to provide adequate
27 funding for the achievement of these goals. This section does
28 not require the expenditure of funds to meet the goals
29 established in this section except funds specifically
30 appropriated for such purpose.
31 (3) The department shall enter into an agreement with

1 the Department of Education regarding the education and
2 related care of children known to the department. Such
3 agreement shall be designed to provide educational access to
4 children known to the department for the purpose of
5 facilitating the delivery of services or programs to children
6 known to the department. The agreement shall avoid duplication
7 of services or programs and shall provide for combining
8 resources to maximize the availability or delivery of services
9 or programs.
10 (4) The department shall enter into agreements with
11 district school boards or other local educational entities
12 regarding education and related services for children known to
13 the department who are of school age and children known to the
14 department who are younger than school age but who would
15 otherwise qualify for services from the district school board.
16 Such agreements shall include, but are not limited to:
17 (a) A requirement that the department shall:
18 1. Enroll children known to the department in school.
19 The agreement shall provide for continuing the enrollment of a
20 child known to the department at the same school, if possible,
21 with the goal of avoiding disruption of education.
22 2. Notify the school and school district in which a
23 child known to the department is enrolled of the name and
24 phone number of the child known to the department caregiver
25 and caseworker for child safety purposes.
26 3. Establish a protocol for the department to share
27 information about a child known to the department with the
28 school district, consistent with the Family Educational Rights
29 and Privacy Act, since the sharing of information will assist
30 each agency in obtaining education and related services for
31 the benefit of the child.

1 4. Notify the school district of the department's case
2 planning for a child known to the department, both at the time
3 of plan development and plan review. Within the plan
4 development or review process, the school district may provide
5 information regarding the child known to the department if the
6 school district deems it desirable and appropriate.
7 (b) A requirement that the district school board
8 shall:
9 1. Provide the department with a general listing of
10 the services and information available from the district
11 school board, including, but not limited to, the current
12 Sunshine State Standards, the Surrogate Parent Training
13 Manual, and other resources accessible through the Department
14 of Education or local school districts to facilitate
15 educational access for a child known to the department.
16 2. Identify all educational and other services
17 provided by the school and school district which the school
18 district believes are reasonably necessary to meet the
19 educational needs of a child known to the department.
20 3. Determine whether transportation is available for a
21 child known to the department when such transportation will
22 avoid a change in school assignment due to a change in
23 residential placement. Recognizing that continued enrollment
24 in the same school throughout the time the child known to the
25 department is in out-of-home care is preferable unless
26 enrollment in the same school would be unsafe or otherwise
27 impractical, the department, the district school board, and
28 the Department of Education shall assess the availability of
29 federal, charitable, or grant funding for such transportation.
30 4. Provide individualized student intervention or an
31 individual educational plan when a determination has been made

1 through legally appropriate criteria that intervention
2 services are required. The intervention or individual
3 educational plan must include strategies to enable the child
4 known to the department to maximize the attainment of
5 educational goals.
6 (c) A requirement that the department and the district
7 school board shall cooperate in accessing the services and
8 supports needed for a child known to the department who has or
9 is suspected of having a disability to receive an appropriate
10 education consistent with the Individuals with Disabilities
11 Education Act and state implementing laws, rules, and
12 assurances. Coordination of services for a child known to the
13 department who has or is suspected of having a disability may
14 include:
15 1. Referral for screening.
16 2. Sharing of evaluations between the school district
17 and the department where appropriate.
18 3. Provision of education and related services
19 appropriate for the needs and abilities of the child known to
20 the department.
21 4. Coordination of services and plans between the
22 school and the residential setting to avoid duplication or
23 conflicting service plans.
24 5. Appointment of a surrogate parent, consistent with
25 the Individuals with Disabilities Education Act, for
26 educational purposes for a child known to the department who
27 qualifies as soon as the child is determined to be dependent
28 and without a parent to act for the child. The surrogate
29 parent shall be appointed by the school district without
30 regard to where the child known to the department is placed so
31 that one surrogate parent can follow the education of the

1 child known to the department during his or her entire time in
2 state custody.
3 6. For each child known to the department 14 years of
4 age and older, transition planning by the department and all
5 providers, including the department's independent living
6 program staff, to meet the requirements of the local school
7 district for educational purposes.
8 (5) The department shall incorporate an education
9 component into all training programs of the department
10 regarding children known to the department. Such training
11 shall be coordinated with the Department of Education and the
12 local school districts. The department shall offer
13 opportunities for education personnel to participate in such
14 training. Such coordination shall include, but not be limited
15 to, notice of training sessions, opportunities to purchase
16 training materials, proposals to avoid duplication of services
17 by offering joint training, and incorporation of materials
18 available from the Department of Education and local school
19 districts into the department training when appropriate. The
20 department training components shall include:
21 (a) Training for surrogate parents to include how an
22 ability to learn of a child known to the department is
23 affected by abuse, abandonment, neglect, and removal from the
24 home.
25 (b) Training for parents in cases in which
26 reunification is the goal, or for preadoptive parents when
27 adoption is the goal, so that such parents learn how to access
28 the services the child known to the department needs and the
29 importance of their involvement in the education of the child
30 known to the department.
31 (c) Training for caseworkers and foster parents to

1 include information on the right of the child known to the
2 department to an education, the role of an education in the
3 development and adjustment of a child known to the department,
4 the proper ways to access education and related services for
5 the child known to the department, and the importance and
6 strategies for parental involvement in education for the
7 success of the child known to the department.
8 (d) Training of caseworkers regarding the services and
9 information available through the Department of Education and
10 local school districts, including, but not limited to, the
11 current Sunshine State Standards, the Surrogate Parent
12 Training Manual, and other resources accessible through the
13 Department of Education or local school districts to
14 facilitate educational access for a child known to the
15 department.
16 Section 94. Paragraph (d) of subsection (3) of section
17 1002.22, Florida Statutes, is amended to read:
18 1002.22 Student records and reports; rights of parents
19 and students; notification; penalty.--
20 (3) RIGHTS OF PARENT OR STUDENT.--The parent of any
21 student who attends or has attended any public school, area
22 technical center, or public postsecondary educational
23 institution shall have the following rights with respect to
24 any records or reports created, maintained, and used by any
25 public educational institution in the state. However,
26 whenever a student has attained 18 years of age, or is
27 attending a postsecondary educational institution, the
28 permission or consent required of, and the rights accorded to,
29 the parents of the student shall thereafter be required of and
30 accorded to the student only, unless the student is a
31 dependent student of such parents as defined in 26 U.S.C. s.

1 152 (s. 152 of the Internal Revenue Code of 1954). The State
2 Board of Education shall adopt rules whereby parents or
3 students may exercise these rights:
4 (d) Right of privacy.--Every student shall have a
5 right of privacy with respect to the educational records kept
6 on him or her. Personally identifiable records or reports of a
7 student, and any personal information contained therein, are
8 confidential and exempt from the provisions of s. 119.07(1).
9 A ~~No~~ state or local educational agency, board, public school,
10 technical center, or public postsecondary educational
11 institution may not ~~shall~~ permit the release of such records,
12 reports, or information without the written consent of the
13 student's parent, or of the student himself or herself if he
14 or she is qualified as provided in this subsection, to any
15 individual, agency, or organization. However, personally
16 identifiable records or reports of a student may be released
17 to the following persons or organizations without the consent
18 of the student or the student's parent:
19 1. Officials of schools, school systems, technical
20 centers, or public postsecondary educational institutions in
21 which the student seeks or intends to enroll; and a copy of
22 such records or reports shall be furnished to the parent or
23 student upon request.
24 2. Other school officials, including teachers within
25 the educational institution or agency, who have legitimate
26 educational interests in the information contained in the
27 records.
28 3. The United States Secretary of Education, the
29 Director of the National Institute of Education, the Assistant
30 Secretary for Education, the Comptroller General of the United
31 States, or state or local educational authorities who are

1 authorized to receive such information subject to the
2 conditions set forth in applicable federal statutes and
3 regulations of the United States Department of Education, or
4 in applicable state statutes and rules of the State Board of
5 Education.
6 4. Other school officials, in connection with a
7 student's application for or receipt of financial aid.
8 5. Individuals or organizations conducting studies for
9 or on behalf of an institution or a board of education for the
10 purpose of developing, validating, or administering predictive
11 tests, administering student aid programs, or improving
12 instruction, if such studies are conducted in such a manner as
13 will not permit the personal identification of students and
14 their parents by persons other than representatives of such
15 organizations and if such information will be destroyed when
16 no longer needed for the purpose of conducting such studies.
17 6. Accrediting organizations, in order to carry out
18 their accrediting functions.
19 7. School readiness coalitions and the Florida
20 Partnership for School Readiness in order to carry out their
21 assigned duties.
22 8. For use as evidence in student expulsion hearings
23 conducted by a district school board pursuant to the
24 provisions of chapter 120.
25 9. Appropriate parties in connection with an
26 emergency, if knowledge of the information in the student's
27 educational records is necessary to protect the health or
28 safety of the student or other individuals.
29 10. The Auditor General and the Office of Program
30 Policy Analysis and Government Accountability in connection
31 with their official functions; however, except when the

1 collection of personally identifiable information is
2 specifically authorized by law, any data collected by the
3 Auditor General and the Office of Program Policy Analysis and
4 Government Accountability is confidential and exempt from the
5 provisions of s. 119.07(1) and shall be protected in such a
6 way as will not permit the personal identification of students
7 and their parents by other than the Auditor General, the
8 Office of Program Policy Analysis and Government
9 Accountability, and their staff, and such personally
10 identifiable data shall be destroyed when no longer needed for
11 the Auditor General's and the Office of Program Policy
12 Analysis and Government Accountability's official use.
13 11.a. A court of competent jurisdiction in compliance
14 with an order of that court or the attorney of record pursuant
15 to a lawfully issued subpoena, upon the condition that the
16 student and the student's parent are notified of the order or
17 subpoena in advance of compliance therewith by the educational
18 institution or agency.
19 b. A person or entity pursuant to a court of competent
20 jurisdiction in compliance with an order of that court or the
21 attorney of record pursuant to a lawfully issued subpoena,
22 upon the condition that the student, or his or her parent if
23 the student is either a minor and not attending a
24 postsecondary educational institution or a dependent of such
25 parent as defined in 26 U.S.C. s. 152 (s. 152 of the Internal
26 Revenue Code of 1954), is notified of the order or subpoena in
27 advance of compliance therewith by the educational institution
28 or agency.
29 12. Credit bureaus, in connection with an agreement
30 for financial aid that the student has executed, provided that
31 such information may be disclosed only to the extent necessary

1 to enforce the terms or conditions of the financial aid
2 agreement. Credit bureaus shall not release any information
3 obtained pursuant to this paragraph to any person.
4 13. Parties to an interagency agreement among the
5 Department of Juvenile Justice, school and law enforcement
6 authorities, and other signatory agencies for the purpose of
7 reducing juvenile crime and especially motor vehicle theft by
8 promoting cooperation and collaboration, and the sharing of
9 appropriate information in a joint effort to improve school
10 safety, to reduce truancy and in-school and out-of-school
11 suspensions, and to support alternatives to in-school and
12 out-of-school suspensions and expulsions that provide
13 structured and well-supervised educational programs
14 supplemented by a coordinated overlay of other appropriate
15 services designed to correct behaviors that lead to truancy,
16 suspensions, and expulsions, and that support students in
17 successfully completing their education. Information provided
18 in furtherance of such interagency agreements is intended
19 solely for use in determining the appropriate programs and
20 services for each juvenile or the juvenile's family, or for
21 coordinating the delivery of such programs and services, and
22 as such is inadmissible in any court proceedings prior to a
23 dispositional hearing unless written consent is provided by a
24 parent or other responsible adult on behalf of the juvenile.
25 14. Consistent with the Family Educational Rights and
26 Privacy Act, the Department of Children and Family Services or
27 a community-based care lead agency acting on behalf of the
28 Department of Children and Family Services, as appropriate.
29
30 This paragraph does not prohibit any educational institution
31 from publishing and releasing to the general public directory

information relating to a student if the institution elects to do so. However, no educational institution shall release, to any individual, agency, or organization that is not listed in subparagraphs 1.-14. ~~1.-13.~~, directory information relating to the student body in general or a portion thereof unless it is normally published for the purpose of release to the public in general. Any educational institution making directory information public shall give public notice of the categories of information that it has designated as directory information with respect to all students attending the institution and shall allow a reasonable period of time after such notice has been given for a parent or student to inform the institution in writing that any or all of the information designated should not be released.

Section 95. Subsection (6) of section 410.604, Florida Statutes, is repealed.

Section 96. Except for this section and section 86, which shall take effect upon becoming a law, and except as otherwise expressly provided in this act, this act shall take effect July 1, 2004.

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

And the title is amended as follows:

On page 11, line 9, through
page 13, line 25, delete those lines

and insert:

applicability; authorizing the Department of Children and Family Services' Economic Self-Sufficiency Services Program Office to

1 provide eligibility-determination functions
2 through departmental staff or through contract;
3 providing restrictions; amending s. 39.304,
4 F.S.; adding a law enforcement agency to the
5 groups to which a health care facility licensed
6 under ch. 395, F.S., must supply specified
7 items during an investigation of abuse,
8 abandonment, or neglect of a child; amending s.
9 39.302, F.S.; deleting a requirement that the
10 Department of Children and Family Services
11 notify the state attorney of a report of
12 institutional child abuse; authorizing a law
13 enforcement agency and a licensing or oversight
14 agency conducting a joint investigation to have
15 access to information of the Department of
16 Children and Family Services to the extent
17 allowed by law; requiring that the department
18 inform the facility of a report of child abuse;
19 requiring that the child's parent or legal
20 custodian be notified of the report; providing
21 for an on-site visit to the child's place of
22 residence; requiring the agency with oversight
23 responsibility of a facility to implement
24 identified safety actions under certain
25 circumstances; authorizing the Department of
26 Children and Family Services to recommend
27 corrective actions; deleting a requirement that
28 the department assist a facility in maintaining
29 its operation under certain circumstances;
30 requiring that the department notify the state
31 attorney or a law enforcement agency of

1 criminal conduct; requiring that criminal
2 investigations be coordinated with child
3 protective investigations when possible;
4 deleting requirements that the department
5 provide a specialized team to investigate child
6 abuse, neglect, or abandonment; requiring the
7 department to adopt procedures for child
8 protective investigations by rule; requiring
9 the Department of Children and Family Services
10 to adopt minimum hiring and training
11 requirements by rule; requiring the Department
12 of Children and Family Services to report to
13 the Governor and the Legislature on its
14 implementation of the recommendations of an
15 interim project and the recommendations of the
16 Protective Investigator Retention Workgroup;
17 amending s. 61.21, F.S.; requiring the
18 Department of Children and Family Services to
19 approve parenting courses; establishing
20 requirements relating to the provision of
21 approved parenting courses; amending s. 839.13,
22 F.S.; providing that a person who knowingly
23 falsifies, alters, destroys, defaces,
24 overwrites, removes, or discards a record of
25 the department or its contract provider or a
26 record relating to an individual in the care
27 and custody of the state commits a felony of
28 the third degree; creating s. 39.0016, F.S.,
29 relating to the education of abused, neglected,
30 and abandoned children; creating definitions;
31 providing for interpretation of the act;

1 requiring an agreement between the Department
2 of Children and Family Services and the
3 Department of Education; requiring agreements
4 between the Department of Children and Family
5 Services and district school boards or other
6 local educational entities; specifying
7 provisions of such agreements; requiring access
8 to certain information; requiring education
9 training components; amending s. 1002.22, F.S.,
10 relating to access to student records;
11 authorizing the release of records to the
12 Department of Children and Family Services or a
13 community-based care lead agency; repealing s.
14 410.604(6), F.S., relating to fees charged by
15 the department and its providers for services
16 delivered to a disabled adult whose income is
17 above the eligibility standard for
18 institutional care; providing effective dates.
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