

Tab 1	SB 610 by Yarborough ; (Identical to H 00367) Registration of Residential Child-caring Agencies and Family Foster Homes				
Tab 2	SB 784 by Burgess ; (Similar to H 01275) Special Persons Registry				
Tab 3	SB 786 by Burgess ; (Similar to H 01277) Public Records/Special Persons Registry				
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Tab 4	SB 1292 by Jones ; (Similar to H 01301) Parenting Plans				
Tab 5	SB 1284 by Simon ; (Identical to H 00201) Criminal Defendants Adjudicated Incompetent to Proceed				
Tab 6	SB 1444 by Garcia ; (Identical to H 01517) Agency for Persons with Disabilities				
Tab 7	SB 1594 by Brodeur ; (Similar to H 01579) Services for Persons with Disabilities				
Tab 8	SB 1634 by Brodeur ; (Compare to H 01201) Child Welfare				
117838	A	S	CF, Brodeur	btw L.803 - 804:	03/23 12:51 PM
753362	A	S	CF, Brodeur	btw L.1175 - 1176:	03/24 08:29 AM
Tab 9	SB 1690 by Ingoglia ; (Similar to CS/H 01557) Human Trafficking				
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Garcia, Chair

Senator Thompson, Vice Chair

MEETING DATE: Monday, March 27, 2023

TIME: 11:30 a.m.—2:30 p.m.

PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Garcia, Chair; Senator Thompson, Vice Chair; Senators Baxley, Book, Bradley, Brodeur, Ingoglia, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 610 Yarborough (Identical H 367)	Registration of Residential Child-caring Agencies and Family Foster Homes; Removing obsolete language; making technical changes, etc. CF 03/27/2023 JU RC	
2	SB 784 Burgess (Similar H 1275, Compare H 1277, Linked S 786)	Special Persons Registry; Citing this act as the "Protect Our Loved Ones Act"; authorizing local law enforcement agencies to develop and maintain a database, to be known as the "Special Persons Registry," for a specified purpose; authorizing local law enforcement agencies to provide relevant information from the registry to law enforcement officers under certain circumstances, etc. CF 03/27/2023 CJ RC	
3	SB 786 Burgess (Similar H 1277, Compare H 1275, Linked S 784)	Public Records/Special Persons Registry; Providing an exemption from public records requirements for all records, data, information, correspondence, and communications relating to and submitted in connection with the enrollment of persons in the Special Persons Registry maintained by local law enforcement agencies; prohibiting law enforcement agencies, county emergency management agencies, and local fire departments from further disclosing confidential and exempt information; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/27/2023 CJ RC	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, March 27, 2023, 11:30 a.m.—2:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1292 Jones (Similar H 1301, Compare H 1409, S 1416)	Parenting Plans; Creating a presumption that equal time-sharing is in the best interests of the child, with exceptions; creating a presumption for purposes of modifying a parenting plan and time-sharing schedule regarding relocation of a parent, etc. CF 03/27/2023 JU RC	
5	SB 1284 Simon (Identical H 201)	Criminal Defendants Adjudicated Incompetent to Proceed; Requiring that the Department of Children and Families initiate a transfer evaluation to determine if a defendant adjudicated incompetent to proceed meets the criteria for involuntary civil commitment if it determines that the defendant will not or is unlikely to gain competence; requiring that a copy of the evaluation be provided to the court and counsel, etc. CF 03/27/2023 JU RC	
6	SB 1444 Garcia (Identical H 1517)	Agency for Persons with Disabilities; Revising background screening requirements for certain direct service providers; requiring the licensure of adult day training programs; providing for inspections of adult day training programs; authorizing the agency to immediately suspend or revoke the license of adult day training programs under certain circumstances, etc. CF 03/27/2023 FP	
7	SB 1594 Brodeur (Similar H 1579)	Services for Persons with Disabilities; Revising provisions related to the application for services for persons with disabilities; revising timeframes within which the Agency for Persons with Disabilities must make certain eligibility determinations; requiring the agency to request additional documentation from applicants if it determines such documentation is necessary to make an eligibility determination; specifying requirements for the agency's eligibility determinations, etc. CF 03/27/2023 HP RC	

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Monday, March 27, 2023, 11:30 a.m.—2:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1634 Brodeur (Compare H 1201)	Child Welfare; Clarifying a provision regarding access to certain records in the event of the death of a child as a result of abuse, abandonment, or neglect; revising provisions to refer to a multidisciplinary legal representation program rather than a model; requiring each office of criminal conflict and civil regional counsel to annually submit certain data to the Office of Program Policy Analysis and Government Accountability (OPPAGA) by a specified date; authorizing certain persons to initiate a proceeding by filing a petition for adjudication and permanent commitment if both parents of a child are deceased or the last known living parent dies, etc. CF 03/27/2023 AHS FP	

9	SB 1690 Ingoglia (Identical H 1557)	Human Trafficking; Requiring the Department of Children and Families to develop age-appropriate public awareness signs for display in specified locations that provide shelter and care for dependent children; requiring the Department of Children and Families to develop a process to certify adult safe houses that provide housing and care to adult survivors of human trafficking; requiring the department to inspect adult safe houses before certification and annually thereafter; requiring the Department of Children and Families to develop age-appropriate educational programming for children in certain facilities concerning human trafficking, etc. CF 03/27/2023 AHS FP	
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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.			
Secretary of Children and Families			
10	Harris, Shevaun ()	Pleasure of Governor	
Director, Agency for Persons with Disabilities			
11	Hatch, Taylor N. ()	Pleasure of Governor	
Secretary of Elderly Affairs			
12	Branham, Michelle ()	Pleasure of Governor	

COMMITTEE MEETING EXPANDED AGENDA
Children, Families, and Elder Affairs
Monday, March 27, 2023, 11:30 a.m.—2:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	Other Related Meeting Documents		

By Senator Yarborough

4-01284-23

2023610__

A bill to be entitled
An act relating to the registration of residential
child-caring agencies and family foster homes;
amending s. 409.176, F.S.; removing obsolete language;
making technical changes; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and paragraph
(b) of subsection (5) of section 409.176, Florida Statutes, are
amended to read:

409.176 Registration of residential child-caring agencies
and family foster homes.—

(1)(a) A residential child-caring agency or family foster
home may not receive a child for continuing full-time care or
custody, and a residential child-caring agency may not place a
child for full-time continuing care or custody in a family
foster home, unless it has first registered with an association
that is certified by a Florida statewide child care organization
which ~~was in existence on January 1, 1984, and which~~ publishes,
and requires compliance with, its standards and files copies
thereof with the department as provided in paragraph (5)(b). For
purposes of this section, such an association is ~~shall be~~
referred to as the "qualified association."

(5) The licensing provisions of s. 409.175 do not apply to
a facility operated by an organization that:

(b) Is certified by a Florida statewide child care
organization which ~~was in existence on January 1, 1984, and~~
~~which~~ publishes, and requires compliance with, its standards and

4-01284-23

2023610__

30 files copies thereof with the department. Such standards must
31 ~~shall~~ be in substantial compliance with published minimum
32 standards that similar licensed child-caring agencies or family
33 foster homes are required to meet, as determined by the
34 department, with the exception of those standards of a
35 curricular or religious nature and those relating to staffing or
36 financial stability. Once the department has determined that the
37 standards for child-caring agencies or family foster homes are
38 in substantial compliance with minimum standards that similar
39 facilities are required to meet, the standards do not have to be
40 resubmitted to the department unless a change occurs in the
41 standards. Any changes in the standards must ~~shall~~ be provided
42 to the department within 10 days after ~~of~~ their adoption.

43 Section 2. This act shall take effect July 1, 2023.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 610

INTRODUCER: Senator Yarborough

SUBJECT: Registration of Residential Child-caring Agencies and Family Foster Homes

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Cox	CF	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 610 removes a limitation that an organization or entity must have been in existence on January 1, 1984 to be considered a qualified association that can register certain faith-based child-caring facilities and foster homes. This allows organizations and entities that began operating after January 1, 1984 to be a qualified association.

Any new organization or entity seeking to become a qualified association under this expansion will need to comply with all other statutory requirements to become and maintain status as a qualified association.

The bill will likely not have a fiscal impact on the private sector or government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

DCF Licensure and Registration of Residential Child-Caring Agencies and Family Foster Homes

A “residential child-caring agency” is defined as a residential facility or agency that provides staffed 24-hour care for children, to include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps.¹ A “family foster home” is defined as a residence in which children who are unattended by a parent or legal guardian are provided 24-hour care, not to include adoptive homes.² Residential child-caring agencies and family foster homes, referred

¹ Section 409.175(2)(l), F.S.

² Section 409.175(2)(e), F.S.

to as “facilities,” must be licensed by the Department of Children and Families (DCF) under s. 409.175, F.S., or otherwise registered under s. 409.176, F.S.³

Licensure by the Department of Children and Families

Licensure of a facility under s. 409.175, F.S., requires meeting minimum standards related to:

- Operation, conduct, and maintenance;
- Provision of food, clothing, education, services, equipment, and supplies to ensure healthy physical, emotional, and mental development of children;
- Safety, cleanliness, and adequacy of the premises;
- Staff to child ratio for adequate care and supervision;
- Maximum number of children; and
- Good moral character of personnel.⁴

The DCF must issue a license for a facility that meets minimum licensure standards.⁵ The issuance of a license does not require a community-based care lead agency⁶ under contract with the DCF to place a child with in any agency or home.⁷

The following placements are exempt from licensure:

- Relative caregivers;⁸
- Non-relative caregivers;⁹
- An adoptive home which has been approved for children placed for adoption;¹⁰
- Persons who care for children in their homes for less than 90 days, such as summer camps, or persons who care for children of friends and neighbors;¹¹ and
- A religious organization that does not directly receive state or federal funds or a family foster home associated with such an organization and does not directly receive state or federal funds.¹²

Registration of Exempt Religious Facilities by a Qualified Association

While certain facilities are exempt from licensure, those facilities must still be registered with a “qualified association” before they may receive a child for full-time care or custody.¹³

³ Facilities licensed under s. 409.175, F.S., are classified as “Type I” facilities and those registered under s. 409.176, F.S., are classified as “Type II” facilities. *See* ss. 409.175 and 409.176, F.S.

⁴ Section 409.175(5)(b), F.S.

⁵ Section 409.175(6)(h), F.S.

⁶ Child welfare services are directed toward the prevention of abandonment, abuse, and neglect of children. Such services are coordinated by the DCF-contracted community-based care lead agencies. *See generally* The DCF, Community Based Care, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care> (last viewed March 22, 2023).

⁷ Section 409.175(6)(i), F.S.

⁸ Section 409.175(4)(a), F.S.; this includes a relative of the child by blood, marriage, or adoption, and a permanent guardian established under law.

⁹ *Id.*

¹⁰ Section 409.175(1)(e), F.S.

¹¹ Section 409.175(4)(d), F.S.

¹² Section 409.176(5)(a), F.S.

¹³ Section 409.176(1), F.S.

The licensing provisions of s. 409.175, F.S., do not apply to a facility operated by an organization that:

- Is a religious organization or family foster home associated with such an organization that does not directly receive state or federal funds;
- Is a qualified association; or
- Has been issued a certificate of registration by a qualified association.¹⁴

A qualified association that may register these license-exempt facilities must:

- Be an association certified by a Florida statewide child care organization that was in existence on January 1, 1984.¹⁵
- Publish its standards, file those standards with the DCF, and ensure compliance with those standards by registered facilities.

The published standards of the qualified association must substantially comply with the minimal published regulations of the DCF that similar licensed child-caring agencies or family foster homes are required to meet, with exceptions for standards of a curricular or religious nature and those relating to staffing or financial stability.¹⁶ The DCF is required to determine whether the registration standards are in substantial compliance, and once determined, the qualified association does not have to resubmit its standards unless there are changes.¹⁷ Any changes must be provided to the DCF within 10 days of their adoption.¹⁸

A qualified association is required to notify the DCF within 24 hours upon finding a violation that threatens harm to a child or constitutes an emergency requiring immediate action.¹⁹ The DCF must also be notified within three calendar days of a determination that a facility is operating without a certificate of registration or license.²⁰ The DCF must notify the state attorney when there is a violation of law reported and, if needed, file civil suit to stop the facility from continuing care.²¹ The DCF also still has the overall authority to investigate concerns of abuse, abandonment, or neglect²² and also to institute injunctive proceedings in court to enforce statutory requirements or terminate facility operations.²³

A qualified association is required to annually report to the DCF:

- The number of registered facilities during the most recent calendar year, the names and addresses of each facility, and the name of each facility's administrator.
- The total number of children served by each facility during the calendar year.²⁴

¹⁴ Section 409.176(5), F.S.

¹⁵ Sections 409.176(1)(a) and 409.176(5)(b), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 409.176(10)(a), F.S.

²⁰ Section 409.176(10)(b), F.S.

²¹ *Id.*

²² *See generally* ch. 39, F.S.

²³ Section 409.176(10)(c), F.S.

²⁴ Section 409.176(15), F.S.

Under current law, the Florida Association of Christian Child Caring Agencies (FACCCA) is the only organization that meets the requirements to be a qualified association and is the only qualified association responsible for the required standards, registration, and oversight of licensure-exempt faith-based facilities.²⁵

Florida Association of Christian Child Caring Agencies

The FACCCA is a not-for-profit Florida corporation based in Tampa that has been active since 1982.²⁶ The FACCCA registers four types of child caring homes: residential care homes, maternity homes, adoption & substitution family homes, and restoration homes. These homes are as follows:

- Residential Care Homes: provide 24-hour care in family-structured residential homes. The FACCCA registers eight residential care homes.²⁷
- Maternity Homes: provide care for pregnant girls of various age in need during and after her pregnancy. The FACCCA registers five maternity homes.²⁸
- Adoption & Substitute Family Homes: provide adoption services and temporary loving homes for a child, similar to a foster home, until a permanent placement can be found. The FACCCA registers three agencies that provide adoption and substitute family homes.²⁹
- Restoration Homes: provide homes for troubled children and teens in need of specialized help. The FACCCA registers eight restoration homes.³⁰

III. Effect of Proposed Changes:

The bill removes a limitation that an organization or entity must have been in existence on January 1, 1984 to be considered a qualified association that can register certain faith-based child-caring facilities and foster homes. This allows organizations and entities that began operating after January 1, 1984 to be a qualified association.

The Florida Association of Christian Child Caring Agencies (FACCCA) is the only association that currently meets the statutory requirements of a qualified association and will remain eligible as long as it continues to meet the other statutory requirements. Any new organization or entity seeking to become a qualified association will need to comply with all other statutory requirements to become and maintain status as a qualified association.

²⁵ Rule 65D-46.001, F.A.C

²⁶Florida Division of Corporations Search Records indicates that the FACCCA has been an active organization since February 22, 1982, available at <https://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2012%5C0224%5C22932575.Tif&documentNumber=762042> (last visited March 22, 2023).

²⁷ The Florida Association of Christian Child Caring Agencies (FACCCA website), *Residential Care*, available at <https://www.faccca.com/residential-care> (last visited March 19, 2023).

²⁸ FACCCA website, *Maternity Homes*, available at <https://www.faccca.com/maternity-homes> (last visited March 19, 2023).

²⁹ FACCCA website, *Adoption & Substitute Family Homes*, available at <https://www.faccca.com/adoption-homes> (last visited March 19, 2023).

³⁰ FACCCA website, *Restoration Homes*, available at <https://www.faccca.com/restoration-homes> (last visited March 19, 2023).

The bill also requires that any change to a qualified association's standards must be provided to DCF "within 10 days *after their* adoption." Current language requires changes to standards to be provided to the DCF "within 10 days *of* adoption."

The bill provides for an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF states that the bill will not have an impact on state government.³¹

VI. Technical Deficiencies:

None.

³¹ Agency analysis p. 4

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.176 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Burgess

23-00274-23

2023784__

A bill to be entitled
An act relating to the Special Persons Registry;
providing a short title; creating s. 402.88, F.S.;
authorizing local law enforcement agencies to develop
and maintain a database, to be known as the "Special
Persons Registry," for a specified purpose; providing
for enrollment in and removal from the registry;
specifying information the registry may include;
authorizing local law enforcement agencies to provide
relevant information from the registry to law
enforcement officers under certain circumstances;
providing an effective date.

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

Section 1. This act may be cited as the "Protect Our Loved
Ones Act."

Section 2. Section 402.88, Florida Statutes, is created to
read:

402.88 Special Persons Registry in interactions with law
enforcement.—

(1) (a) A local law enforcement agency may develop and
maintain a database, to be known as the "Special Persons
Registry," listing persons who have developmental,
psychological, or other disabilities or conditions that may be
relevant to their interactions with law enforcement officers.
Persons with any type of confirmed developmental, psychological,
or other disability or condition, including, but not limited to,
autism spectrum disorder, Alzheimer's disease or a dementia-

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30 related disorder, bipolar disorder, or Down syndrome, may be
31 enrolled in the registry. The confirmation of the disability or
32 condition must be certified by a physician or physician
33 assistant licensed under chapter 458 or chapter 459 or an
34 advanced practice registered nurse licensed under chapter 464.
35 In the case of psychological conditions, the confirmation of the
36 condition must be certified by a psychologist licensed under
37 chapter 490, a mental health counselor licensed under chapter
38 491, or a psychiatrist as defined in s. 394.455(37). An adult
39 with a disability may enroll himself or herself in the registry.
40 If a person with a disability has been declared incapacitated
41 under chapter 744, a parent or legal guardian of the person may
42 enroll him or her in the registry.

43 (b) A minor with a disability or condition may be enrolled
44 in the registry by his or her parent or legal guardian. An
45 incapacitated adult enrolled by another person must be notified
46 of that enrollment by the local law enforcement agency in
47 writing at his or her address of record within 5 business days
48 after enrollment in the registry. A minor who was enrolled by
49 another person must be notified by the agency in writing of that
50 enrollment at his or her address of record within 5 business
51 days after his or her 18th birthday.

52 (c) A registration is valid until the person is removed
53 from the registry. A minor or an incapacitated adult may be
54 removed from the registry by the minor's parent or legal
55 guardian or the adult's legal guardian, respectively. A
56 competent person who has reached 18 years of age may also choose
57 to have his or her name removed from the registry. Upon a valid
58 verbal or written request for removal of a person from the

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59 registry, the local law enforcement agency must remove the
60 person's information from the registry within 5 business days
61 after the request is made.

62 (2) The registry may include, but need not be limited to,
63 any of the following information:

64 (a) The listed person's name, contact information, personal
65 identifying information, and disability or condition that may be
66 relevant to interactions with law enforcement officers.

67 (b) If a person did not enroll himself or herself, the
68 name, contact information, and personal identifying information
69 of the person who enrolled the listed person in the registry.

70 (c) Any additional information provided by the enrollee or
71 the person who enrolled the listed person in the registry,
72 including the certification of the condition or disability.

73 (3) A local law enforcement agency may provide relevant
74 information from the registry to a law enforcement officer
75 engaged in his or her official duties.

76 Section 3. This act shall take effect January 1, 2024.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 784

INTRODUCER: Senator Burgess

SUBJECT: Special Persons Registry

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Pre-meeting
2.			CJ	
3.			RC	

I. Summary:

SB 784, known as the “Protect Our Loved Ones” Act, authorizes a local law enforcement agency to develop and maintain a database, known as the “Special Needs Registry”, of persons who may have certain developmental, psychological, or other disabilities or conditions.

Parents and guardians may voluntarily enroll minors and incapacitated individuals in the registry. The registry may include:

- An enrollee’s demographic and contact information, and information related to the enrollee’s disability or condition;
- Contact information of persons who have enrolled individuals on the registry; and
- Certification of the disability or condition.

The bill provides notification requirements for enrollment onto the registry and a process for removing oneself from the registry.

The bill authorizes local law enforcement agencies to provide information from the registry to law enforcement officers to assist in performance of their official duties.

The bill does not have a fiscal impact on state government. The bill may have an indeterminate negative fiscal impact on those law enforcement agencies that choose to create and maintain a Special Needs Registry. See Section V. Fiscal Impact Statement.

The bill is effective January 1, 2024.

II. Present Situation:

Developmental Disabilities

Developmental disabilities¹ include autism, cerebral palsy, spina bifida, intellectual disabilities, Down syndrome, Prader-Willi syndrome, and Phelan-McDermid syndrome.²

Cerebral palsy³ is 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.⁴

Spina bifida⁵ is a birth defect in the vertebral column in which part of the spinal cord, which is normally protected within the vertebral column, is exposed. Spina bifida is caused by the failure of the neural tube to close during embryonic development. The neural tube is the embryonic structure that gives rise to the brain and spinal cord. People with spina bifida can have difficulty with bladder and bowel incontinence, cognitive (learning) problems, and limited mobility.⁶

Individuals suffering from intellectual disabilities have significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior, which manifests before the age of 18.⁷ Such individuals have certain limitations in both mental functioning and in adaptive skills such as communicating, self-care, and social skills. These limitations will cause a person to learn and develop more slowly. People with intellectual disabilities may take longer to learn to speak, walk, and take care of their personal needs such as dressing or eating.⁸

Down syndrome is a genetic disorder caused when abnormal cell division results in extra genetic material from chromosome 21. This genetic disorder, also known as trisomy 21, varies in severity, causes lifelong intellectual disability and developmental delays, and, in some people, causes health problems.^{9, 10}

¹ Developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

² Agency for Persons with Disabilities, *Long-Range Program Plan (2022)*, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=23172&DocType=PDF> (last visited March 22, 2023) (hereinafter cited as “The Long-Range Plan”).

³ Section 393.063(6), F.S.

⁴ *Id.*

⁵ Spina bifida is defined in statute as a medical diagnosis of spina bifida cystica or myelomeningocele. Section 393.063(41), F.S.

⁶ The Long-Range Plan, p. 79.

⁷ Section 393.063(24), F.S. For the purposes of this definition, the term “adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The term “significantly sub-average general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

⁸ The Long-Range Plan, p. 73.

⁹ *Id.* at 69.

¹⁰ Down syndrome is defined in statute as a disorder caused by the presence of an extra chromosome 21. Section 393.063(15), F.S.

Prader-Willi syndrome¹¹ is a complex genetic condition that affects many parts of the body. In infancy, this condition is characterized by weak muscle tone, feeding difficulties, poor growth, and delayed development. Beginning in childhood, affected individuals develop an insatiable appetite and chronic overeating. As a result, most experience rapid weight gain leading to obesity. People with Prader-Willi syndrome typically have an intellectual disability or a learning disability and behavioral problems.¹²

Phelan-McDermid syndrome¹³ is a rare condition due to a chromosomal abnormality. Symptoms vary in range and severity but often include low muscle tone, difficulty moving, absent-to-severely delayed speech, autistic features, moderate-to-profound intellectual disability, and epilepsy.¹⁴

Autism

Autism is a pervasive, neurologically-based developmental disability of extended duration that has onset during infancy or childhood, which causes severe learning, communication, and behavioral disorders.¹⁵ Autism spectrum disorder (ASD) includes autism, Asperger's syndrome, and any other pervasive developmental disorder.¹⁶ The Centers for Disease Control and Prevention (CDC) estimates that approximately one in 44 children has ASD.¹⁷ The CDC also estimates that over 5.4 million adults have ASD.¹⁸

Interactions with Law Enforcement for Individuals with Autism

A person's developmental disability may make interactions with law enforcement more challenging. For example, identifying a person with an ASD can be confusing to any person unfamiliar with the condition, including law enforcement. Law enforcement can mistake the signs of autism with behaviors typically associated with those of criminals.¹⁹ Common attributes of autism are communication differences and behaviors or thinking that are repetitive or restricted to an area of interest. These traits could be interpreted by law enforcement as not being compliant with questioning or direct instructions. A characteristic of ASD known as escalation

¹¹ Prader-Willi syndrome is defined in statute as an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior. Section 393.063(29), F.S.

¹² The Long-Range Plan, p. 77.

¹³ Phelan-McDermid Syndrome is defined in statute as a disorder caused by the loss of the terminal segment of the long arm of chromosome 22, which occurs near the end of the chromosome at a location designated q13.3, typically leading to developmental delay, intellectual disability, dolicocephaly, hypotonia, or absent or delayed speech. Section 393.063(28), F.S.

¹⁴ The Long-Range Plan, p. 77.

¹⁵ Section 393.063(5), F.S.

¹⁶ Section 627.6686(2)(b), F.S.

¹⁷ The Centers for Disease Control and Prevention (The CDC), *Data & Statistics on Autism Spectrum Disorder*, available at <https://www.cdc.gov/ncbddd/autism/data.html> (last visited March 22, 2023).

¹⁸ The CDC, *Key Findings: CDC Releases First Estimates of the Number of Adults Living with Autism Spectrum Disorder in the United States*, available at <https://www.cdc.gov/ncbddd/autism/features/adults-living-with-autism-spectrum-disorder.html> (last visited March 22, 2023).

¹⁹ Randy Lambert, *How Changing the Wes Kleinert Fair Interview Act and Establishing Law Enforcement Academy Training Standards Will Help the Autism Community*, Child and Family Law Journal, p. 48 (2018), available at <https://lawpublications.barry.edu/cflj/vol6/iss1/3> (last visited March 22, 2023).

poses a particular problem in encounters with law enforcement.²⁰ Escalation describes the response of a person with ASD under stress or in an unfamiliar situation.²¹ Overwhelmed by the barrage of sensory information, a person with ASD may attempt to flee the uncomfortable situation, become combative, or simply shut down.²² The individual may cover his or her ears and shriek, not knowing how or where to get help.²³ The presence of police lights and sirens, uniforms, loud and unfamiliar voices, or barking dogs often makes a difficult situation worse by contributing to the individual's sensory overload.²⁴

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.²⁵

The primary indicators used to evaluate an individual's mental health are:

- **Emotional well-being-** Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being-** Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being-** Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.²⁶ Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. Nearly one in five adults lives with a mental illness.²⁷ During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22 percent.²⁸

²⁰ Bernard J. Farber, *Police Interaction With Autistic Persons: The Need For Training*, AeLe Monthly Law Journal, p. 106 (2009), available at <https://www.aele.org/law/2009all07/2009-07MLJ101.pdf> (last visited March 22, 2023).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ World Health Organization, *Mental Health: Strengthening Our Response*, <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> (last visited March 22, 2023).

²⁶ *Id.*

²⁷ National Institute of Mental Health (NIH), *Mental Illness*, <https://www.nimh.nih.gov/health/statistics/mental-illness> (last visited March 22, 2023).

²⁸ *Id.*

Some examples of common mental health illnesses or disorders that can negatively impact how a person interacts with others, such as law enforcement officers, include schizophrenia, bipolar disorder, borderline personality disorder, and antisocial personality disorder.²⁹

Alzheimer's Disease

Alzheimer's disease is a form of dementia, a general term for memory loss. It is a progressive brain disorder that damages and eventually destroys brain cells, leading to memory loss and changes in the functions of the brain. In the early stages of Alzheimer's disease, memory loss is mild; in late-stages, individuals lose the ability to carry on a conversation and respond to their environment. Currently, the disease has no cure, but treatment can temporarily slow the worsening of symptoms.³⁰

Florida has an increasing number of individuals with Alzheimer's disease. An estimated 580,000 Floridians have Alzheimer's disease.³¹ The projected number of Floridians with Alzheimer's disease is estimated to increase by 24% to 720,000 individuals by 2025.³²

Interactions with Law Enforcement for Individuals with Alzheimer's and Dementia

Many behaviors associated with Alzheimer's disease and dementia tend to increase a person's chance of interacting with law enforcement. Because these individuals are often unable to explain their unusual behavior, their actions are more easily misunderstood.³³ Common instances that can cause someone with Alzheimer's disease to interact with law enforcement include wandering, auto accidents, erratic driving, accidental breaking and entering due to confusion, and unintentional shoplifting.³⁴

Florida Crime Information Center (FCIC) System

The Florida Crime Information Center (FCIC) system is an electronic database that provides criminal justice agencies with access to federal and state criminal justice information. The FCIC is managed by FDLE and contains information as reported to FDLE by law enforcement agencies through the state.³⁵

²⁹ See National Alliance Mental Illness, *Mental Health Disorders*, available at <https://www.nami.org/About-Mental-Illness/Mental-Health-Conditions>; Psychiatry Online, *Contact Between Police and People With Mental Disorders: A Review of Rates*, available at <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201500312> (all sites last visited March 22, 2023).

³⁰ Alzheimer's Association, *2021 Alzheimer's Disease Facts and Figures* available at <https://www.alz.org/media/documents/alzheimers-facts-and-figures.pdf> (last visited March 22, 2023).

³¹ The Department of Elder Affairs, *2021 Alzheimer's Disease Advisory Committee Annual Report*, p. 4, available at https://elderaffairs.org/wp-content/uploads/ADAC-Report-2021_FINAL.pdf (last visited March 22, 2023).

³² *Id.*

³³ Alzheimer's Association, *Alzheimer's Disease Guide for Law Enforcement*, available at https://www.alz.org/national/documents/safereturn_lawenforcement.pdf (last visited March 22, 2023).

³⁴ *Id.*

³⁵ The FDLE, *The FCIC*, available at <https://web.fdle.state.fl.us/pas/restricted/PAS/home/home.jsf> (last visited March 22, 2023).

Voluntary Registry Systems

Law enforcement agencies nationwide have begun utilizing voluntary registry systems that provide officers with relevant information on individuals with special needs, including those with Alzheimer's disease.³⁶ Law enforcement agencies have found that such registries can:

- Promote community safety;
- Improve officer safety;
- Increase the speed and efficiency in which officers are able to respond, decreasing department liability;
- Reduce strain on department resources, both human and financial, during emergencies;
- Give community members peace of mind; and
- Promote community partnerships in responding to special needs community members.³⁷

Voluntary registry systems allow law enforcement to obtain information that assists in response to calls for service involving individuals with conditions such as Alzheimer's disease.³⁸

Voluntary registry systems have also proven helpful in responding to individuals in other special needs populations. Departments utilize the system for community members living with ASD, developmental disabilities, attention deficit/hyperactivity disorder (ADHD), epilepsy, brain injury, mental illness, and other disabilities that may affect the way individuals interact and respond to law enforcement officers and other first responders.³⁹

Project Safe and Sound

In 2007, the Polk County Sheriff's Office (PCSO) began utilizing a voluntary registry system, called Project Safe and Sound (PSS), which provides bracelets to registrants in an effort to help identify wandering individuals with Alzheimer's disease and special needs children.⁴⁰

Caregivers choosing to participate are asked to complete an application/authorization form which requires specific information about the child or adult being registered. The agency then enters the information into the PSS database, making the information accessible to all Polk County first responders. After the information is entered, the special needs person will be issued a "Safe & Sound" bracelet, which includes an assigned number. The bracelet also includes emergency contact information engraved on the plate of the bracelet. In the event a special needs child or adult wanders off and is found, responding law enforcement personnel will be able to contact the PCSO and confirm the identity of the individual.⁴¹ First responders will be provided the caregiver's contact information so that the special needs person can be reunited with their caregiver.⁴²

³⁶ The International Association of Chiefs of Police (IACP), *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Populations*, p. 2, available at https://www.theiacp.org/sites/default/files/Alz%20Voluntary%20Registry_0.pdf (last visited March 22, 2023)(hereinafter cited as "The IACP Guide").

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 3.

⁴⁰ Polk County Sheriff's Office, *Project Safe & Sound*, available at <http://www.polksheriff.org/programs-services/crime-prevention-programs-for-adults/project-safe-sound> (last visited March 22, 2023).

⁴¹ *Id.*

⁴² *Id.*

The PCSO was highlighted in *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Adults* for using existing grant funds to build and sustain the PSS program and leveraging a partnership with a local engraver who engraves PSS bracelets with ID numbers at no cost to the program.⁴³

III. Effect of Proposed Changes:

The bill creates s. 402.88, F.S., providing that the bill may be cited as the “Protect Our Loved Ones Act.” The bill authorizes a local law enforcement agency to develop and maintain a database, known as the “Special Needs Registry” of persons who may have developmental, psychological, or other disability or condition that may be relevant to their interactions with a law enforcement officer, including but not limited to, a confirmed diagnosis of the following:

- Autism spectrum disorder;
- Alzheimer’s disease or a related dementia disorder;
- Bipolar disorder; and
- Down syndrome.

Confirmation of a disability or condition must be certified by a licensed physician or licensed physician assistant or a licensed advanced practice registered nurse. Confirmation of a psychological condition must be certified by a licensed psychologist, licensed mental health counselor, or a psychiatrist.

Any adult with a disability may enroll himself or herself in the registry. If an individual with a disability is a minor or has been declared incapacitated a parent or legal guardian may enroll the individual in the registry.

An adult enrolled onto the registry by another person must be notified of that enrollment by the local law enforcement agency in writing at his or her address of record within five business days after such enrollment. A minor enrolled onto the registry must be notified of that enrollment by the local law enforcement agency in writing at his or her address of record within five business days after his or her 18th birthday.

A registration is valid until the person is removed from the registry. A minor or an incapacitated individual may be removed from the registry by his or her parent or legal guardian. A competent person who is 18 years old may remove himself or herself from the registry. A competent person who has reached 18 years of age may also choose to have his or her name removed from the registry. Upon a verbal or written request for removal of a person from the registry, a local law enforcement agency must remove an individual’s information from the registry within five business days after the request is made.

⁴³ The IACP Guide at 32 and 24.

The registry may include, but is not limited to the following:

- An enrollee's demographic and contact information, and information related to the enrollee's disability or condition;
- Contact information of those who have enrolled individuals on the registry; and
- Any additional information provided by the enrollee or the person who enrolled the listed person, including the certification of the condition or disability.

The bill expressly permits local law enforcement agencies to provide relevant information from the registry to a law enforcement officer engaged in his or her official duties.

The information provided to law enforcement officers under the bill may assist officers in their official duties by preparing them to respectfully and appropriately interact with an individual enrolled in the registry who has a relevant disability or condition.

The bill takes effect January 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not have a fiscal impact on state government. The bill may have a indeterminate negative fiscal impact on those law enforcement agencies that choose to create and maintain a Special Needs Registry.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 402.88 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 786

INTRODUCER: Senator Burgess

SUBJECT: Public Records/Special Persons Registry

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Pre-meeting
2.			CJ	
3.			RC	

I. Summary:

SB 786 creates an exemption from the public records requirements of s. 119.07(1), F.S., and section 24(a), Art. I of the Florida Constitution for the following information relating to the enrollment of individuals on the Special Needs Registry (SNR) created by SB 784:

- Records;
- Data;
- Information;
- Correspondence; and
- Communications.

The bill also applies the exemption to any locally maintained registry that is substantially similar to the SNR. The bill specifies that such information may not be disclosed except, upon request, to:

- A law enforcement agency;
- A county emergency management agency;
- A local fire department; or
- As otherwise specifically authorized by the bill.

The bill provides for an Open Government Sunset Review and contains a statement of public necessity as required by the State Constitution.

The bill also applies the exemption retroactively to confidential and exempt information held by one of the agency entities listed above before the effective date of the act.

The bill is not expected to have a fiscal impact. See Section V. Fiscal Impact Statement.

The bill provides that the act shall take effect on the same date that SB 784 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 784 has an effective date of January 1, 2024.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person who acts on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that:

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes that relate to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

[a] ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity which justifies the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill that enacts an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁹

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violations of those laws.

⁹ FLA CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- The release of sensitive personal information would be defamatory or jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Developmental Disabilities

Developmental disabilities²⁶ include autism, cerebral palsy, spina bifida, intellectual disabilities, Down syndrome, Prader-Willi syndrome, and Phelan-McDermid syndrome.²⁷

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ Section 119.15(6)(a), F.S. The specific questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

²⁷ Agency for Persons with Disabilities, *Long-Range Program Plan (2022)*, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=23172&DocType=PDF> (last visited March 22, 2023) (hereinafter cited as “The Long-Range Plan”).

Cerebral palsy²⁸ is 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.²⁹

Spina bifida³⁰ is a birth defect in the vertebral column in which part of the spinal cord, which is normally protected within the vertebral column, is exposed. Spina bifida is caused by the failure of the neural tube to close during embryonic development. The neural tube is the embryonic structure that gives rise to the brain and spinal cord. People with spina bifida can have difficulty with bladder and bowel incontinence, cognitive (learning) problems, and limited mobility.³¹

Individuals suffering from intellectual disabilities have significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior, which manifests before the age of 18.³² Such individuals have certain limitations in both mental functioning and in adaptive skills such as communicating, self-care, and social skills. These limitations will cause a person to learn and develop more slowly. People with intellectual disabilities may take longer to learn to speak, walk, and take care of their personal needs such as dressing or eating.³³

Down syndrome is a genetic disorder caused when abnormal cell division results in extra genetic material from chromosome 21. This genetic disorder, also known as trisomy 21, varies in severity, causes lifelong intellectual disability and developmental delays, and, in some people, causes health problems.^{34, 35}

Prader-Willi syndrome³⁶ is a complex genetic condition that affects many parts of the body. In infancy, this condition is characterized by weak muscle tone, feeding difficulties, poor growth, and delayed development. Beginning in childhood, affected individuals develop an insatiable appetite and chronic overeating. As a result, most experience rapid weight gain leading to obesity. People with Prader-Willi syndrome typically have an intellectual disability or a learning disability and behavioral problems.³⁷

²⁸ Section 393.063(6), F.S.

²⁹ *Id.*

³⁰ Spina bifida is defined in statute as a medical diagnosis of spina bifida cystica or myelomeningocele. Section 393.063(41), F.S.

³¹ The Long-Range Plan, p. 79.

³² Section 393.063(24), F.S. For the purposes of this definition, the term “adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The term “significantly sub-average general intellectual functioning” means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

³³ The Long-Range Plan, p. 73.

³⁴ *Id.* at 69.

³⁵ Down syndrome is defined in statute as a disorder caused by the presence of an extra chromosome 21. Section 393.063(15), F.S.

³⁶ Prader-Willi syndrome is defined in statute as an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior. Section 393.063(29), F.S.

³⁷ The Long-Range Plan, p. 77

Phelan-McDermid syndrome³⁸ is a rare condition due to a chromosomal abnormality. Symptoms vary in range and severity but often include low muscle tone, difficulty moving, absent-to-severely delayed speech, autistic features, moderate-to-profound intellectual disability, and epilepsy.³⁹

Autism

Autism is a pervasive, neurologically-based developmental disability of extended duration that has onset during infancy or childhood, which causes severe learning, communication, and behavioral disorders.⁴⁰ Autism spectrum disorder (ASD) includes autism, Asperger's syndrome, and any other pervasive developmental disorder.⁴¹ The Centers for Disease Control and Prevention (CDC) estimates that approximately one in 44 children has ASD.⁴² The CDC also estimates that over 5.4 million adults have ASD.⁴³

Interactions with Law Enforcement for Individuals with Autism

A person's developmental disability may make interactions with law enforcement more challenging. For example, identifying a person with an ASD can be confusing to any person unfamiliar with the condition, including law enforcement. Law enforcement can mistake the signs of autism with behaviors typically associated with those of criminals.⁴⁴ Common attributes of autism are communication differences and behaviors or thinking that are repetitive or restricted to an area of interest. These traits could be interpreted by law enforcement as not being compliant with questioning or direct instructions. A characteristic of ASD known as escalation poses a particular problem in encounters with law enforcement.⁴⁵ Escalation describes the response of a person with ASD under stress or in an unfamiliar situation.⁴⁶ Overwhelmed by the barrage of sensory information, a person with ASD may attempt to flee the uncomfortable situation, become combative, or simply shut down.⁴⁷ The individual may cover his or her ears and shriek, not knowing how or where to get help.⁴⁸ The presence of police lights and sirens, uniforms, loud and unfamiliar voices, or barking dogs often makes a difficult situation worse by contributing to the individual's sensory overload.⁴⁹

³⁸ Phelan-McDermid Syndrome is defined in statute as a disorder caused by the loss of the terminal segment of the long arm of chromosome 22, which occurs near the end of the chromosome at a location designated q13.3, typically leading to developmental delay, intellectual disability, dolicocephaly, hypotonia, or absent or delayed speech. Section 393.063(28), F.S.

³⁹ The Long-Range Plan, p. 77.

⁴⁰ Section 393.063(5), F.S.

⁴¹ Section 627.6686(2)(b), F.S.

⁴² The Centers for Disease Control and Prevention (The CDC), *Data & Statistics on Autism Spectrum Disorder*, available at <https://www.cdc.gov/ncbddd/autism/data.html> (last visited March 22, 2023).

⁴³ The CDC, *Key Findings: CDC Releases First Estimates of the Number of Adults Living with Autism Spectrum Disorder in the United States*, available at <https://www.cdc.gov/ncbddd/autism/features/adults-living-with-autism-spectrum-disorder.html> (last visited March 22, 2023).

⁴⁴ Randy Lambert, *How Changing the Wes Kleinert Fair Interview Act and Establishing Law Enforcement Academy Training Standards Will Help the Autism Community*, Child and Family Law Journal, p. 48 (2018), available at <https://lawpublications.barry.edu/cflj/vol6/iss1/3> (last visited March 22, 2023).

⁴⁵ Bernard J. Farber, *Police Interaction With Autistic Persons: The Need For Training*, AeLe Monthly Law Journal, p. 106 (2009), available at <https://www.aele.org/law/2009all07/2009-07MLJ101.pdf> (last visited March 22, 2023).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.⁵⁰

The primary indicators used to evaluate an individual's mental health are:

- **Emotional well-being-** Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being-** Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being-** Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.⁵¹ Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. Nearly one in five adults lives with a mental illness.⁵² During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22 percent.⁵³

Some examples of common mental health illnesses or disorders that can negatively impact how a person interacts with others, such as law enforcement officers, include schizophrenia, bipolar disorder, borderline personality disorder, and antisocial personality disorder.⁵⁴

Alzheimer's Disease

Alzheimer's disease is a form of dementia, a general term for memory loss. It is a progressive brain disorder that damages and eventually destroys brain cells, leading to memory loss and changes in the functions of the brain. In the early stages of Alzheimer's disease, memory loss is mild; in late-stages, individuals lose the ability to carry on a conversation and respond to their environment. Currently, the disease has no cure, but treatment can temporarily slow the worsening of symptoms.⁵⁵

⁵⁰ World Health Organization, *Mental Health: Strengthening Our Response*, <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> (last visited March 22, 2023).

⁵¹ *Id.*

⁵² National Institute of Mental Health (NIH), *Mental Illness*, <https://www.nimh.nih.gov/health/statistics/mental-illness> (last visited March 22, 2023).

⁵³ *Id.*

⁵⁴ See National Alliance Mental Illness, *Mental Health Disorders*, available at <https://www.nami.org/About-Mental-Illness/Mental-Health-Conditions>; Psychiatry Online, *Contact Between Police and People With Mental Disorders: A Review of Rates*, available at <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201500312> (all sites last visited March 22, 2023).

⁵⁵ Alzheimer's Association, *2021 Alzheimer's Disease Facts and Figures*, available at <https://www.alz.org/media/documents/alzheimers-facts-and-figures.pdf> (last visited March 22, 2023).

Florida has an increasing number of individuals with Alzheimer's disease. An estimated 580,000 Floridians have Alzheimer's disease.⁵⁶ The projected number of Floridians with Alzheimer's disease is estimated to increase by 24% to 720,000 individuals by 2025.⁵⁷

Interactions with Law Enforcement for Individuals with Alzheimer's and Dementia

Many behaviors associated with Alzheimer's disease and dementia tend to increase a person's chance of interacting with law enforcement. Because these individuals are often unable to explain their unusual behavior, their actions are more easily misunderstood.⁵⁸ Common instances that can cause someone with Alzheimer's disease to interact with law enforcement include wandering, auto accidents, erratic driving, accidental breaking and entering due to confusion, and unintentional shoplifting.⁵⁹

Florida Crime Information Center (FCIC) System

The Florida Crime Information Center (FCIC) system is an electronic database that provides criminal justice agencies with access to federal and state criminal justice information. The FCIC is managed by FDLE and contains information as reported to FDLE by law enforcement agencies through the state.⁶⁰

Voluntary Registry Systems

Law enforcement agencies nationwide have begun utilizing voluntary registry systems that provide officers with relevant information on individuals with special needs, including those with Alzheimer's disease.⁶¹ Law enforcement agencies have found that such registries can:

- Promote community safety;
- Improve officer safety;
- Increase the speed and efficiency in which officers are able to respond, decreasing department liability;
- Reduce strain on department resources, both human and financial, during emergencies;
- Give community members peace of mind; and
- Promote community partnerships in responding to special needs community members.⁶²

Voluntary registry systems allow law enforcement to obtain information that assists in response to calls for service involving individuals with conditions such as Alzheimer's disease.⁶³

⁵⁶ The Department of Elder Affairs, *2021 Alzheimer's Disease Advisory Committee Annual Report*, p. 4, available at https://elderaffairs.org/wp-content/uploads/ADAC-Report-2021_FINAL.pdf (last visited March 22, 2023).

⁵⁷ *Id.*

⁵⁸ Alzheimer's Association, *Alzheimer's Disease Guide for Law Enforcement*, available at https://www.alz.org/national/documents/safereturn_lawenforcement.pdf (last visited March 22, 2023).

⁵⁹ *Id.*

⁶⁰ The FDLE, *The FCIC*, available at <https://web.fdle.state.fl.us/pas/restricted/PAS/home/home.jsf> (last visited March 22, 2023).

⁶¹ The International Association of Chiefs of Police (IACP), *A Guide to Law Enforcement on Voluntary Registry Programs for Vulnerable Populations*, p. 2, available at https://www.theiacp.org/sites/default/files/Alz%20Voluntary%20Registry_0.pdf (last visited March 22, 2023).

⁶² *Id.*

⁶³ *Id.*

Voluntary registry systems have also proven helpful in responding to individuals in other special needs populations. Departments utilize the system for community members living with ASD, developmental disabilities, attention deficit/hyperactivity disorder (ADHD), epilepsy, brain injury, mental illness, and other disabilities that may affect the way individuals interact and respond to law enforcement officers and other first responders.⁶⁴

Confidentiality of Information

Voluntary registry systems generally contain large amounts of personal and sensitive information. Confidentiality concerns, coupled with a general fear of law enforcement prevalent in some communities, could hinder community willingness to participate in voluntary registry programs.⁶⁵ Some community members may be hesitant to participate due to fear exploitation of registry data.⁶⁶ Others fear that registry information collected may be used to violate the rights of special needs individuals by inappropriately releasing the information to outside parties and entities.⁶⁷

Some agencies utilizing voluntary registry systems use disclaimers, waivers, or releases on voluntary registry systems' registration forms or questionnaires to notify registrants that providing data is voluntary and to ensure that registrants and their caregivers know that information will be used solely for the purpose of assisting first responders in providing service.⁶⁸ Other individuals have also expressed concerns regarding Health Insurance Portability and Accountability Act (HIPAA) compliance of registry information collection and storage.⁶⁹

III. Effect of Proposed Changes:

The bill amends the proposed s. 402.88, F.S., which would be created by SB 784. The bill creates an exemption from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution for the following information relating to the enrollment of individuals on the SNR created by SB 784:

- Records;
- Data;
- Information;
- Correspondence; and
- Communications.

The bill also applies the exemption to any locally maintained registry that is substantially similar to the SNR. The bill specifies that such information may not be disclosed except, upon request, to:

- A law enforcement agency;
- A county emergency management agency;
- A local fire department; or

⁶⁴ *Id.* at 3.

⁶⁵ *Id.* at 21.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

- As otherwise specifically authorized by the bill.

Any of the above-listed agency entities are permitted to disclose information otherwise deemed confidential and exempt by the bill to others not specifically listed only under the following circumstances:

- With the express written consent of the registry enrollee or the legally authorized representative of such enrollee;
- In a medical emergency;
- By court order, upon a finding of good cause;
- To another governmental agency when needed for the performance of its duties and responsibilities; or
- In the interest of public safety, to:
 - Assist in locating the enrollee; or
 - Promote the safety or well-being of the enrollee, as determined by the law enforcement agency.

The bill includes a public necessity statement, specifying the need to make all records, data, information, correspondence, and communications relating the enrollment of persons in the SNR confidential and exempt from Florida's public records laws. The bill provides that such records are likely to include confidential medical information and sensitive personal information of individuals on the SNR. The bill states that the potential disclosure of such information will deter enrollment, thereby depriving law enforcement of information which would enable them to interact with those eligible for enrollment in safe and appropriate ways.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and saved from repeal by the Legislature.

The bill also applies the exemption retroactively to confidential and exempt information held by one of the agency entities listed above before the effective date of the act.

The bill provides that the act shall take effect on the same date that SB 784 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 784 has an effective date of January 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for records, data,

information, correspondence, and communication relating to the enrollment of individuals on the SNR. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect sensitive personal information, and confidential medical information, of individuals enrolled in the SNR. This bill exempts only such information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 402.88 of the Florida Statutes, if created by SB 784.

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

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

None.

B. Amendments:

None.

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



539150

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with directory amendment)

Delete line 74

and insert:

SB 784 or similar legislation takes effect, if such legislation

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete line 21

and insert:



539150

11 Florida Statutes, as created by SB 784 or similar legislation,

By Senator Jones

34-01428-23

20231292__

A bill to be entitled
An act relating to parenting plans; amending s. 61.13,
F.S.; creating a presumption that equal time-sharing
is in the best interests of the child, with
exceptions; creating a presumption for purposes of
modifying a parenting plan and time-sharing schedule
regarding relocation of a parent; providing an
effective date.

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

Section 1. Paragraph (c) of subsection (2) and subsection
(3) of section 61.13, Florida Statutes, are amended to read:

61.13 Support of children; parenting and time-sharing;
powers of court.—

(2)

(c) The court shall determine all matters relating to
parenting and time-sharing of each minor child of the parties in
accordance with the best interests of the child and in
accordance with the Uniform Child Custody Jurisdiction and
Enforcement Act, except that modification of a parenting plan
and time-sharing schedule requires a showing of a substantial,
material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor
child has frequent and continuing contact with both parents
after the parents separate or the marriage of the parties is
dissolved and to encourage parents to share the rights and
responsibilities, and joys, of childrearing. Unless otherwise
provided in this section or agreed to by the parties, there is a

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30 presumption that equal time-sharing of a minor child is in the
31 best interests of the minor child who is common to the parties
32 ~~Except as otherwise provided in this paragraph, there is no~~
33 ~~presumption for or against the father or mother of the child or~~
34 ~~for or against any specific time-sharing schedule~~ when creating
35 or modifying the parenting plan of the child.

36 2. The court shall order that the parental responsibility
37 for a minor child be shared by both parents unless the court
38 finds that shared parental responsibility would be detrimental
39 to the child. The following evidence creates a rebuttable
40 presumption of detriment to the child:

41 a. A parent has been convicted of a misdemeanor of the
42 first degree or higher involving domestic violence, as defined
43 in s. 741.28 and chapter 775;

44 b. A parent meets the criteria of s. 39.806(1)(d); or

45 c. A parent has been convicted of or had adjudication
46 withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and
47 at the time of the offense:

48 (I) The parent was 18 years of age or older.

49 (II) The victim was under 18 years of age or the parent
50 believed the victim to be under 18 years of age.

51
52 If the presumption is not rebutted after the convicted parent is
53 advised by the court that the presumption exists, shared
54 parental responsibility, including time-sharing with the child,
55 and decisions made regarding the child, may not be granted to
56 the convicted parent. However, the convicted parent is not
57 relieved of any obligation to provide financial support. If the
58 court determines that shared parental responsibility would be

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59 detrimental to the child, it may order sole parental
60 responsibility and make such arrangements for time-sharing as
61 specified in the parenting plan as will best protect the child
62 or abused spouse from further harm. Whether or not there is a
63 conviction of any offense of domestic violence or child abuse or
64 the existence of an injunction for protection against domestic
65 violence, the court shall consider evidence of domestic violence
66 or child abuse as evidence of detriment to the child.

67 3. In ordering shared parental responsibility, the court
68 may consider the expressed desires of the parents and may grant
69 to one party the ultimate responsibility over specific aspects
70 of the child's welfare or may divide those responsibilities
71 between the parties based on the best interests of the child.
72 Areas of responsibility may include education, health care, and
73 any other responsibilities that the court finds unique to a
74 particular family.

75 4. The court shall order sole parental responsibility for a
76 minor child to one parent, with or without time-sharing with the
77 other parent if it is in the best interests of the minor child.

78 5. There is a rebuttable presumption against granting time-
79 sharing with a minor child if a parent has been convicted of or
80 had adjudication withheld for an offense enumerated in s.

81 943.0435(1)(h)1.a., and at the time of the offense:

82 a. The parent was 18 years of age or older.

83 b. The victim was under 18 years of age or the parent
84 believed the victim to be under 18 years of age.

85
86 A parent may rebut the presumption upon a specific finding in
87 writing by the court that the parent poses no significant risk

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88 of harm to the child and that time-sharing is in the best
89 interests of the minor child. If the presumption is rebutted,
90 the court shall consider all time-sharing factors in subsection
91 (3) when developing a time-sharing schedule.

92 6. Access to records and information pertaining to a minor
93 child, including, but not limited to, medical, dental, and
94 school records, may not be denied to either parent. Full rights
95 under this subparagraph apply to either parent unless a court
96 order specifically revokes these rights, including any
97 restrictions on these rights as provided in a domestic violence
98 injunction. A parent having rights under this subparagraph has
99 the same rights upon request as to form, substance, and manner
100 of access as are available to the other parent of a child,
101 including, without limitation, the right to in-person
102 communication with medical, dental, and education providers.

103 (3) For purposes of establishing or modifying parental
104 responsibility and creating, developing, approving, or modifying
105 a parenting plan, including a time-sharing schedule, which
106 governs each parent's relationship with his or her minor child
107 and the relationship between each parent with regard to his or
108 her minor child, the best interest of the child shall be the
109 primary consideration. A determination of parental
110 responsibility, a parenting plan, or a time-sharing schedule may
111 not be modified without a showing of a substantial, material,
112 and unanticipated change in circumstances and a determination
113 that the modification is in the best interests of the child. For
114 purposes of modifying a parenting plan and time-sharing
115 schedule, a parent's permanent relocation from a residence more
116 than 50 miles from the primary residence of the child to a

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117 residence within 50 miles of the primary residence of the child
118 is presumed to be a substantial, material, and unanticipated
119 change in circumstances. Determination of the best interests of
120 the child shall be made by evaluating all of the factors
121 affecting the welfare and interests of the particular minor
122 child and the circumstances of that family, including, but not
123 limited to:

124 (a) The demonstrated capacity and disposition of each
125 parent to facilitate and encourage a close and continuing
126 parent-child relationship, to honor the time-sharing schedule,
127 and to be reasonable when changes are required.

128 (b) The anticipated division of parental responsibilities
129 after the litigation, including the extent to which parental
130 responsibilities will be delegated to third parties.

131 (c) The demonstrated capacity and disposition of each
132 parent to determine, consider, and act upon the needs of the
133 child as opposed to the needs or desires of the parent.

134 (d) The length of time the child has lived in a stable,
135 satisfactory environment and the desirability of maintaining
136 continuity.

137 (e) The geographic viability of the parenting plan, with
138 special attention paid to the needs of school-age children and
139 the amount of time to be spent traveling to effectuate the
140 parenting plan. This factor does not create a presumption for or
141 against relocation of either parent with a child.

142 (f) The moral fitness of the parents.

143 (g) The mental and physical health of the parents.

144 (h) The home, school, and community record of the child.

145 (i) The reasonable preference of the child, if the court

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146 deems the child to be of sufficient intelligence, understanding,
147 and experience to express a preference.

148 (j) The demonstrated knowledge, capacity, and disposition
149 of each parent to be informed of the circumstances of the minor
150 child, including, but not limited to, the child's friends,
151 teachers, medical care providers, daily activities, and favorite
152 things.

153 (k) The demonstrated capacity and disposition of each
154 parent to provide a consistent routine for the child, such as
155 discipline, and daily schedules for homework, meals, and
156 bedtime.

157 (l) The demonstrated capacity of each parent to communicate
158 with and keep the other parent informed of issues and activities
159 regarding the minor child, and the willingness of each parent to
160 adopt a unified front on all major issues when dealing with the
161 child.

162 (m) Evidence of domestic violence, sexual violence, child
163 abuse, child abandonment, or child neglect, regardless of
164 whether a prior or pending action relating to those issues has
165 been brought. If the court accepts evidence of prior or pending
166 actions regarding domestic violence, sexual violence, child
167 abuse, child abandonment, or child neglect, the court must
168 specifically acknowledge in writing that such evidence was
169 considered when evaluating the best interests of the child.

170 (n) Evidence that either parent has knowingly provided
171 false information to the court regarding any prior or pending
172 action regarding domestic violence, sexual violence, child
173 abuse, child abandonment, or child neglect.

174 (o) The particular parenting tasks customarily performed by

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each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

(p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

(q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

(r) The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

(s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

(t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

Section 2. This act shall take effect July 1, 2023.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1292

INTRODUCER: Senator Jones

SUBJECT: Parenting Plans

DATE: March 24, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Tuzynski	Cox	CF	Pre-meeting
2. _____	_____	JU	_____
3. _____	_____	RC	_____

I. Summary:

SB 1292 creates a rebuttable presumption that equal time-sharing with minor children is in the best interests of a child, and provides that a parent moving to a residence within 50 miles of the primary residence of a child is a substantial change in circumstances.

The bill will likely not have a fiscal impact on the private sector or government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Timesharing with Minor Children

In general terms, chapter 61, F.S., contains the statutes that govern the dissolution of marriage, the distribution of assets and liabilities arising from the marriage, and the parents' responsibilities to support and care for their children, whether the parents are married or unmarried.

Section 61.13, F.S., establishes a court's authority to order payments for child support and to approve, grant, or modify a parenting plan.¹ When making a decision in these areas, the guiding principle a court must follow is the "best interests of the child" standard. Additionally, the public policy of the state is that each child have frequent and continuing contact with both parents unless the court finds that shared parental responsibility would be detrimental to the child.

¹ A parenting plan is the document that is created "to govern the relationship between the parents relating to the decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child."
Section 61.046(14) F.S.

Shared parental responsibility refers to the authority of both parents, regardless of the time-sharing schedule, to make decisions for the child in matters such as education and health care.²

Timesharing - In General

The public policy of the state is for each minor child to have “frequent and continuing contact with both parents.”³ Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.⁴ In setting a time-sharing award, there is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.⁵ In determining time-sharing with each parent, a court must consider the best interests of the child based on statutory factors, namely:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child’s school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.
- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.⁶

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.⁷

² See s. 61.13(2)(c)3., F.S.

³ Section 61.13(2)(c)1., F.S.

⁴ Section 61.13 (2)(c)2., F.S.

⁵ Section 61.13(2)(c)1., F.S.

⁶ Section 61.13(3), F.S.

⁷ Section 61.13(3)(t), F.S.

Modification of a Timesharing Award

Times change and circumstances change. Just like alimony, timesharing with a minor child is subject to future modification by the court. Either party to a final judgment of dissolution or final order regarding timesharing and child support may seek modification of the timesharing or child support award on the grounds of a substantial change in circumstances.⁸ The party seeking modification of a timesharing order must allege, and the trial court must find, that:

- Circumstances have substantially and materially changed since the original custody determination;
- The change was not reasonably contemplated by the parties; and
- The child's best interests justify changing custody.⁹

The court may modify support retroactively to the date of the filing of the motion.¹⁰ Unlike alimony, timesharing is always modifiable while the child is a minor and the parties may not enter into an agreement that prohibits modification in the future.

Studies on Equal Time-sharing

A paper reviewing 40 studies on equal time-sharing found in part that:

While acknowledging that some studies were more methodologically sophisticated and used more valid and reliable measures than the others, the fact remains that the 40 studies reached similar conclusions. First, shared parenting was linked to better outcomes for children of all ages across a wide range of emotional, behavioral, and physical health measures. Second, there was not any convincing evidence that overnighting or shared parenting was linked to negative outcomes for infants or toddlers.¹¹

Presumptions

A presumption in a legal proceeding is an assumption of the existence of a fact that is in reality unproven by direct evidence. A presumption is derived from another fact or group of facts that has been proven in the action. If a presumption is recognized, the presumed fact must be found to be present if the trier of fact finds that the underlying facts which give rise to the presumption exist. Presumptions usually assist in managing circumstances in which direct proof is rendered difficult. Presumptions arising out of considerations of fairness, public policy, and probability, as well as judicial economy, are also useful devices for allocating the burden of proof.¹² There are two types of presumption applicable to civil actions -- a presumption affecting the burden of producing evidence and a presumption affecting the burden of proof.¹³

⁸ Section 61.14(1)(a), F.S.

⁹ *Korkmaz v. Korkmaz*, 200 So. 3d 263, 265 (Fla. Dist. Ct. App. 2016)

¹⁰ Section 61.14(1)(a), F.S.

¹¹ Neilson, *Shared Physical Custody: Summary of 40 Studies on Outcomes for Children*, *Journal of Divorce & Remarriage*, 55:613–635, 2014

¹² *Presumptions—Generally*, 1 Fla. Prac., Evidence s. 301.1 (2020 ed.).

¹³ Section 90.302, F.S.

Presumptions that are recognized primarily to facilitate the determination of an action, rather than to implement public policy, are presumptions affecting the burden of producing evidence. These so-called bursting bubble presumptions are recognized when the underlying facts are proved to exist and they remain in effect until credible evidence is introduced to disprove the presumed fact. Once the evidence of the nonexistence of the presumed fact is offered, the presumption disappears.¹⁴

Any presumption not falling within the category of presumptions affecting the burden of producing evidence is a presumption affecting the burden of proof.¹⁵ These presumptions are recognized because they express a policy that society deems desirable. When proof is introduced of the basic facts giving rise to a presumption affecting the burden of proof, the presumption operates to shift the burden of persuasion regarding the presumed fact to the opposing party.¹⁶

Florida law is silent as to a rebuttable presumption for equal time-sharing absent of these enumerated factors.

III. Effect of Proposed Changes:

Timesharing with Minor Children

The bill creates a rebuttable presumption that equal time-sharing between the parents is in the best interest of a child common to the parties. The parties may waive the presumption and agree on a different timesharing agreement.

The bill also provides that a parent's permanent relocation to a residence within 50 miles of the primary residence of the child is a substantial, material, and unanticipated change in circumstances.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ *Types of presumptions which affect the burden of producing evidence*, 1 Fla. Prac., Evidence s. 303.1 (2020 ed.).

¹⁵ Section 90.304, F.S.

¹⁶ *Types of presumptions which affect the burden of proof*, 1 Fla. Prac., Evidence § 304.1 (2020 ed.).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate positive impact on persons who are seeking for timesharing with a child or seeking to relocate by making timesharing orders more predictable thereby reducing litigation costs.

C. Government Sector Impact:

The bill may have an indeterminate positive impact on the courts by making timesharing orders more predictable thereby reducing workload and hearing litigation costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 61.13 of the Florida Statutes:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Simon

3-01671-23

20231284__

A bill to be entitled
An act relating to criminal defendants adjudicated
incompetent to proceed; amending s. 916.13, F.S.;
requiring that the Department of Children and Families
initiate a transfer evaluation to determine if a
defendant adjudicated incompetent to proceed meets the
criteria for involuntary civil commitment if it
determines that the defendant will not or is unlikely
to gain competence; requiring that a copy of the
evaluation be provided to the court and counsel;
providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (2) of
section 916.13, Florida Statutes, to read:

916.13 Involuntary commitment of defendant adjudicated
incompetent.—

(2) A defendant who has been charged with a felony and who
has been adjudicated incompetent to proceed due to mental
illness, and who meets the criteria for involuntary commitment
under this chapter, may be committed to the department, and the
department shall retain and treat the defendant.

(d) If the department determines at any time that a
defendant will not or is unlikely to gain competence to proceed,
the department shall initiate a transfer evaluation to determine
if the defendant meets the criteria for involuntary civil
commitment, and a copy of that evaluation shall be provided to
the court and counsel before initiating any transfer of the

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30 defendant back to the committing jurisdiction.

31 Section 2. This act shall take effect July 1, 2023.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1284

INTRODUCER: Senator Simon

SUBJECT: Criminal Defendants Adjudicated Incompetent to Proceed

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1284 requires the Department of Children and Families (the DCF) to initiate a transfer evaluation to determine if a defendant deemed incompetent to proceed meets the criteria for involuntary civil commitment in instances where the DCF determines the defendant is unlikely to regain competence. It also requires that a copy of that evaluation be provided to the court and counsel before initiating any transfer of the defendant back to the committing jurisdiction.

The bill will likely have an indeterminate impact on state government and the private sector. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Competency Restoration Treatment and Forensic Facilities

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues, an intellectual disability, or autism, and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed¹ and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil and forensic treatment facilities by the circuit court,² or in lieu of such commitment, may be released on conditional release³ by

¹ “Incompetent to proceed” means “the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding” or “the defendant has no rational, as well as factual, understanding of the proceedings against her or him.” Section 916.12(1), F.S.

² Sections 916.13, 916.15, and 916.302, F.S.

³ Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.

the circuit court if the person is not serving a prison sentence.⁴ The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release and a defendant may not be released from either commitment or conditional release except by order of the committing court.⁵

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed, or who has been found not guilty by reason of insanity. Florida law provides for the ability to commit a person under either basis; however, the goals for the commitment are different for each basis of the commitment. Persons committed under s. 916.13, F.S., after an adjudication of incompetency to proceed have a primary goal of restoration of competency; whereas persons who have been found not guilty by reason of insanity that are committed have a primary goal of stabilization and post-hospital planning.

A civil facility is, in part, a mental health facility established within the DCF or by contract with the DCF to serve individuals committed pursuant to ch. 394, F.S., and defendants pursuant to ch. 916, F.S., who do not require the security provided in a forensic facility.⁶

A forensic facility is a separate and secure facility established within the DCF or the Agency for Persons with Disabilities (the APD) to service forensic clients committed pursuant to ch. 916, F.S.⁷ A separate and secure facility means a security-grade building for the purposes of separately housing individuals with mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed from non-forensic residents.⁸

State Forensic System – Mental Health Treatment for Criminal Defendants

State Treatment Facilities

State treatment facilities are the most restrictive settings for forensic services. The forensic facilities provide assessment, evaluation, and treatment to the individuals who have mental health issues and who are involved with the criminal justice system.

Mental Health Treatment Facilities

The DCF runs three mental health treatment facilities: the Florida State Hospital (FSH), the Northeast Florida State Hospital (NEFSH), and the North Florida Evaluation and Treatment Center (NFETC).⁹ The DCF also contracts with a private provider to operate three additional facilities that provide competency restoration training. The facilities are the South Florida

⁴ Section 916.17(1), F.S.

⁵ Section 916.16(1), F.S.

⁶ Section 916.106(4), F.S.

⁷ Section 916.106(10), F.S. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to ch. 916, F.S., from non-forensic residents.

⁸ *Id.*

⁹ The DCF, *State Mental Health Treatment Facilities*, available at <https://www2.myflfamilies.com/service-programs/mental-health/state-mental-health-treatment-facilities.shtml> last visited March 22, 2023).

Evaluation and Treatment Center, South Florida State Hospital, and Treasure Coast Treatment Facility which are operated by Wellpath Recovery Solutions (Wellpath).¹⁰

The FSH, located in Chattahoochee, Florida, is a state psychiatric hospital that provides civil and forensic services.¹¹ The hospital's civil services are comprised of the following three units with a total of 490 beds:

- Civil Admissions evaluates and provides psychiatric services primarily for newly admitted acutely ill male and female civil residents between the ages of 18 and 64;
- Civil Transition Program serves civil residents and individuals previously in a forensic setting who no longer need that level of security and with court approval, may reside in a less restrictive civil environment; and
- Specialty Care Program serves a diverse population of individuals requiring mental health treatment and services, including civil and forensic step downs.¹²

The hospital's forensic services section evaluates and treats persons with felony charges who have been adjudicated incompetent to stand trial or not guilty by reason of insanity. Forensic services is comprised of the following two units;

- Forensic Admission is a maximum security facility that assesses new admissions, provides short-term treatment and competency restoration for defendants found incompetent to stand trial, and behavior stabilization for persons committed as not guilty by reason of insanity; and
- Forensic Central provides longer-term treatment and serves a seriously and persistently mentally ill population who are incompetent to proceed or not guilty by reason of insanity.¹³

The NEFSH, located in Macclenny, Florida, is a state psychiatric hospital that provides civil services.¹⁴ The facility operates 633 beds and is the largest state-owned provider of psychiatric care and treatment to civilly committed individuals in Florida. Referrals are based upon community and regional priorities for admission.¹⁵

The NFETC, located in Gainesville, Florida, is an evaluation and treatment center for people with mental illnesses who are involved in the criminal justice system.¹⁶ The center has 193 beds open for the evaluation and treatment of residents who have major mental disorders. These residents are either incompetent to proceed to trial or have been judged to be not guilty by reason of insanity.¹⁷

¹⁰ *Id.*

¹¹ The DCF, *Forensic Facilities*, available at <https://www2.myflfamilies.com/service-programs/samh/adult-forensic-mental-health/forensic-facilities.shtml> (last visited March 22, 2023).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

As of March 15, 2023, there were a total of 330 individuals on the waitlist for forensic beds at the state's mental health facilities.¹⁸ Individuals spend 59 days on the waitlist on average.¹⁹

Determination of Incompetency

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.²⁰ If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.²¹ If the defendant is found to be competent, the criminal proceeding resumes.²² If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.²³

Judicial Determination of Incompetency and Commitment

A defendant is deemed incompetent to proceed if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.²⁴

Mental health experts appointed pursuant to s. 916.115, F.S., must first determine whether the defendant has a mental illness and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed.²⁵ A defendant must be evaluated by no fewer than two experts before the court commits the defendant or takes other action, except if one expert finds that the defendant is incompetent to proceed and the parties stipulate to that finding. The court may commit the defendant or take other action without further evaluation or hearing, or the court may appoint no more than two additional experts to evaluate the defendant.²⁶ Notwithstanding any stipulation by the state and the defendant, the court may require a hearing with testimony from the expert or experts before ordering the commitment of a defendant.²⁷

In considering the issue of competence to proceed, an examining expert must first consider and specifically include in his or her report the defendant's capacity to:

- Appreciate the charges or allegations against the defendant;
- Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;
- Understand the adversarial nature of the legal process;

¹⁸ The DCF, E-mail from John Paul Fiore, Legislative Affairs Director, *Forensic Bed Waitlist*, March 15, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁹ The DCF, E-mail from John Paul Fiore, Legislative Affairs Director, *Re: SB 1600*, January 29, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).

²⁰ Rule 3.210, Fla.R.Crim.P.

²¹ *Id.*

²² Rule 3.212, Fla.R.Crim.P.

²³ *Id.*

²⁴ Section 916.12(1), F.S.

²⁵ Section 916.12(2), F.S.

²⁶ *Id.*

²⁷ *Id.*

- Disclose to counsel facts pertinent to the proceedings at issue;
- Manifest appropriate courtroom behavior; and
- Testify relevantly.²⁸

In addition, an examining expert must consider and include in his or her report any other factor deemed relevant by the expert.²⁹

If an expert finds that the defendant is incompetent to proceed, the expert must report on any recommended treatment for the defendant to attain competence to proceed.³⁰ In considering the issues relating to treatment, the examining expert must specifically report on:

- The mental illness causing the incompetence;
- The treatment or treatments appropriate for the mental illness of the defendant and an explanation of each of the possible treatment alternatives in order of choices;
- The availability of acceptable treatment and, if treatment is available in the community, the expert shall so state in the report; and
 - The likelihood of the defendant's attaining competence under the treatment recommended,
 - An assessment of the probable duration of the treatment required to restore competence, and
 - The probability that the defendant will attain competence to proceed in the foreseeable future.³¹

A defendant who, because of psychotropic medication,³² is able to understand the nature of proceedings and assist in the defendant's own defense must not automatically be deemed incompetent to proceed simply because the defendant's satisfactory mental functioning is dependent upon such medication.³³

If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.³⁴

²⁸ Section 916.12(3), F.S.

²⁹ *Id.*

³⁰ Section 916.12(4), F.S.

³¹ *Id.*

³² "Psychotropic medication" is defined to mean any drug or compound used to treat mental or emotional disorders affecting the mind, behavior, intellectual functions, perception, moods, or emotions and includes antipsychotic, antidepressant, antimanic, and antianxiety drugs. Section 916.12(5), F.S.

³³ Section 916.12(5), F.S.

³⁴ Sections 916.13(2)(b) and 916.15(3)(c), F.S. For involuntary commitment of a person under s. 916.15, F.S., the additional report must be submitted prior to the end of any period of extended commitment, rather than "at the end" of the extended commitment.

Judicial Procedure for Release and Transportation Back to Committing Jurisdiction

Current law also requires that a competency hearing must be held within 30 days after the court receives notification that a defendant is competent to proceed or no longer meets the criteria for continued commitment.³⁵ However, many defendants are either not being transported back to the committing jurisdiction in a timely manner or are not being transported for the hearing at all.³⁶ While patients await transportation back to the county with jurisdiction, they remain at a treatment facility.³⁷ There are between 80 and 100 competent individuals in treatment facilities awaiting transportation back to the committing jurisdiction on an average day.³⁸ As a result, the waitlist for state mental health services is longer as it contains some individuals left in state facilities that are occupying beds which could be utilized by those awaiting treatment.³⁹

While s. 916.13, F.S., requires that a competency hearing be held within 30 days of receiving a competency notification, there are instances in which courts do not make a determination of competency during an initial hearing, resulting in a defendant remaining at a treatment facility for longer than the maximum 30 days required by current law.⁴⁰ Additionally, in some instances individuals that are transported back to the committing jurisdiction decompensate⁴¹ before a determination of competency can be made because hearings are continued or not scheduled within the 30-day timeframe.⁴²

If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it.⁴³ The jail and department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician.⁴⁴

Incompetent to Proceed and Non-Restorable

If after being committed the defendant does not respond to treatment and is deemed non-restorable, the administrator of the commitment facility must notify the court by filing a report in the criminal case.⁴⁵ Those who are found to be non-restorable must be civilly committed or released.⁴⁶

³⁵ Sections 916.13(2)(c) and 916.15(5), F.S.

³⁶ The DCF Analysis at p. 3.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Psychiatrists and psychologists use the term "decompensating" to describe worsening symptoms of mental illness. An "episode of decompensation" is a period of significant, often rapid, deterioration in mental health, such as a panic attack. See *Episodes of Decompensation in Mental Illness: Social Security Disability*, available at <https://www.disabilitysecrets.com/mic2.html> (last visited March 14, 2023).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Section. 916.13(2)(b), F.S.

⁴⁶ *Mosher v. State*, 876 So.2d 1230 (Fla. 1st DCA 2004).

Non-Restorable Competency

An individual's competency is considered non-restorable when it is not likely that he or she will regain competency in the foreseeable future.⁴⁷ The DCF must make every effort to restore the competency of those committed pursuant to ch. 916, F.S., as incompetent to proceed.⁴⁸ To ensure that all possible treatment options have been exhausted, all competency restoration attempts in less restrictive, step-down facilities should be considered prior to making a recommendation of non-restorability, particularly for individuals with violent charges.⁴⁹

Florida Rules of Criminal Procedure 3.213 and s. 916.145, F.S., require dismissal of charges if an individual remains incompetent to proceed for five years (with the exception of individuals adjudicated incompetent to proceed with sentencing) unless the court specifically finds that the individual will become competent within the foreseeable future and specifies the timeframe in which the individual is expected to become competent.⁵⁰ After an evaluator of competency has completed a competency evaluation and opined that there is not a substantial probability of competency restoration in the current environment in the foreseeable future, the evaluator will notify the appropriate recovery team coordinator that the individual's competency does not appear to be restorable.⁵¹ A recovery team is an assigned group of individuals with specific responsibilities identified on the recovery plan including the resident, psychiatrist, guardian/guardian advocate (if resident has a guardian/guardian advocate), community case manager, family member and other treatment professionals commensurate with the resident's needs, goals, and preferences.⁵²

The recovery team is required to meet to consider the individual's restorability.⁵³ However, prior to the team meeting, an independent evaluation must be conducted to examine suitability for involuntary placement.⁵⁴ Once the recovery team meets it must consider the following:

- Mental and emotional symptoms affecting competency to proceed;
- Medical conditions affecting competency to proceed;
- Current treatments and activities to restore competency to proceed;
- Whether relevant symptoms and conditions are likely to demonstrate substantive improvement;
- Whether relevant and feasible treatments remain that have not been attempted, including competency restoration training in a less restrictive, step-down facility; and
- Additional information as needed (including barriers to discharge, pending warrants and detainers, dangerousness, self-neglect).⁵⁵

⁴⁷ The DCF Operating Procedures No. 155-13, *Mental Health and Substance Abuse: Incompetent to Proceed and Non-Restorable Status* at p. 1., September 2021, available at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_155-13_incompetence_to_proceed_and_non-restorable_status.pdf (last visited March 22, 2023).

⁴⁸ *Id.* at p. 3.

⁴⁹ *Id.*

⁵⁰ *Id.* at p. 7.

⁵¹ *Id.* at p. 3.

⁵² *Id.* at p. 2.

⁵³ *Id.* at p. 3.

⁵⁴ *Id.*

⁵⁵ *Id.*

The recovery team must document the team meeting and considerations for review, and, if applicable, the extent to which the individual meets the criteria for involuntary examination pursuant to s. 394.463, F.S., or involuntary inpatient placement pursuant to s. 394.467(1), F.S. Each member of the recovery team must provide a recommendation for disposition. Individuals with competency reported as non-restorable may be considered, as appropriate, for recommendations of release without legal conditions or involuntary examination or inpatient placement.⁵⁶

Competency Evaluation Report

Following the completion of the competency evaluation, the evaluator must complete a competency evaluation report to the circuit court.⁵⁷ The report must include the following:

- A description of mental, emotional, and behavioral disturbances;
- An explanation to support the opinion of incompetence to proceed;
- The rationale to support why the individual is unlikely to gain competence to proceed in the foreseeable future;
- A clinical opinion that the individual no longer meets the criteria for involuntary forensic commitment pursuant to s. 916.13, F.S.; and
- A recommendation whether the individual meets the criteria for involuntary examination pursuant to s. 394.463, F.S.⁵⁸

The Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.⁵⁹ The Baker Act deals with Florida's mental health commitment laws, and includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations.⁶⁰ The Baker Act also protects the rights of all individuals examined or treated for mental illness in Florida.⁶¹

Involuntary Examination

Individuals suffering from an acute mental health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.⁶² An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; and
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm

⁵⁶ *Id.* at p. 4.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Chapter 71-131, L.O.F.; The Baker Act is contained in ch. 394, F.S.

⁶⁰ Sections 394.451 through 394.47891, F.S.

⁶¹ Section 394.459, F.S.

⁶² Sections 394.4625 and 394.463, F.S., respectively.

to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.⁶³

The involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;⁶⁴
- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination;⁶⁵ or
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.⁶⁶

Involuntary patients must be taken to either a public or private facility which has been designated by the DCF as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold, or refer, as appropriate, involuntary patients under emergency conditions for psychiatric evaluation and to provide short-term treatment or transportation to the appropriate service provider.⁶⁷ The patient must be examined by the receiving facility within 72 hours of the initiation of the involuntary examination and specified actions must be taken within that time frame to address the individual needs of the patient.⁶⁸

III. Effect of Proposed Changes:

The bill requires the DCF to, if the DCF determines that a defendant will not, or is unlikely to gain competence to proceed to trial, initiate a transfer evaluation to determine if the defendant meets the criteria for involuntary civil commitment under the Baker Act. The bill also requires a copy of the transfer to be provided to the court and counsel before initiating the transfer of the defendant back to the committing jurisdiction.

The bill will provide courts with an opportunity to ensure that individuals whose competency is likely non-restorable but who still meet Baker Act commitment criteria to receive crisis services they may otherwise not receive.

The bill is effective July 1, 2023.

⁶³ Section 394.463(1), F.S.

⁶⁴ Section 394.463(2)(a)1., F.S. Additionally, the order of the court must be made a part of the patient's clinical record.

⁶⁵ Section 394.463(2)(a)2., F.S. The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.

⁶⁶ Section 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record

⁶⁷ Section 394.455(40), F.S.

⁶⁸ Section 394.463(2)(g), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF states that it cannot determine how many individuals may be affected by the bill, and as such the fiscal impact to the agency is indeterminate.⁶⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁶⁹ The DCF, *Agency Analysis of SB 1284*, p. 4, January 1, 2023. (On file with the Senate Committee on Children, Families, and Elder Affairs).

VIII. Statutes Affected:

This bill substantially amends section 916.13 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

By Senator Garcia

36-01011B-23

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A bill to be entitled

An act relating to the Agency for Persons with Disabilities; amending s. 393.063, F.S.; revising and defining terms; amending s. 393.0655, F.S.; revising background screening requirements for certain direct service providers; amending s. 393.067, F.S.; requiring the licensure of adult day training programs; conforming related application and licensure provisions to changes made by the act; providing for comprehensive emergency management plans of adult day training programs; providing for inspections of adult day training programs; requiring adult day training programs to adhere to specified rights; conforming provisions to changes made by the act; amending s. 393.0673, F.S.; revising provisions related to disciplinary action against certain licensees to include licensed adult day training programs; providing that for purposes of disciplinary action for certain violations, a licensee is ultimately responsible for the care and supervision of clients in its facility or participants of the program; providing construction; revising grounds for denial of a licensure application; defining the term "good moral character"; authorizing the agency to immediately suspend or revoke the license of adult day training programs under certain circumstances; authorizing the agency to impose an immediate moratorium on service authorizations to licensed facilities and adult day training programs under certain circumstances;

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amending s. 393.0678, F.S.; conforming provisions to changes made by the act; making a technical correction; amending s. 393.135, F.S.; conforming provisions to changes made by the act; repealing s. 393.18, F.S., relating to comprehensive transitional education programs; amending s. 394.875, F.S.; conforming a provision to changes made by the act; amending ss. 383.141, 400.063, and 1002.394, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (1) and (10) of section 393.063, Florida Statutes, are amended, and a new subsection (25) is added to that section, to read:

393.063 Definitions.—For the purposes of this chapter, the term:

(1) "Adult day training" means a program of training services which takes ~~that take~~ place in a nonresidential setting, separate from the home or facility in which the client resides, and is are intended to support the participation of clients in ~~daily,~~ meaningful, and valued routines of the community. These services include, but are not limited to, the acquisition, retention, or improvement of self-help, socialization, and adaptive skills ~~Such training may be provided in work-like settings that do not meet the definition of supported employment.~~

~~(10) "Comprehensive transitional education program" means~~

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the program established in s. 393.18.

(25) "Licensee" means an individual, a corporation, a partnership, a firm, an association, a governmental entity, or other entity that is issued a permit, registration, certificate, or license by the agency. The licensee is legally responsible for all aspects of the provider operation.

Section 2. Subsection (1) of section 393.0655, Florida Statutes, is amended to read:

393.0655 Screening of direct service providers.—

(1) MINIMUM STANDARDS.—The agency shall require level 2 employment screening pursuant to chapter 435 for direct service providers who are unrelated to their clients, including support coordinators, and managers and supervisors of residential facilities or adult day training ~~comprehensive transitional education~~ programs licensed under this chapter and any other person, including volunteers, who provide care or services, who have access to a client's living areas, or who have access to a client's funds or personal property. Background screening must ~~shall~~ include employment history checks as provided in s. 435.03(1) and local criminal records checks through local law enforcement agencies.

(a) A volunteer who assists on an intermittent basis for less than 10 hours per month does not have to be screened if a person who meets the screening requirement of this section is always present and has the volunteer within his or her line of sight.

(b) Licensed physicians, nurses, or other professionals licensed and regulated by the Department of Health are not subject to background screening pursuant to this section if they

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are providing a service that is within their scope of licensed practice.

(c) A person selected by the family or the individual with developmental disabilities and paid by the family or the individual to provide supports or services is not required to have a background screening under this section.

(d) Persons 12 years of age or older, including family members, residing with a direct services provider who provides services to clients in his or her own place of residence are subject to background screening; however, such persons who are 12 to 18 years of age shall be screened for delinquency records only.

Section 3. Section 393.067, Florida Statutes, is amended to read:

393.067 Facility licensure.—

(1) The agency shall provide through its licensing authority and by rule license application procedures, provider qualifications, facility and client care standards, requirements for client records, requirements for staff qualifications and training, and requirements for monitoring foster care facilities, group home facilities, residential habilitation centers, and adult day training ~~comprehensive transitional education~~ programs that serve agency clients.

(2) The agency shall conduct annual inspections and reviews of facilities and adult day training programs licensed under this section.

(3) An application for a license under this section must be made to the agency on a form furnished by it and shall be accompanied by the appropriate license fee.

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(4) The application shall be under oath and shall contain the following:

(a) The name and address of the applicant, if an applicant is an individual; if the applicant is a firm, partnership, or association, the name and address of each member thereof; if the applicant is a corporation, its name and address and the name and address of each director and each officer thereof; and the name by which the facility or program is to be known.

(b) The location of the facility or adult day training program for which a license is sought.

(c) The name of the person or persons under whose management or supervision the facility or adult day training program will be conducted.

(d) The number and type of residents or clients for which maintenance, care, education, or treatment is to be provided by the facility or adult day training program.

~~(e) The number and location of the component centers or units which will compose the comprehensive transitional education program.~~

~~(f)~~ A description of the types of services and treatment to be provided by the facility or adult day training program.

(f)~~(g)~~ Information relating to the number, experience, and training of the employees of the facility or adult day training program.

(g)~~(h)~~ Certification that the staff of the facility or adult day training program will receive training to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, of residents and clients.

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146 ~~(h)(i) Such other~~ Information as the agency determines is
147 necessary to carry out the provisions of this chapter.

148 (5) As a prerequisite for issuance of an initial or renewal
149 license, the applicant, and any manager, supervisor, and staff
150 member of the direct service provider of a facility or adult day
151 training program licensed under this section, must have
152 submitted to background screening as required under s. 393.0655.
153 A license may not be issued or renewed if the applicant or any
154 manager, supervisor, or staff member of the direct service
155 provider has a disqualifying offense revealed by ~~failed~~
156 background screenings as required under s. 393.0655. The agency
157 shall determine by rule the frequency of background screening.
158 The applicant shall submit with each initial or renewal
159 application a signed affidavit under penalty of perjury stating
160 that the applicant and any manager, supervisor, or staff member
161 of the direct service provider is in compliance with all
162 requirements for background screening.

163 (6) A facility or program The applicant shall furnish
164 satisfactory proof of financial ability to operate and conduct
165 the facility or program in accordance with the requirements of
166 this chapter and adopted rules.

167 (7) The agency shall adopt rules establishing minimum
168 standards for facilities and adult day training programs
169 licensed under this section, including rules requiring
170 facilities and adult day training programs to train staff to
171 detect, report, and prevent sexual abuse, abuse, neglect,
172 exploitation, and abandonment, as defined in ss. 39.01 and
173 415.102, of residents and clients, minimum standards of quality
174 and adequacy of client care, incident reporting requirements,

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and uniform firesafety standards established by the State Fire Marshal which are appropriate to the size of the facility or adult day training ~~of the component centers or units of the~~ program.

(8) The agency, after consultation with the Division of Emergency Management, shall adopt rules for foster care facilities, group home facilities, ~~and~~ residential habilitation centers, and adult day training programs which establish minimum standards for the preparation and annual update of a comprehensive emergency management plan. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan for all facilities and adult day training ~~comprehensive transitional education~~ programs ~~and for homes~~ serving individuals who have a complex medical condition ~~conditions~~ is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency shall ensure that the agency and the Division of Emergency Management, at a minimum, are given the opportunity to review the plan. Also, appropriate volunteer organizations must be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility or program of necessary revisions.

(9) The agency may conduct unannounced inspections to

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determine compliance by foster care facilities, group home facilities, residential habilitation centers, and adult day training ~~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 an adult day training ~~a~~ program to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, of residents and clients. The facility or adult day training program shall make copies of inspection reports available to the public upon request.

(10) Each facility or program licensed under this section shall forward annually to the agency a true and accurate sworn statement of its costs of providing care to clients funded by the agency.

(11) The agency may audit the records of any facility or program that 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 is ~~shall be~~ limited to the records of clients funded by the agency.

(12) The agency 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.

(13) Facilities and adult day training programs licensed under ~~pursuant to~~ this section shall adhere to all rights specified in s. 393.13, ~~including those enumerated in s. 393.13(4).~~

(14) The agency may not authorize funds or services to an

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unlicensed facility or adult day training program that requires
a license under this section ~~may not receive state funds~~. A
license for the operation of a facility or an adult day training
program may ~~shall~~ not be renewed if the licensee has any
outstanding fines assessed pursuant to this chapter wherein
final adjudication of such fines has been entered.

(15) The agency is not required to contract with facilities
or adult day training programs licensed under ~~pursuant to~~ this
chapter.

Section 4. Section 393.0673, Florida Statutes, is amended
to read:

393.0673 Denial, suspension, or revocation of license;
moratorium on admissions; administrative fines; procedures.—

(1) The following constitute grounds for which the agency
may take disciplinary action, including revoking or suspending
~~revoke or suspend~~ a license and imposing ~~or impose~~ an
administrative fine, not to exceed \$1,000 per violation per day~~7~~
~~if~~:

(a) The licensee has:

1. Falsely represented or omitted a material fact in its
license application submitted under s. 393.067;

2. Had prior action taken against it under the Medicaid or
Medicare program; or

3. Failed to comply with the applicable requirements of
this chapter or rules applicable to the licensee; or

(b) The Department of Children and Families has verified
that the licensee is responsible for the abuse, neglect, or
abandonment of a child or the abuse, neglect, or exploitation of
a vulnerable adult.

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(2) For purposes of disciplinary action under this section for verified findings of abuse, neglect, abandonment, or exploitation of a child or vulnerable adult, the licensee is responsible not only for administration of the facilities in compliance with the standards set out by statute and administrative rule, but is ultimately responsible for the care and supervision of the clients in the facility or the participants of the program.

(a) A licensee may not delegate to others the ultimate responsibility for the safety of the clients in its care.

(b) A licensee is subject to disciplinary action for an employee's lapse in care or supervision of the clients at the facility or the participants of the program in which a verified finding of abuse, neglect, abandonment, or exploitation occurred.

(c) Remedial action taken by the licensee does not affect the agency's ability to impose disciplinary action for the underlying violation.

(3) The agency may deny an application for licensure submitted under s. 393.067 if:

(a) The applicant has:

1. Falsely represented or omitted a material fact in its license application submitted under s. 393.067;

2. Had prior action taken against it under the Medicaid or Medicare program;

3. Failed to comply with the applicable requirements of this chapter or rules applicable to the applicant; or

4. Previously had a license to operate a residential facility or adult day training program revoked by the agency,

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the Department of Children and Families, or the Agency for Health Care Administration; ~~or~~

(b) The Department of Children and Families has verified that the applicant is responsible for the abuse, neglect, or abandonment of a child or the abuse, neglect, or exploitation of a vulnerable adult; or

(c) The agency has determined that there is clear and convincing evidence that the applicant is unqualified for a license because of a lack of good moral character. For purposes of this paragraph, the term "good moral character" means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and the Federal Government.

(4)~~(3)~~ All hearings must ~~shall~~ be held within the county in which the licensee or applicant operates or applies for a license to operate a facility or adult day training program as defined herein.

(5)~~(4)~~ The agency, as a part of any final order issued by it under this chapter, may impose such fine as it deems proper, except that such fine may not exceed \$1,000 for each violation. Each day a violation of this chapter occurs constitutes a separate violation and is subject to a separate fine, but in no event may the aggregate amount of any fine exceed \$10,000. Fines paid by any facility licensee under ~~the provisions of~~ this subsection shall be deposited in the Health Care Trust Fund and expended as provided in s. 400.063.

(6)~~(5)~~ The agency may issue an order immediately suspending or revoking a license when it determines that any condition of ~~in~~ the facility or adult day training program presents a danger

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to the health, safety, or welfare of the residents in the facility or the program participants.

(7)~~(6)~~ The agency may impose an immediate moratorium on admissions to any facility or service authorizations to a facility or adult day training program when the agency determines that any condition of in the facility or adult day training program presents a threat to the health, safety, or welfare of the residents in the facility or the program participants.

(8)~~(7)~~ The agency shall establish by rule criteria for evaluating the severity of violations and for determining the amount of fines imposed.

Section 5. Subsection (1) of section 393.0678, Florida Statutes, is amended to read:

393.0678 Receivership proceedings.—

(1) The agency may petition a court of competent jurisdiction for the appointment of a receiver for ~~a comprehensive transitional education program~~, a residential habilitation center, or a group home facility owned and operated by a corporation or partnership when any of the following conditions exist:

(a) Any person is operating a facility without a license and refuses to make application for a license as required by s. 393.067.

(b) The licensee is closing the facility or has informed the agency ~~department~~ that it intends to close the facility; and adequate arrangements have not been made for relocation of the residents within 7 days, exclusive of weekends and holidays, of the closing of the facility.

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(c) The agency determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or which present a substantial probability that death or serious physical harm would result therefrom. Whenever possible, the agency shall facilitate the continued operation of the program.

(d) The licensee cannot meet its financial obligations to provide food, shelter, care, and utilities. Evidence such as the issuance of bad checks or the accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities constitutes prima facie evidence that the ownership of the facility lacks the financial ability to operate the home in accordance with the requirements of this chapter and all rules adopted ~~promulgated~~ thereunder.

Section 6. Subsection (2) of section 393.135, Florida Statutes, is amended to read:

393.135 Sexual misconduct prohibited; reporting required; penalties.—

(2) A covered person who engages in sexual misconduct with an individual with a developmental disability who:

(a) Resides in a residential facility, including any ~~comprehensive transitional education program~~, developmental disabilities center, foster care facility, group home facility, intermediate care facility for the developmentally disabled, or residential habilitation center; or

(b) Is eligible to receive services from the agency under this chapter,

commits a felony of the second degree, punishable as provided in

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s. 775.082, s. 775.083, or s. 775.084. A covered person may be found guilty of violating this subsection without having committed the crime of sexual battery.

Section 7. Section 393.18, Florida Statutes, is repealed.

Section 8. Paragraph (c) of subsection (3) of section 394.875, Florida Statutes, is amended to read:

394.875 Crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required.—

(3) The following are exempt from licensure as required in ss. 394.455-394.903:

~~(c) Comprehensive transitional education programs licensed under s. 393.067.~~

Section 9. Paragraph (b) of subsection (1) of section 383.141, Florida Statutes, is amended to read:

383.141 Prenatally diagnosed conditions; patient to be provided information; definitions; information clearinghouse; advisory council.—

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

(b) "Developmental disability" includes Down syndrome and other developmental disabilities defined by s. 393.063 ~~s. 393.063(12)~~.

Section 10. Subsection (1) of section 400.063, Florida Statutes, is amended to read:

400.063 Resident protection.—

(1) The Health Care Trust Fund shall be used for the purpose of collecting and disbursing funds generated from the license fees and administrative fines as provided for in ss. 393.0673(5) ~~ss. 393.0673(4)~~, 400.062(3), 400.121(2), and

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407 400.23(8). Such funds shall be for the sole purpose of paying
408 for the appropriate alternate placement, care, and treatment of
409 residents who are removed from a facility licensed under this
410 part or a facility specified in s. 393.0678(1) in which the
411 agency determines that existing conditions or practices
412 constitute an immediate danger to the health, safety, or
413 security of the residents. If the agency determines that it is
414 in the best interest of the health, safety, or security of the
415 residents to provide for an orderly removal of the residents
416 from the facility, the agency may utilize such funds to maintain
417 and care for the residents in the facility pending removal and
418 alternative placement. The maintenance and care of the residents
419 shall be under the direction and control of a receiver appointed
420 pursuant to s. 393.0678(1) or s. 400.126(1). However, funds may
421 be expended in an emergency upon a filing of a petition for a
422 receiver, upon the declaration of a state of local emergency
423 pursuant to s. 252.38(3)(a)5., or upon a duly authorized local
424 order of evacuation of a facility by emergency personnel to
425 protect the health and safety of the residents.

426 Section 11. Paragraph (d) of subsection (2) of section
427 1002.394, Florida Statutes, is amended to read:

428 1002.394 The Family Empowerment Scholarship Program.—

429 (2) DEFINITIONS.—As used in this section, the term:

430 (d) "Disability" means, for a 3- or 4-year-old child or for
431 a student in kindergarten to grade 12, autism spectrum disorder,
432 as defined in the Diagnostic and Statistical Manual of Mental
433 Disorders, Fifth Edition, published by the American Psychiatric
434 Association; cerebral palsy, as defined in s. 393.063; Down
435 syndrome, as defined in s. 393.063; an intellectual disability,

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as defined in s. 393.063; a speech impairment; a language impairment; an orthopedic impairment; any ~~an~~ other health impairment; an emotional or a behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; Phelan-McDermid syndrome, as defined in s. 393.063; Prader-Willi syndrome, as defined in s. 393.063; spina bifida, as defined in s. 393.063; being a high-risk child, as defined in s. 393.063(22)(a) ~~s. 393.063(23)(a)~~; muscular dystrophy; Williams syndrome; rare diseases which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization for Rare Disorders; anaphylaxis; a hearing impairment, including deafness; a visual impairment, including blindness; traumatic brain injury; hospital or homebound; or identification as dual sensory impaired, as defined by rules of the State Board of Education and evidenced by reports from local school districts. The term "hospital or homebound" includes a student who has a medically diagnosed physical or psychiatric condition or illness, as defined by the state board in rule, and who is confined to the home or hospital for more than 6 months.

Section 12. This act shall take effect October 1, 2024.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1444

INTRODUCER: Senator Garcia

SUBJECT: Agency for Persons with Disabilities

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Pre-meeting
2.			FP	

I. Summary:

SB 1444 requires adult day training (ADT) programs serving individuals with developmental disabilities to be licensed by the Agency for Persons with Disabilities (the APD). The bill also prohibits the licensure of comprehensive transitional educational programs (CTEPs) in Florida.

Specifically, the bill makes the following changes:

- Clarifies the definitions of “adult day training”;
- Adds a definition for “licensee,” which is the same definition as used in s. 408.803(9), F.S., relating to health care licensing by the Agency for Health Care Administration (the AHCA) and the same, in part, as used in s. 400.023(2)(a), F.S., relating to nursing homes;
- Requires the licensing and regulation of ADT programs by the APD;
- Allows the APD to deny licenses for residential facilities and ADT programs when there is evidence that the applicant is unqualified due to lack of good moral character;
- Allows the APD to take disciplinary actions due to the noncompliance of ADT programs;
- Clarifies the circumstances for which the APD can take disciplinary action related to verified findings of abuse, neglect, or abandonment of a child or vulnerable adult being served by an APD licensed facility or ADT program;
- Removes obsolete language regarding CTEPs that no longer operate within the state;
- Requires APD-licensed facilities and ADT programs to allow local emergency management agencies to examine the approved emergency management plans and review and approve plans for facilities and programs serving individuals with a complex medical condition; and
- Clarifies language that the APD must not authorize funds or services to an unlicensed facility or ADT program that requires a license.

The bill is expected to have a fiscal impact on state government and will likely have a significant, but indeterminate impact on existing ADT programs. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2024.

II. Present Situation:

Agency for Persons with Disabilities

The APD is responsible for the provision of services to individuals with developmental disabilities and for administering the Home and Community-Based Services (HCBS) Waiver.¹ Florida has procured waivers of federal Medicaid requirements for the purpose of providing home and community-based services to individuals at risk of institutionalization.² The HCBS Waiver provides services to individuals with developmental disabilities that allow them to continue to live in their home or home-like setting and avoid institutionalization.³ Eligible individuals must meet institutional level of care requirements.⁴ The overarching goal for the APD is to prevent or reduce the severity of a developmental disability and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.⁵

Regional Offices

In addition to central headquarters in Tallahassee, the APD operates a total of six regional offices and 14 field offices throughout the state, as detailed below:⁶

<u>Region</u>	<u>Counties</u>
Northwest	Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington Fields 1 and 2.
Northeast	Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam, St. Johns, Suwannee, Taylor, Union, and Volusia Fields 3, 4, and 12.
Central	Brevard, Citrus, Hardee, Hernando, Highlands, Lake, Marion, Orange, Osceola, Polk, Seminole, and Sumter Fields 7, 13, and 14.
Suncoast	Charlotte, Collier, DeSoto, Glades, Hendry, Hillsborough, Lee, Manatee, Pasco, Pinellas, and Sarasota Suncoast Field and Field 8.

¹ See Section 20.197(3), F.S.

² Rule 59G-13.080(1), F.A.C.

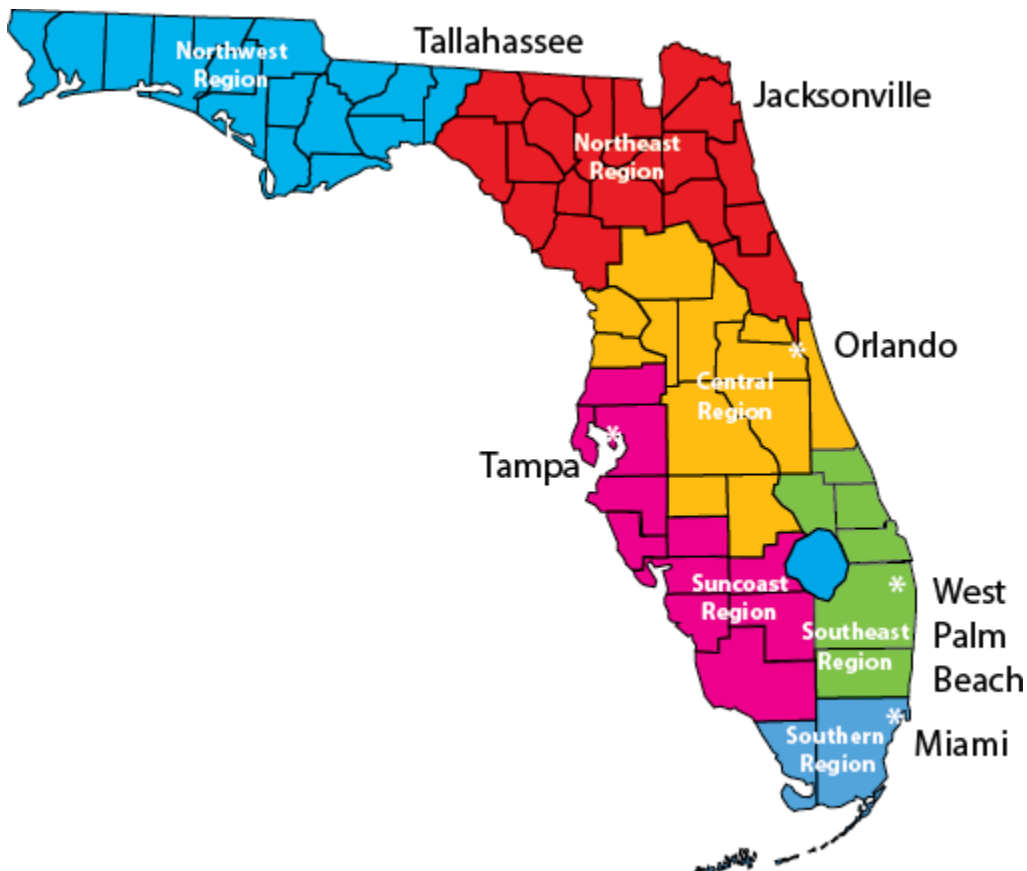
³ The Centers for Medicare and Medicaid Services, *Home and Community-Based Services 1915(c)*, available at <https://www.medicare.gov/medicaid/home-community-based-services/home-community-based-services-authorities/home-community-based-services-1915c/index.html> (last visited March 21, 2023).

⁴ *Id.*; Rule 59G-13.080(1), F.A.C.

⁵ See s. 393.062, F.S.

⁶ The APD, *Regional Offices*, available at <https://apd.myflorida.com/region/> (last visited March 21, 2023).

Southeast	Broward, Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie Fields 9 and 10.
Southern	Miami-Dade and Monroe Field 11.



iBudget Florida Program

The APD administers Florida's individual budget-based HCBS Waiver, known as iBudget Florida, for individuals with specified developmental disabilities who meet Medicaid eligibility requirements. These individuals may choose to receive services in the community through iBudget Florida. Alternatively, they may choose to live in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD)⁷ through traditional Medicaid administered by the Agency for Health Care Administration (AHCA).⁸

⁷ Section 393.063(25), F.S., defines "intermediate care facility for the developmentally disabled" to mean a residential facility licensed and certified under part VIII of chapter 400, F.S.

⁸ Section 393.0662, F.S.

The APD initiated implementation of iBudget Florida on May 1, 2011 with the final areas transitioned from the previous tiered waiver system on July 1, 2013.⁹ The iBudget Florida program uses an algorithm, or formula, to set individuals' funding allocations for waiver services.¹⁰ The APD administers iBudget Florida pursuant to s. 393.0662, F.S.

The APD serves just over 34,900 individuals through iBudget Florida, contracting with service providers to offer 27 supports and services to assist individuals to live in their community.¹¹ Examples of waiver services enabling children and adults to live, learn, and work in their communities include residential habilitation, behavioral services, personal supports, adult day training, employment services, and occupational and physical therapy.¹²

Licensure of Facilities by the APD

Pursuant to s. 393.067, F.S., the APD is charged with licensing community-based residential facilities that serve and assist individuals with developmental disabilities; these include foster care facilities, group home facilities, residential habilitation centers, and Comprehensive Transitional Education Program (CTEPs).

The APD currently licenses over 2,100 residential facilities statewide but does not license ADT programs.¹³ Through iBudget Florida, there are over 13,700 clients with ADT services on their cost plans.¹⁴ There are also additional participants in ADT programs through Intermediate Care Facilities for the Developmentally Disabled (ICF/DDs) and private pay arrangements.¹⁵

The APD is required to conduct annual inspections and reviews of facilities and programs licensed under s. 393.067.¹⁶ Applications for licensure must be made to the APD on a form furnished by it and must be accompanied by the appropriate license fee.¹⁷ All applications for licensure must contain the following:

- The name and address of the applicant, if an applicant is an individual; if the applicant is a firm, partnership, or association, the name and address of each member thereof; if the applicant is a corporation, its name and address and the name and address of each director and each officer thereof; and the name by which the facility or program is to be known;
- The location of the facility or program for which a license is sought;
- The name of the person or persons under whose management or supervision the facility or program will be conducted;
- The number and type of residents or clients for which maintenance, care, education, or treatment is to be provided by the facility or program;

⁹ The APD, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2022-23*, p. 2, November 15, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as "The Quarterly Report").

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ The APD, *Agency Analysis of SB 1444* at p. 2. (On file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 393.067(2), F.S.

¹⁷ Section 393.067(3), F.S.

- The number and location of the component centers or units which will compose the comprehensive transitional education program;
- A description of the types of services and treatment to be provided by the facility or program.
- Information relating to the number, experience, and training of the employees of the facility or program;
- Certification that the staff of the facility or program will receive training to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, F.S., of residents and clients; and
- Such other information as the APD determines is necessary to carry out the provisions of ch. 393, F.S.¹⁸

As a prerequisite for issuance of an initial or renewal license, the applicant, and any manager, supervisor, and staff member of a direct service provider of a licensed facility or program, must have submitted to Level 2 background screening as required under s. 393.0655, F.S., and a license may not be issued or renewed if the applicant or any manager, supervisor, or staff member of the direct service provider has failed background screenings.¹⁹ The APD is required to determine by rule the frequency of background screening.²⁰ Applicants must submit with each initial or renewal application a signed affidavit under penalty of perjury stating that the applicant and any manager, supervisor, or staff member of the direct service provider is in compliance with all requirements for background screening.²¹

Applicants are required to furnish satisfactory proof of the financial ability to operate and conduct a facility or program in accordance with the requirements of ch. 393, F.S., and agency rules.²² APD rules²³ must establish minimum standards for licensed facilities and programs including rules requiring facilities and programs to train staff to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, F.S., respectively, of residents and clients, minimum standards of quality and adequacy of client care, incident reporting requirements, and uniform fire safety standards established by the State Fire Marshal which are appropriate to the size of the facility or of the component centers or units of the program.²⁴

After consultation with the Division of Emergency Management (DEM), the APD is also required to adopt rules for foster care facilities, group home facilities, and residential habilitation centers which establish minimum standards for the preparation and annual update of a comprehensive emergency management plan.²⁵ At a minimum, the rules must provide for plan components that address:

- Emergency evacuation transportation;
- Adequate sheltering arrangements;
- Post-disaster activities, including emergency power, food, and water;

¹⁸ Section 393.067(4), F.S.

¹⁹ Section 393.067(5), F.S.

²⁰ *Id.*

²¹ *Id.*

²² Section 393.067(6), F.S.

²³ Rules governing health and safety requirements for APD-licensed facilities can be found in Rule 65G-2, F.A.C.

²⁴ Section 393.067(7), F.S.

²⁵ Section 393.067(8), F.S.

- Post-disaster transportation;
- Supplies;
- Staffing;
- Emergency equipment;
- Individual identification of residents and transfer of records; and
- Responding to family inquiries.²⁶

The comprehensive emergency management plan for all CTEPs and for homes serving individuals who have complex medical conditions is subject to review and approval by the local emergency management agency.²⁷ During its review, the local emergency management agency shall ensure that the agency and the DEM, at a minimum, are given the opportunity to review the plan.²⁸ Appropriate volunteer organizations must be given the opportunity to review the plan.²⁹ The local emergency management agency shall complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.³⁰

The APD may also conduct unannounced inspections to determine compliance by foster care facilities, group home facilities, residential habilitation centers, and CTEPs with the applicable provisions of ch. 393, F.S., and the associated rules, including the rules adopted for training staff of a facility or a program to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment, as defined in ss. 39.01 and 415.102, of residents and clients.³¹ The facility or program must make copies of inspection reports available to the public upon request.³² All facilities and programs licensed by the APD must also adhere to all provisions of the Bill of Rights of Persons with Disabilities, delineated in ch. 393.13, F.S.³³

Adult Day Training Programs

Section 393.063, F.S. defines “adult day training” (ADT) to mean training services that take place in a nonresidential setting, separate from the home or facility in which the client resides, and are intended to support the participation of clients in daily, meaningful, and valued routines of the community. ADT may be provided in work-like settings that do not meet the definition of supported employment.³⁴

ADT services are training services intended to support the participation of recipients in valued routines of the community, including volunteering, job exploration, accessing community resources, and self-advocacy, in settings that are age and culturally appropriate.³⁵ Adult day

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 393.067(9), F.S.

³² *Id.*

³³ Section 393.067(13), F.S.

³⁴ “Supported employment” is defined as “employment located or provided in an integrated work setting, with earnings paid on a commensurate wage basis, and for which continued support is needed for job maintenance.” Section 393.063(43), F.S.

³⁵ The Agency for Health Care Administration (the AHCA), *Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook* at p. 2-20. September 2021, available at

training services can include meaningful day activities and training in the activities of daily living, adaptive skills, social skills, and employment.³⁶ The training, activities, and routine established by the ADT must be meaningful to the recipient and provide an appropriate level of variation and interest.³⁷

ADT services generally begin at age 22 when a recipient is out of the public school system or when they have graduated from the public school system.³⁸ Recipients who are age 22 years or older who have not graduated are also eligible.³⁹ Providers of ADT services must be designated by the APD regional office as ADT providers.⁴⁰ The service expectation for ADT services is to achieve individually determined goals and support recipient participation in less restrictive settings.⁴¹ ADT must be provided in accordance with a formal implementation plan, developed under the direction of the recipient, reflecting goals from the recipient's current support plan.⁴²

The APD checks to see if those ADT programs that provide iBudget Waiver services meet the minimum education, experience, and background screening requirements to offer services at the time of the provider enrollment process.⁴³ This process currently does not include review of client care standards, site of services, operator(s), program(s), or ongoing monitoring.⁴⁴

ADT program providers operate through the iBudget Waiver via a contract with the APD called a Medicaid Waiver Services Agreement (MWSA).⁴⁵ However, current regulations and the current MWSA used by the APD does not provide the agency with a mechanism to ensure that the physical facility where clients receive ADT services is adequate to meet the health and safety needs of its clients.⁴⁶

Some ADT programs are not enrolled iBudget Waiver providers, and these settings are reimbursed via private pay arrangements with clients and their families. The absence of the provider having either a license or contract with APD effectively prevents the APD from initiating any type of disciplinary action against such programs in response to health and safety issues.⁴⁷

https://apd.myflorida.com/ibudget/docs/September%202021%2059G-13.070_DD_iBudget_Waiver_Services.pdf (last visited March 21, 2023) (hereinafter cited as, "The iBudget Handbook").

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See The APD, *Medicaid Waiver Services Agreement*, available at <https://apd.myflorida.com/forms/medicaid-waiver-services-agreement.doc> (last visited March 21, 2023).

⁴⁶ The APD Analysis at p. 2.

⁴⁷ The APD Analysis at p. 3.

The APD has the ability to levy administrative fines, sanctions, and moratoriums for residential facilities licensed by the agency,⁴⁸ but there is no comparable statutory authority related to ADT facilities.

The APD can revoke an ADT providers MWSA; however, the APD does not have a mechanism to sanction an ADT for not meeting specific health and safety-related standards of care.⁴⁹ Terminating a MWSA impacts all programs, such as group homes, operated by those same providers, as opposed to addressing and correcting issues solely pertaining to the ADTs operated by those providers.⁵⁰

Verified Findings of Abuse, Neglect, Exploitation, or Sexual Misconduct

The APD is required to conduct a termination review of an ADT provider's MWSA following incidents of abuse, neglect, exploitation, or sexual misconduct against a recipient of services, in addition to any other legal sanctions available.⁵¹ The failure of a provider to report any incident of abuse, neglect, exploitation, or sexual misconduct on behalf of the recipient will also result in the termination review of the provider's MWSA.⁵² Abuse, neglect, exploitation, or sexual misconduct related to the recipient by an employee of a provider or an employee's failure to report an incident of abuse, neglect, exploitation, or sexual misconduct can be imputed to the provider and will result in termination review of the provider's MWSA.⁵³

The APD conducted an analysis of incident data and abuse, neglect, or exploitation data and discovered a significant number of issues adversely impacting the health and safety of APD clients related to ADT services.⁵⁴ During the last 4 years, there have been 125 instances where the Department of Children and Families (the DCF) conducted protective services investigations for abuse, neglect, or exploitation related to ADT services with 34 instances of verified findings.⁵⁵ Additionally, APD received 2,807 incident reports related to ADT services.⁵⁶

The APD reviewed prior incident reports occurring in ADT facilities in order to mitigate similar future incidents.⁵⁷ The APD found that some incidents occurred as a result of environmental hazards not addressed through current waiver standards for ADT services.⁵⁸ Additionally, the agency believes that increased enforcement of appropriate staffing ratios could reduce some incidents, such as elopements and client injuries.⁵⁹ Required training could also assist ADTs in proper use of medical equipment and the implementation of behavioral interventions.⁶⁰ The APD

⁴⁸ See s. 393.0673, F.S.

⁴⁹

⁵⁰ *Id.*

⁵¹ The iBudget Handbook at p. 1-10.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ The APD Analysis at p. 3.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

believes that establishing facility licensure standards and enforcement authority could prevent, or reduce the prevalence of, such incidents in the future.⁶¹

Comprehensive Transitional Education Programs

A CTEP is a group of jointly operating centers or units that provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors.⁶² The Legislature created the CTEP license in 2006 to serve individuals primarily, though not limited to those with developmental disabilities, who have severe or moderate maladaptive behaviors.⁶³ The services provided by the CTEP were proscribed as “temporary in nature and delivered in a structured residential setting, having the primary goal of incorporating the principle of self-determination in establishing permanent residence for persons with maladaptive behaviors in facilities that are not associated with the comprehensive transitional education program.”⁶⁴

Carlton Palms, run by Bellwether Behavioral Health, was the only licensed CTEP in Florida.⁶⁵ The facility closed in 2018 following the death of a resident and numerous documented cases of abuse and neglect over the course of several years.⁶⁶ All 200 residents of Carlton Palms were moved to smaller community settings.

However, s. 393.18, F.S., still authorizes the CTEP license.⁶⁷ CTEPs provide treatment in large-scale residential settings but federal law prohibits the provision of iBudget Waiver services in such environments.⁶⁸ Because the majority of the APD’s clients are receiving services through the iBudget Waiver, the agency states that it is focused on offering community-based services in smaller and more family-like settings and does not anticipate licensing new CTEPs.⁶⁹

III. Effect of Proposed Changes:

ADT Licensure Requirements

The bill clarifies that ADT services specifically include, but are not limited to, the acquisition, retention, or improvement of self-help, socialization, and adaptive skills. The bill eliminates a provision allowing ADT to be provided in work like settings that do not meet the definition of supported employment.

⁶¹ *Id.*

⁶² Section 393.18, F.S.

⁶³ Ch. 2006-227, L.O.F.; Disability Rights Florida, *Monitoring and Investigation of Carlton Palms Educational Center, Results and Recommendations March 2018* at p. 3., available at https://disabilityrightsflorida.org/documents/Carlton_Palms_Report_3-5-18.pdf (last visited March 21, 2023) (hereinafter cited as, “The DRF Report”).

⁶⁴ The DRF Report at p. 3.

⁶⁵ *Id.* at p. 1.

⁶⁶ The Daily Commercial, *Troubled Carlton Palms Home for the Disabled to Close*, May 11, 2018, available at <https://www.dailycommercial.com/story/news/local/mount-dora/2018/05/11/troubled-carlton-palms-home-for-disabled-to-close/12261119007/> (last visited March 21, 2023).

⁶⁷ The APD Analysis at p. 3.

⁶⁸ *Id.*

⁶⁹ *Id.*

The bill adds a definition of “licensee” to that section. Specifically, the bill defines “licensee” to mean “an individual, a corporation, a partnership, a firm, an association, a governmental entity, or other entity that is issued a permit, registration, certificate, or license by the agency. The licensee is legally responsible for all aspects of the provider operation.” This is the same definition of “licensee” used in s. 408.803(9), F.S., relating to health care licensing by the Agency for Health Care Administration (the AHCA) and the same, in part, as used in s. 400.023(2)(a), F.S., relating to nursing homes.

The bill requires all direct service providers employed by ADT programs to undergo a level 2 background screening. The bill also requires applicants, managers, supervisors, and staff members of direct service providers employed by ADT programs to undergo level 2 background screenings.

The bill applies the facility licensure requirements currently in place for foster care facilities, group home facilities, and residential habilitation facilities to ADT programs. The bill also requires the APD to conduct annual inspections and reviews of ADT programs licensed under the bill.

The bill implements many of the same application requirements for other facilities licensed by the APD to applications for licensure as ADT programs. Specifically, an application for licensure as an ADT program must include:

- The location of the ADT program for which a license is sought;
- The name of the person or persons under whose management or supervision the ADT program will be conducted;
- The number and type of residents or clients for which maintenance, care, education or treatment is to be provided by the ADT program;
- A description of the type of services and treatment to be provided by the facility or ADT program;
- Information relating to the number, experience, and training of the employees of the ADT program;
- Certification that the staff of the ADT program will receive training to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment of residents and clients; and
- Information the APD determines is necessary to carry out other statutory requirements delineated in s. 393.067, F.S.

The bill requires applicants for licensure as ADT programs to furnish satisfactory proof of financial ability to operate and conduct the program in accordance with s. 393.067, F.S., and adopted rules.

The bill requires the APD to adopt rules establishing minimum standards for ADT programs, including:

- Rules requiring ADT programs to train staff to detect, report, and prevent sexual abuse, abuse, neglect, exploitation, and abandonment of residents and clients;
- Minimum standards of quality and adequacy of client care;
- Incident reporting requirements; and

- Uniform fire safety standards established by the State Fire Marshal which are appropriate to the size of the ADT program.

Under the bill, as with other facilities licensed by the agency, the APD must consult with the Division of Emergency Management and adopt rules for ADT programs which establish minimum standards for the preparation and annual update of a comprehensive emergency management plan. As with plans applicable to other APD-licensed facilities and providers, the plan is subject to review and approval by the local emergency management agency, and the local emergency management agency must complete its review within 60 days and either approve the plan or advise the ADT program of necessary revisions.

The bill permits the APD to conduct unannounced inspections of ADT programs to determine compliance with the standards described above and throughout ch. 393.067, F.S., as well as applicable rules, specifically including the rules adopted to detect sexual abuse, abuse, neglect, exploitation, and abandonment of residents and clients. ADT programs are required to make copies of inspection reports available to the public upon request.

The bill requires licensed ADT programs to adhere to all provisions of the Bill of Rights of Persons with Disabilities delineated in ch. 393.13, F.S.

The bill prohibits the APD from authorizing funds or services to unlicensed ADT programs, and prohibits the APD from renewing a license for an ADT program if the licensee has any outstanding fines assessed wherein final adjudication of such fines has not been entered.

The bill specifies that the APD is not required to contract with licensed ADT programs.

The bill applies many of the same grounds for which the APD can take disciplinary action against a licensed facility to ADT programs licensed under the bill. Disciplinary action may include revoking or suspending a license and imposing an administrative fine not to exceed \$1,000 per day. Grounds for discipline include instances where the licensee has:

- Falsely represented or omitted a material fact in its license application submitted under s. 393.067, F.S.;
- Had prior action taken against it under the Medicaid or Medicare program; or
- Failed to comply with the applicable requirements of ch. 393, F.S., or rules applicable to the licensee.

The APD can also take disciplinary action when the DCF has verified that the licensee is responsible for the abuse, neglect, exploitation, of a vulnerable adult.

The bill provides that for purposes of disciplinary action for verified findings of abuse, neglect, abandonment, or exploitation of a child or vulnerable adult, all APD licensees, including facilities already requiring licensure in current law and ADT programs newly requiring licensure under the bill, are responsible not only for administration of the facilities in compliance with the standards set out by statute and administrative rule, but for the care and supervision of the clients in the facility or the participants of the program.

The bill specifies that a licensee may not delegate to others the ultimate responsibility for the safety of the clients in its care. Further, a licensee is subject to disciplinary action for an employee's lapse in care or supervision of the clients at the facility or the participants of the program in which a verified finding of abuse, neglect, abandonment, or exploitation occurred. The bill requires that remedial action taken by the licensee not affect the APD's ability to impose disciplinary action for the underlying violation.

The bill also specifies that the APD may deny an application for licensure if:

- An applicant has previously had a license to operate an ADT program revoked by the APD;
- The DCF has verified that the applicant is responsible for the abuse, neglect, abandonment, or exploitation of a child or vulnerable adult; or
- The APD has determined that there is clear and convincing evidence that the applicant is unqualified for a license because of a lack of good moral character. Under the bill, the term "good moral character" means "a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and the Federal Government."

Under the bill, all licensee hearings must be held within the county in which the licensee or applicant operates or applies for a license to operate an ADT program. The APD is permitted to issue orders immediately suspending or revoking a license when it determines that any condition of an ADT program presents a danger to the health, safety, or welfare of the program participants.

The bill allows the APD to impose an immediate moratorium on service authorizations to a facility or ADT program when the agency determines that any condition of the facility or the program presents a threat to the health, safety, or welfare of the residents in the facility or the program participants.

Repeal of CTEP Provisions

The bill strikes the definition of "comprehensive transitional education program" in s. 393.063, F.S., and removes a requirement for CTEP employees to undergo level 2 background screenings, as the statutory authority to license a CTEP is removed entirely by the bill. The bill repeals s. 393.18, F.S., which authorizes the licensure of CTEPs. The bill makes other conforming changes and removes all references to CTEPs remaining in statute.

The bill is effective October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will likely be an indeterminate fiscal impact to existing ADT programs relating to the cost of licensure application and other costs associated with obtaining initial and continuing licensure.

C. Government Sector Impact:

The APD anticipates that the bill will require 7 FTE for implementation, totaling \$457,616 in recurring funds.⁷⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 393.063, 393.0655, 393.067, 393.0673, 393.0678, 393.135, 394.875, 383.141, 400.063, and 1002.394 of the Florida Statutes.

This bill repeals section 393.18 of the Florida Statutes.

⁷⁰ The APD Analysis at p. 5.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Brodeur

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A bill to be entitled
An act relating to services for persons with disabilities; amending s. 393.065, F.S.; revising provisions related to the application for services for persons with disabilities; revising timeframes within which the Agency for Persons with Disabilities must make certain eligibility determinations; requiring the agency to request additional documentation from applicants if it determines such documentation is necessary to make an eligibility determination; specifying requirements for the agency's eligibility determinations; revising procedures for admissions to intermediate care facilities for the developmentally disabled; requiring the agency to assign certain clients to a waiting list; revising provisions related to the prioritization of clients waiting for certain waiver services; requiring the agency to place certain clients on an agency registration list; providing that only agency clients are eligible for certain services; specifying eligibility criteria for such services; amending s. 393.0651, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 393.065, Florida Statutes, is amended to read:

393.065 Application and eligibility determination.—

(1) Application for services must ~~shall~~ be made in writing

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to the agency, in the region ~~service area~~ in which the applicant resides. The agency shall review each application and make an eligibility determination ~~applicant for eligibility within 45 days after the date the application is signed for children under 6 years of age and~~ within 60 days after receipt of the signed application. If an applicant is requesting enrollment in the home and community-based services (HCBS) Medicaid waiver program for a person with developmental disabilities due to crisis, as specified in paragraph (5)(a), at the time of the application, the agency must complete an eligibility determination within 45 days after receipt of the signed application.

(a) If the agency determines additional documentation is necessary to make a proper determination on an applicant's eligibility, the agency must request the necessary documentation from the applicant ~~the date the application is signed for all other applicants.~~

(b) When necessary to definitively identify individual conditions or needs, the agency shall provide a comprehensive assessment.

(c) If the agency requests additional documentation from an applicant or provides a comprehensive assessment, the agency's eligibility determination must be completed within 90 days after receipt of the signed application.

(2) To be eligible for services under this chapter, the agency's eligibility determination must find the applicant has satisfied all procedural requirements and eligibility criteria found in rule, which must include, but need not be limited to, the requirement that the applicant have a developmental disability and be domiciled in Florida ~~Only applicants whose~~

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59 ~~domicile is in Florida are eligible for services.~~ Information
60 accumulated by other agencies, including professional reports
61 and collateral data, must ~~shall~~ be considered in this process
62 when available.

63 ~~(2) In order to provide immediate services or crisis~~
64 ~~intervention to applicants, the agency shall arrange for~~
65 ~~emergency eligibility determination, with a full eligibility~~
66 ~~review to be accomplished within 45 days of the emergency~~
67 ~~eligibility determination.~~

68 (3) The agency shall notify each applicant, in writing, of
69 its eligibility determination decision. Any applicant or client
70 determined by the agency to be ineligible for services has the
71 right to appeal this decision pursuant to ss. 120.569 and
72 120.57.

73 (4) Any admission to an intermediate care facility for the
74 developmentally disabled must be authorized by the agency. As
75 part of the authorization, the agency, or its designee, shall
76 conduct an assessment, including an assessment of medical
77 necessity and level of reimbursement ~~The agency shall assess the~~
78 ~~level of need and medical necessity for prospective residents of~~
79 ~~intermediate care facilities for the developmentally disabled.~~
80 ~~The agency may enter into an agreement with the Department of~~
81 ~~Elderly Affairs for its Comprehensive Assessment and Review for~~
82 ~~Long-Term-Care Services (CARES) program to conduct assessments~~
83 ~~to determine the level of need and medical necessity for long-~~
84 ~~term care services under this chapter. To the extent permissible~~
85 ~~under federal law, the assessments shall be funded under Title~~
86 ~~XIX of the Social Security Act.~~

87 (5) The agency shall assign any client that meets the level

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of care requirement for an intermediate care facility for
individuals with intellectual disabilities pursuant to 42 C.F.R.
s. 435.217(b)(1) and 42 C.F.R. s. 440.150 to a waiting list, and
shall provide priority to clients waiting for waiver services in
the following order:

(a) Category 1, which includes clients deemed to be in
crisis as described in rule, shall be given first priority in
moving from the waiting list to the waiver.

(b) Category 2, which includes individuals on the waiting
list who are:

1. From the child welfare system with an open case in the
Department of Children and Families' statewide automated child
welfare information system and who are either:

a. Transitioning out of the child welfare system at the
finalization of an adoption, a reunification with family
members, a permanent placement with a relative, or a
guardianship with a nonrelative; or

b. At least 18 years but not yet 22 years of age and who
need both waiver services and extended foster care services; or

2. At least 18 years but not yet 22 years of age and who
withdrew consent pursuant to s. 39.6251(5)(c) to remain in the
extended foster care system.

For individuals who are at least 18 years but not yet 22 years
of age and who are eligible under sub-subparagraph 1.b., the
agency shall provide waiver services, including residential
habilitation, and the community-based care lead agency shall
fund room and board at the rate established in s. 409.145(3) and
provide case management and related services as defined in s.

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117 409.986(3)(e). Individuals may receive both waiver services and
118 services under s. 39.6251. Services may not duplicate services
119 available through the Medicaid state plan.

120 (c) Category 3, which includes, but is not required to be
121 limited to, clients:

122 1. Whose caregiver has a documented condition that is
123 expected to render the caregiver unable to provide care within
124 the next 12 months and for whom a caregiver is required but no
125 alternate caregiver is available;

126 2. At substantial risk of incarceration or court commitment
127 without supports;

128 3. Whose documented behaviors or physical needs place them
129 or their caregiver at risk of serious harm and other supports
130 are not currently available to alleviate the situation; or

131 4. Who are identified as ready for discharge within the
132 next year from a state mental health hospital or skilled nursing
133 facility and who require a caregiver but for whom no caregiver
134 is available or whose caregiver is unable to provide the care
135 needed.

136 (d) Category 4, which includes, but is not required to be
137 limited to, clients whose caregivers are 70 years of age or
138 older and for whom a caregiver is required but no alternate
139 caregiver is available.

140 (e) Category 5, which includes, but is not required to be
141 limited to, clients who are expected to graduate within the next
142 12 months from secondary school and need support to obtain a
143 meaningful day activity, maintain competitive employment, or
144 pursue an accredited program of postsecondary education to which
145 they have been accepted.

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(f) Category 6, which includes clients 21 years of age or older who do not meet the criteria for category 1, category 2, category 3, category 4, or category 5.

~~(g) Category 7, which includes clients younger than 21 years of age who do not meet the criteria for category 1, category 2, category 3, or category 4.~~

(6) Within categories 3, 4, 5, and 6, ~~and 7~~, the agency shall maintain a waiting list of clients placed in the order of the date that the client is determined eligible for waiver services.

(7) The agency shall place on an agency registration list any client who meets the level of care requirement for an intermediate care facility for individuals with intellectual disabilities pursuant to 42 C.F.R. s. 435.217(b)(1) and 42 C.F.R. s. 440.150 and is:

(a) Younger than 21 years of age, requesting but not receiving waiver services, and not assigned to category 1, category 2, category 3, category 4, or category 5; or

(b) An adult that resides in an institutional setting, including, but not limited to, a penal institution, an intermediate care facility for the developmentally disabled, a mental health hospital, a nursing home, or a forensic facility run by the agency pursuant to chapter 916.

(8)~~(6)~~ The agency shall allow an individual who meets the eligibility requirements of subsection (2) ~~subsection (1)~~ to receive home and community-based services in this state if the individual's parent or legal guardian is an active-duty military servicemember and if, at the time of the servicemember's transfer to this state, the individual was receiving home and

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community-based services in another state.

(9)~~(7)~~ The agency shall allow an individual with a diagnosis of Phelan-McDermid syndrome who meets the eligibility requirements of subsection (2) ~~subsection (1)~~ to receive home and community-based services.

(10) Only a client may be eligible for services under the HCBS Medicaid waiver program. To receive services under the HCBS Medicaid waiver program, there must be available funding pursuant to s. 393.0662 or other legislative appropriation, and a client must:

(a) Meet the eligibility criteria as provided in subsection (2), which must be confirmed by the agency;

(b) Be eligible for the state Medicaid program under Title XIX of the Social Security Act or the Supplemental Security Income program;

(c) Meet the level of care requirements for an intermediate care facility for individuals with intellectual disabilities pursuant to 42 C.F.R. s. 435.217(b) (1) and 42 C.F.R. s. 440.150; and

(d) Meet the requirements set forth in the approved federal waiver authorized under s. 1915(c) of the Social Security Act and 42 C.F.R. s. 441.302.

(11)~~(8)~~ Agency action that selects individuals to receive waiver services pursuant to this section does not establish a right to a hearing or an administrative proceeding under chapter 120 for individuals remaining on the waiting list.

(12)~~(9)~~ The client, the client's guardian, or the client's family must ensure that accurate, up-to-date contact information is provided to the agency at all times. Notwithstanding s.

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393.0651, the agency shall send an annual letter requesting updated information from the client, the client's guardian, or the client's family. The agency shall remove from the waiting list any individual who cannot be located using the contact information provided to the agency, fails to meet eligibility requirements, or becomes domiciled outside the state.

(13) (a) ~~(10) (a)~~ The agency shall provide the following information to all applicants or their parents, legal guardians, or family members:

1. A brief overview of the vocational rehabilitation services offered through the Division of Vocational Rehabilitation of the Department of Education, including a hyperlink or website address that provides access to the application for such services;

2. A brief overview of the Florida ABLE program as established under s. 1009.986, including a hyperlink or website address that provides access to the application for establishing an ABLE account as defined in s. 1009.986(2);

3. A brief overview of the supplemental security income benefits and social security disability income benefits available under Title XVI of the Social Security Act, as amended, including a hyperlink or website address that provides access to the application for such benefits;

4. A statement indicating that the applicant's local public school district may provide specialized instructional services, including transition programs, for students with special education needs;

5. A brief overview of programs and services funded through the Florida Center for Students with Unique Abilities, including

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contact information for each state-approved Florida
Postsecondary Comprehensive Transition Program;

6. A brief overview of decisionmaking options for
individuals with disabilities, guardianship under chapter 744,
and alternatives to guardianship as defined in s. 744.334(1),
which may include contact information for organizations that the
agency believes would be helpful in assisting with such
decisions;

7. A brief overview of the referral tools made available
through the agency, including a hyperlink or website address
that provides access to such tools; and

8. A statement indicating that some waiver providers may
serve private-pay individuals.

(b) The agency must provide the information required in
paragraph (a) in writing to an applicant or his or her parent,
legal guardian, or family member along with a written disclosure
statement in substantially the following form:

DISCLOSURE STATEMENT

Each program and service has its own eligibility requirements.
By providing the information specified in section 395.065(13)(a)
~~393.065(10)(a)~~, Florida Statutes, the agency does not guarantee
an applicant's eligibility for or enrollment in any program or
service.

(c) The agency shall also publish the information required
in paragraph (a) and the disclosure statement in paragraph (b)
on its website, and shall provide that information and statement
annually to each applicant placed on the waiting list or to the

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parent, legal guardian, or family member of such applicant.

(14)~~(11)~~ The agency and the Agency for Health Care Administration may adopt rules specifying application procedures, criteria associated with the waiting list categories, procedures for administering the waiting list, including tools for prioritizing waiver enrollment within categories, and eligibility criteria as needed to administer this section.

Section 2. Section 393.0651, Florida Statutes, is amended to read:

393.0651 Family or individual support plan.—The agency shall provide directly or contract for the development of a family support plan for children ages 3 to 18 years of age and an individual support plan for each client. The client, if competent, the client's parent or guardian, or, when appropriate, the client advocate, shall be consulted in the development of the plan and shall receive a copy of the plan. Each plan must include the most appropriate, least restrictive, and most cost-beneficial environment for accomplishment of the objectives for client progress and a specification of all services authorized. The plan must include provisions for the most appropriate level of care for the client. Within the specification of needs and services for each client, when residential care is necessary, the agency shall move toward placement of clients in residential facilities based within the client's community. The ultimate goal of each plan, whenever possible, shall be to enable the client to live a dignified life in the least restrictive setting, be that in the home or in the community. ~~For children under 6 years of age,~~ The family or

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individual support plan shall be developed within the timeframes
~~45-day application period as specified in s. 393.065(1); for all~~
~~applicants 6 years of age or older, the family or individual~~
~~support plan shall be developed within the 60-day period as~~
~~specified in that subsection.~~

(1) The agency shall develop and specify by rule the core
components of support plans.

(2) The family or individual support plan shall be
integrated with the individual education plan (IEP) for all
clients who are public school students entitled to a free
appropriate public education under the Individuals with
Disabilities Education Act, I.D.E.A., as amended. The family or
individual support plan and IEP shall be implemented to maximize
the attainment of educational and habilitation goals.

(a) If the IEP for a student enrolled in a public school
program indicates placement in a public or private residential
program is necessary to provide special education and related
services to a client, the local education agency shall provide
for the costs of that service in accordance with the
requirements of the Individuals with Disabilities Education Act,
I.D.E.A., as amended. This shall not preclude local education
agencies and the agency from sharing the residential service
costs of students who are clients and require residential
placement.

(b) For clients who are entering or exiting the school
system, an interdepartmental staffing team composed of
representatives of the agency and the local school system shall
develop a written transitional living and training plan with the
participation of the client or with the parent or guardian of

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the client, or the client advocate, as appropriate.

(3) Each family or individual support plan shall be facilitated through case management designed solely to advance the individual needs of the client.

(4) In the development of the family or individual support plan, a client advocate may be appointed by the support planning team for a client who is a minor or for a client who is not capable of express and informed consent when:

(a) The parent or guardian cannot be identified;

(b) The whereabouts of the parent or guardian cannot be discovered; or

(c) The state is the only legal representative of the client.

Such appointment shall not be construed to extend the powers of the client advocate to include any of those powers delegated by law to a legal guardian.

(5) The agency shall place a client in the most appropriate and least restrictive, and cost-beneficial, residential facility according to his or her individual support plan. The client, if competent, the client's parent or guardian, or, when appropriate, the client advocate, and the administrator of the facility to which placement is proposed shall be consulted in determining the appropriate placement for the client.

Considerations for placement shall be made in the following order:

(a) Client's own home or the home of a family member or direct service provider.

(b) Foster care facility.

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(c) Group home facility.

(d) Intermediate care facility for the developmentally disabled.

(e) Other facilities licensed by the agency which offer special programs for people with developmental disabilities.

(f) Developmental disabilities center.

(6) In developing a client's annual family or individual support plan, the individual or family with the assistance of the support planning team shall identify measurable objectives for client progress and shall specify a time period expected for achievement of each objective.

(7) The individual, family, and support coordinator shall review progress in achieving the objectives specified in each client's family or individual support plan, and shall revise the plan annually, following consultation with the client, if competent, or with the parent or guardian of the client, or, when appropriate, the client advocate. The agency or designated contractor shall annually report in writing to the client, if competent, or to the parent or guardian of the client, or to the client advocate, when appropriate, with respect to the client's habilitative and medical progress.

(8) Any client, or any parent of a minor client, or guardian, authorized guardian advocate, or client advocate for a client, who is substantially affected by the client's initial family or individual support plan, or the annual review thereof, shall have the right to file a notice to challenge the decision pursuant to ss. 120.569 and 120.57. Notice of such right to appeal shall be included in all support plans provided by the agency.

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Section 3. This act shall take effect July 1, 2023.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1594

INTRODUCER: Senator Brodeur

SUBJECT: Services for Persons with Disabilities

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	Pre-meeting
2.			HP	
3.			RC	

I. Summary:

SB 1594 modifies the eligibility criteria for, and operation of, Florida's Home and Community-Based Services (HCBS) Medicaid Waiver administered by the Agency for Persons with Disabilities (the APD).

Specifically, the bill:

- Clarifies the timeframes within which the APD must process applications for the HCBS Waiver;
- Identifies timeframes for processing an application for crisis waiver enrollment from an applicant who is not currently an APD client;
- Clarifies that eligibility for admissions to Intermediate Care Facilities for the Developmentally Disabled (ICF/DDs) are to be completed by the APD;
- Eliminates category 7 of the HCBS Waiver waitlist;
- Replaces category 7 of the HCBS Waiver waitlist with an APD Registration Listing for individuals under the age of 21 who meet eligibility requirements and do not meet the criteria for other waiting list categories and eligible adults in institutional settings; and
- Clarifies that the level of care criteria for eligibility for the HCBS Waiver program is the same as that required by federal law.

The bill is unlikely to have a significant fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) is responsible for the provision of services to individuals with developmental disabilities and for administering the Home and Community-Based Services (HCBS) Waiver.¹ Florida has procured waivers of federal Medicaid requirements for the purpose of providing home and community-based services to individuals at risk of institutionalization.² The HCBS Waiver provides services to individuals with developmental disabilities that allow them to continue to live in their home or home-like setting and avoid institutionalization.³ Eligible individuals must meet institutional level of care requirements.⁴

The overarching goal for the APD is to prevent or reduce the severity of a developmental disability and implement community-based services that will help individuals with developmental disabilities achieve their greatest potential for independent and productive living in the least restrictive means.⁵

In addition to central headquarters in Tallahassee, the APD operates a total of six regional offices and 14 field offices throughout the state, as detailed below:⁶

Region	Counties
Northwest	Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington Fields 1 and 2.
Northeast	Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Nassau, Putnam, St. Johns, Suwannee, Taylor, Union, and Volusia Fields 3, 4, and 12.
Central	Brevard, Citrus, Hardee, Hernando, Highlands, Lake, Marion, Orange, Osceola, Polk, Seminole, and Sumter Fields 7, 13, and 14.
Suncoast	Charlotte, Collier, DeSoto, Glades, Hendry, Hillsborough, Lee, Manatee, Pasco, Pinellas, and Sarasota Suncoast Field and Field 8.
Southeast	Broward, Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie

¹ See Section 20.197(3), F.S.

² Rule 59G-13.080(1), F.A.C.

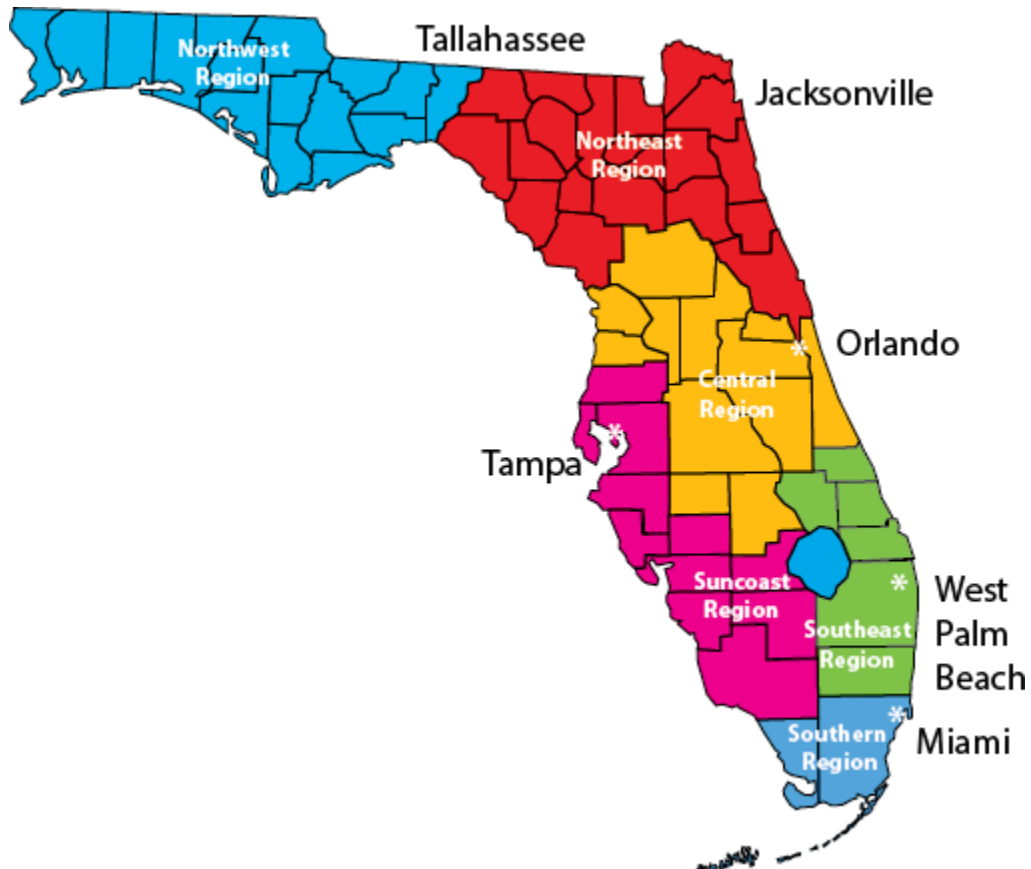
³ The Centers for Medicare and Medicaid Services, *Home and Community-Based Services 1915(c)*, available at <https://www.medicare.gov/medicaid/home-community-based-services/home-community-based-services-authorities/home-community-based-services-1915c/index.html> (last visited March 21, 2023).

⁴ *Id.*; Rule 59G-13.080(1), F.A.C.

⁵ See s. 393.062, F.S.

⁶ The APD, *Regional Offices*, available at <https://apd.myflorida.com/region/> (last visited March 21, 2023).

	Fields 9 and 10.
Southern	Miami-Dade and Monroe
	Field 11.



iBudget Florida Program

The APD administers Florida's individual budget-based HCBS Waiver, known as iBudget Florida, for individuals with specified developmental disabilities who meet Medicaid eligibility requirements. These individuals may choose to receive services in the community through iBudget Florida. Alternatively, they may choose to live in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD)⁷ through traditional Medicaid administered by the Agency for Health Care Administration (AHCA).⁸

⁷ Section 393.063(25), F.S., defines "intermediate care facility for the developmentally disabled" to mean a residential facility licensed and certified under part VIII of ch. 400, F.S.

⁸ Section 393.0662, F.S.

The APD initiated implementation of iBudget Florida on May 1, 2011 with the final areas transitioned from the previous tiered waiver system on July 1, 2013.⁹ The iBudget Florida program uses an algorithm, or formula, to set individuals' funding allocations for waiver services.¹⁰ The APD administers iBudget Florida pursuant to s. 393.0662, F.S.

The APD serves just over 34,900 individuals through iBudget Florida, contracting with service providers to offer 27 supports and services to assist individuals to live in their community.¹¹ Examples of waiver services enabling children and adults to live, learn, and work in their communities include residential habilitation, behavioral services, personal supports, adult day training, employment services, and occupational and physical therapy.¹²

Eligibility for iBudget Services

The application process for individuals wishing to receive services through the iBudget program are detailed in s. 393.065, F.S. The APD must review applications for eligibility within 45 days for children under 6 years of age and within 60 days for all other applicants.¹³ Individuals who are determined to be eligible for the Waiver program are either given a slot in the program or placed on a wait list. Currently, due to demand exceeding available funding, individuals with developmental disabilities who wish to receive HCBS services from the APD are placed on a wait list for services in priority categories of need, unless they are in crisis.¹⁴ As of March 1, 2023 there are approximately 22,225 individuals on the HCBS Waiver wait list.¹⁵

The needs of APD clients are classified into seven categories¹⁶ and are prioritized in the following decreasing order of priority:

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Specified children from the child welfare system.¹⁷
- Category 3 – Includes, but is not limited to, clients:
 - Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within the next 12 months and for whom a caregiver is required but no alternate caregiver is available;
 - Who are at substantial risk of incarceration or court commitment without supports;
 - Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or
 - Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available.

⁹ The APD, *Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2022-23*, p. 2, November 15, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The Quarterly Report”).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Section 393.065(1), F.S.

¹⁴ Section 393.065, F.S.; *See* Rule 65G-1.047, F.A.C., for crisis status criteria.

¹⁵ E-mail from JP Bell, APD Legislative Affairs Director, March 16, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, “The APD March 16 E-mail”).

¹⁶ Section 393.065(5), F.S.

¹⁷ *See* s. 393.065(5)(b), F.S., for specific criteria.

- Category 4 – Includes, but is not limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternate caregiver is available;
- Category 5 – Includes, but is not limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain or maintain competitive employment, or to pursue an accredited program of postsecondary education to which they have been accepted.
- Category 6 – Clients 21 years of age or older who do not meet the criteria for categories 1-5.
- Category 7 – Clients younger than 21 years of age who do not meet the criteria for categories 1-4.¹⁸

Because the APD receives extensive documentation to verify identity, domicile, and documentation of clinical eligibility, most applications are incomplete upon receipt and require additional time to process.¹⁹ The APD also provides for a comprehensive assessment when needed to confirm eligibility for an applicant.²⁰

Section 393.066, F.S., requires the APD to plan, develop, organize, and implement its programs of services and treatment for persons with developmental disabilities to allow clients to live as independently as possible in their own homes or communities and to achieve productive lives as close to normal as possible.²¹ All elements of community-based services must be made available, and eligibility for these services must be consistent across the state.²²

Necessary services for clients must be purchased, rather than provided directly by the APD, when the purchase of services is more cost-efficient than providing such services directly. However, all purchased services must be approved by the APD.²³

Although s. 393.066, F.S., indicates that the APD provides community services and treatment to clients, there is a conflict with s. 393.065, F.S., which indicates that to provide immediate services or crisis intervention to applicants, the APD must arrange for emergency eligibility determination, with a full eligibility review to be accomplished within 45 days of the emergency eligibility determination.²⁴ Crisis intervention services to address immediate emergencies are available through other programs outside of the APD, including child and adult protective services through the Department of Children and Families (the DCF).²⁵

Due to funding constraints, eligible individuals seeking HCBS waiver services are enrolled on the waiting list in the priority order defined in 393.065, F.S. As of March 1, 2023, there were 8,974 individuals under the age of 21 in Category 7 of the waiting list.²⁶ However, many of these individuals are eligible for full Medicaid benefits and are not waiting for services due to

¹⁸ Section 393.065(5), F.S.

¹⁹ The APD, *Agency Analysis of SB 1594*, p. 2 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, “The APD Analysis”).

²⁰ *Id.*

²¹ Section 393.066(1), F.S.

²² *Id.*

²³ Section 393.066(2), F.S.

²⁴ The APD Analysis at p. 2.

²⁵ *Id.*

²⁶ The APD March 16 E-mail.

coverage through the Medicaid program under the Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) requirements. As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness.²⁷ The EPSDT provides a comprehensive array of prevention, diagnostic, and treatment services for Medicaid recipients who are the age of 21 years, as specified in Section 1905(a)(4)(B) of the Social Security Act (the Act) and defined in 42 U.S.C. § 1396d(r)(5) and 42 CFR 441.50.²⁸

Intermediate Care Facilities for the Developmentally Disabled

In addition to meeting eligibility criteria identified in s. 393.063, F.S., clients who are seeking to enroll on the HCBS Waiver must meet the level of care for services in an ICF for placement on the waiting list.²⁹ An intermediate care facility for the developmentally disabled (ICF/DD) provides health and rehabilitative services to individuals with developmental disabilities in a protected residential setting.³⁰ ICF/DDs are licensed and regulated by the Agency for Health Care Administration (AHCA) under Part VIII of ch. 400, F.S., and ch. 59A-26, F.A.C. ICF/DDs provide the following services:

- Nursing services;
- Activity services;
- Dental services;
- Dietary services (including therapeutic diet);
- Pharmacy services;
- Physician services;
- Rehabilitative care services;
- Room/bed and maintenance services; and
- Social services.³¹

ICF/DD services are only covered by the Medicaid program. Eligible individuals include persons who:

- Have the level of need and level of reimbursement determined by the APD in the last six months; and
- Meet the requirements for the Institutional Care Program.³²

²⁷ The Agency for Health Care Administration (the AHCA), *Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Benefit*, available at <https://ahca.myflorida.com/medicaid/prescribed-drugs/early-and-periodic-screening-diagnostic-and-treatment-epsdt-benefit> (last visited March 21, 2023).

²⁸ The AHCA, *Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Requirements in the Managed Medical Assistance Program*, at p. 1, available at https://ahca.myflorida.com/content/download/7074/file/EPSDT_Overview_FAQs_2017-07-17.pdf (last visited March 21, 2023).

²⁹ The AHCA, *Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/DD) Services*, available at https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/behavioral_health_coverage/bhfu/Intermediate_Care.shtml (last visited March 21, 2023) (hereinafter cited as, “The AHCA ICF/DD Services”).

³⁰ The Association of Rehabilitation Facilities, *Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs): Community Residential Living*, available at <https://www.floridaarf.org/category/62/ICF-IID-Info.html> (last visited March 21, 2023).

³¹ The AHCA ICF/DD Services.

³² *Id.*

While the majority of individuals who have a developmental disability live in the community, a small number live in ICF/DDs. Currently, there are 104 privately owned ICF/DD facilities in Florida.³³

Some individuals identified on the waiting list are not waiting for services due to residing in an institutional setting, such as an ICF/DD, penal institution, hospital, or nursing home.³⁴ Individuals who live in institutional settings are not eligible for HCBS waiver services, however, any clients in ICF/DDs or nursing homes who request Waiver enrollment are prioritized for services regardless of waiting list status.³⁵ Some APD clients request services from an ICF/DD rather than through the HCBS Waiver, and while ICF/DDs are licensed by the AHCA, the APD determines eligibility and level of reimbursement.³⁶

III. Effect of Proposed Changes:

The bill requires the APD to process all applications for services within 60 days of receipt, regardless of the age of the applicant. The bill eliminates the requirement for the APD to make eligibility determinations within 45 days for applicants under 6 years of age.

If an applicant is seeking enrollment due to crisis, the bill requires the APD to complete an eligibility determination within 45 days after receipt of the signed application. In instances where the APD needs additional documentation to make a proper determination of an applicant's eligibility, the bill requires the APD to request such documentation from the applicant. If the APD requests additional documentation or provides a comprehensive assessment, the agency must then complete the eligibility determination within 90 days after receipt of the signed application.

The bill clarifies eligibility criteria for the HCBS Waiver by requiring the APD's eligibility determination of an applicant to find that the applicant has satisfied all procedural requirements and eligibility criteria found in rule, which must include, but not need be limited to, the requirement that the applicant:

- Have a developmental disability; and
- Be domiciled in Florida.

The bill removes an existing requirement for the APD to arrange for emergency eligibility determinations, with a full review to be accomplished within 45 days of the emergency eligibility determination.

The bill clarifies that any admission to an ICF/DD must be authorized by the APD, and that as part of that authorization the APD or its designee must conduct an assessment, including an assessment of medical necessity and level of reimbursement. The bill removes the ability of the APD to enter into an agreement with the Department of Elder Affairs' Long-Term Care Services (CARES) Program to conduct assessments of the level of need and medical necessity for long-

³³ E-mail from Patrick Steele, AHCA Legislative Affairs Director, March 22, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs).

³⁴ The APD Analysis at p. 3.

³⁵ *Id.*

³⁶ *Id.*

term care services. This change will make the APD solely responsible for determining ICF/DD placement eligibility.

The bill clarifies the level of care requirement for HCBS waiver services as already specified in the approved federal waiver program. The bill eliminates category 7 of the HCBS Waiver waitlist and replaces it with an agency registration list for any client who meets the federal ICF/DD level of care requirements and is:

- Younger than 21 years of age, requesting but not receiving waiver services, and not assigned to category 1, category 2, category 3, category 4, or category 5; or
- An adult that resides in an institutional setting, including, but not limited to, a penal institution, an intermediate care facility for the developmentally disabled, a mental health hospital, a nursing home, or a forensic facility run by the agency pursuant to ch. 916, F.S.

The bill addresses conflicts between ss. 393.065 and 393.066, F.S., by clarifying that the APD provides services only to eligible clients. The bill also clarifies that in order for a client to receive services under the HCBS Waiver there must be sufficient funding available within the client's iBudget or other legislative appropriation and must also:

- Meet the eligibility criteria as provided under the bill, which must be confirmed by the agency;
- Be eligible for the state Medicaid program under Title XIX of the Social Security Act or the Supplemental Security Income program;
- Meet the level of care requirements for an intermediate 191 care facility for individuals with intellectual disabilities pursuant to 42 C.F.R. s. 435.217(b)(1) and 42 C.F.R. s. 440.150; and
- Meet the requirements set forth in the approved federal waiver authorized under s. 1915(c) of the Social Security Act and 42 C.F.R. s. 441.302.

The bill also makes various conforming changes throughout, including changing instances of the word 'decision' to 'determination' and specifying that the APD is required to notify both applicants and clients of appellate rights following determinations of service eligibility.

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The APD anticipates that the bill will not have a fiscal impact on the private sector.³⁷

C. Government Sector Impact:

The APD anticipates that the bill will not have a fiscal impact on the agency.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 393.065 and 393.0651 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

³⁷ The APD Analysis at p. 4.

³⁸ *Id.*

By Senator Brodeur

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A bill to be entitled

An act relating to child welfare; amending s. 39.202, F.S.; clarifying a provision regarding access to certain records in the event of the death of a child as a result of abuse, abandonment, or neglect; amending s. 39.4092, F.S.; revising provisions to refer to a multidisciplinary legal representation program rather than a model; revising requirements for an office of criminal conflict and civil regional counsel's multidisciplinary legal representation program; requiring each office of criminal conflict and civil regional counsel to annually submit certain data to the Office of Program Policy Analysis and Government Accountability (OPPAGA) by a specified date; deleting a requirement that each office of criminal conflict and civil regional counsel submit a certain report; requiring the OPPAGA to compile certain data and conduct a certain analysis; revising the date the OPPAGA must annually report its analysis; creating s. 39.5035, F.S.; authorizing certain persons to initiate a proceeding by filing a petition for adjudication and permanent commitment if both parents of a child are deceased or the last known living parent dies; requiring that such petition be filed at a specified time under certain circumstances; authorizing certain persons to file a petition for permanent commitment if both parents die or the last known living parent dies after a child has been adjudicated dependent; specifying a timeframe for

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filing such petition; specifying requirements for such petitions; requiring the clerk of the court to set the case for hearing within a specified timeframe after a petition for adjudication and permanent commitment or a petition for permanent commitment is filed; requiring that a certain notice of the hearing and a copy of the petition be served on certain persons; specifying procedures for the adjudicatory hearing on the petitions; specifying the determinations a judge must make at the adjudicatory hearing; specifying that a disposition hearing must be set within a certain timeframe; requiring the Department of Children and Families to provide a certain amended case plan; requiring the department to make certain reasonable efforts regarding the case plan; requiring the court to hold hearings at a certain timeframe; specifying that a certified copy of the death certificate is sufficient evidence of a parent's death; requiring the court to make a certain determination within a specified timeframe after an adjudicatory hearing on certain petitions; providing construction; amending s. 39.522, F.S.; authorizing certain persons to remove a child from a court-ordered placement under certain circumstances; requiring the department to file a motion within a certain timeframe to modify placement following such removals; requiring the court to set a hearing on the motion within a specified timeframe under certain circumstances; requiring the court to make a specified determination at the hearing;

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authorizing the court to base its determination on certain evidence and to hear all relevant and material evidence; requiring the court to enter certain orders under certain circumstances; requiring a placement meet certain home study criteria; requiring the court to conduct a hearing under certain circumstances; amending s. 39.6013, F.S.; authorizing a case plan to be amended at any hearing based upon certain evidence; requiring the department to provide reasonable efforts if the court changes the permanency goal of the case; conforming provisions to changes made by the act; amending s. 39.6221, F.S.; revising conditions for a child's placement in a permanent guardianship; amending s. 39.6251, F.S.; specifying that certain young adults in a Department of Juvenile Justice detention center or commitment program are deemed to have met a certain licensed placement eligibility requirement; specifying that the department's supervision for such young adults is limited to providing certain services; amending s. 39.701, F.S.; revising the required determinations at judicial review hearings for children younger than 18 years of age; amending s. 39.801, F.S.; authorizing certain notice to be waived under certain circumstances; amending s. 39.812, F.S.; revising the court's authorization to review certain information after custody of a child for subsequent adoption has been given to the department; providing procedures if the department denies an application to adopt; revising

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the circumstances that must apply for the department to remove a child from a foster home or custodian after a denial of an application to adopt; conforming provisions to changes made by the act; amending s. 63.062, F.S.; conforming a provision to changes made by the act; amending s. 409.167, F.S.; revising the purpose and requirements of the statewide adoption exchange; specifying requirements of the photo listing component of the adoption exchange; requiring the department or lead agency to refer certain children to the adoption exchange; deleting the requirement that the referral be accompanied by a photograph and description of the child; deleting the requirement that the department provide certain information to the adoption exchange for children accepted for permanent placement by the department; deleting a requirement that the adoption exchange provide a certain service to certain groups, organizations, and associations; requiring that certain children be registered with existing regional and national adoption exchanges under a specified condition; amending s. 409.1678, F.S.; revising the required services that safe houses and safe foster homes must provide, arrange for, or coordinate; conforming a provision to changes made by the act; requiring the department, in collaboration with the Florida Digital Service, to provide a confidential web-based portal for safe house operators and foster parents for safe foster homes; specifying the requirements for such portal; requiring service

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providers to bill Medicaid, contract with local school districts, or obtain federal and local funding for services rendered to victims of commercial sexual exploitation whenever possible; amending s. 409.175, F.S.; revising the timeframe for which a family foster home license is valid; increasing the timeframe for which the department may extend a license expiration date; making a technical change; revising requirements for inservice training for foster parents and agency staff related to human trafficking; amending s. 409.1754, F.S.; requiring the Department of Children and Families, in collaboration with other entities, to implement certain recommendations and develop a certain tool and algorithm by a specified date; requiring that the screening and assessment instruments be validated by a specified date, if possible; requiring the department and the Department of Juvenile Justice to use the previously validated screening and assessment instruments and indicator tool under certain circumstances; requiring the department and each community-based care lead agency to prepare a certain service capacity assessment and development plan by a specified date and triennially thereafter; specifying the requirements of such plan; authorizing the department to provide training to certain local law enforcement officials; defining the term "survivor peer mentor"; providing legislative findings; requiring certain service providers and certain operators to collaborate with local providers

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146 to ensure survivor peer mentors are regularly
147 accessible to certain children; requiring survivor
148 peer mentors to undergo certain training; amending s.
149 409.988, F.S.; requiring that all individuals
150 providing care for dependent children be provided
151 contact information for a certain foster-family
152 support program; amending s. 409.996, F.S.; requiring
153 the department's contracts with lead agencies to
154 require the lead agency to provide a certain foster-
155 family support group; requiring certain governmental
156 entities to create a workgroup for a specified purpose
157 relating to commercial sexual exploitation; requiring
158 the Agency for Health Care Administration to modify
159 state Medicaid plans and implement federal waivers
160 necessary to implement the act; requiring the
161 workgroup to draft a certain plan and submit a certain
162 report to the Legislature by a specified date;
163 providing effective dates.

164
165 Be It Enacted by the Legislature of the State of Florida:

166
167 Section 1. Paragraph (o) of subsection (2) of section
168 39.202, Florida Statutes, is amended to read:

169 39.202 Confidentiality of reports and records in cases of
170 child abuse or neglect; exception.—

171 (2) Except as provided in subsection (4), access to such
172 records, excluding the name of, or other identifying information
173 with respect to, the reporter which shall be released only as
174 provided in subsection (5), shall be granted only to the

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following persons, officials, and agencies:

(o) Any person in the event of the death of a child determined by the department at the closure of its investigation, in accordance with s. 39.301(16), to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

Section 2. Section 39.4092, Florida Statutes, is amended to read:

39.4092 Multidisciplinary legal representation ~~model~~ program for parents of children in the dependency system.—

(1) LEGISLATIVE FINDINGS.—

(a) The Legislature finds that the use of a specialized team that includes an attorney, a social worker, and a parent-peer specialist, also known as a multidisciplinary legal representation ~~model~~ program, in dependency judicial matters is effective in reducing safety risks to children and providing families with better outcomes, such as significantly reducing the time the children spend in out-of-home care and achieving permanency more quickly.

(b) The Legislature finds that parents in dependency court often suffer from multiple challenges, such as mental illness, substance use disorder, domestic violence or other trauma, unstable housing, or unemployment. These challenges are often a contributing factor to children experiencing instability or safety risks. While these challenges may result in legal involvement or require legal representation, addressing the underlying challenges in a manner that achieves stability often

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falls within the core functions of the practice of social work.

(c) The Legislature also finds that social work professionals have a unique skill set, including client assessment and clinical knowledge of family dynamics. This unique skill set allows these professionals to interact and engage with families in meaningful and unique ways that are distinct from the ways in which the families interact with attorneys or other professional staff involved in dependency matters. Additionally, social work professionals are skilled at quickly connecting families facing crisis to resources that can address the specific underlying challenges.

(d) The Legislature finds that there is a great benefit to using parent-peer specialists in the dependency system, which allows parents who have successfully navigated the dependency system and have been successfully reunified with their children to be paired with parents whose children are currently involved in the dependency system. By working with someone who has personally lived the experience of overcoming great personal crisis, parents currently involved in the dependency system have a greater ability to address the underlying challenges that resulted in the instability and safety risk to their children, to provide a safe and stable home environment, and to be successfully reunified.

(e) The Legislature further finds that current federal law authorizes the reimbursement of a portion of the cost of attorneys for parents and children in eligible cases, whereas such funds were formerly restricted to foster care administrative costs.

(f) The Legislature finds it is necessary to encourage and

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233 facilitate the use of a multidisciplinary legal representation
234 program ~~model~~ for parents and their children in order to improve
235 outcomes for those families involved in the dependency system
236 and to provide the families who find themselves in a crisis with
237 the best opportunity to be successful in creating safe and
238 stable homes for their children.

239 (2) ESTABLISHMENT.—Each office of criminal conflict and
240 civil regional counsel established under s. 27.511 may establish
241 a multidisciplinary legal representation ~~model~~ program to serve
242 families in the dependency system.

243 (3) DUTIES.—

244 (a) The department shall collaborate with the office of
245 criminal conflict and civil regional counsel to determine and
246 execute any necessary documentation for approval of federal
247 Title IV-E matching funding. The department shall submit such
248 documentation as promptly as possible upon the establishment of
249 a multidisciplinary legal representation ~~model~~ program and shall
250 execute the necessary agreements to ensure the program accesses
251 available federal matching funding for the program in order to
252 help eligible families involved in the dependency system.

253 (b) An office of criminal conflict and civil regional
254 counsel that establishes a multidisciplinary legal
255 representation ~~model~~ program must, at a minimum:

256 1. Use a team that consists of at least an attorney and, a
257 parent-peer specialist or a forensic social worker, or a similar
258 professional ~~and a parent-peer specialist~~. For purposes of this
259 section, the term "parent-peer specialist" means a person who
260 has:

261 a. Previously had his or her child removed from his or her

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care and placed in out-of-home care.

b. Been successfully reunified with the child for more than 2 years.

c. Received specialized training to become a parent-peer specialist.

2. Comply with any necessary cost-sharing or other agreements to maximize financial resources and enable access to available federal Title IV-E matching funding.

3. Provide specialized training and support for attorneys, forensic social workers, and parent-peer specialists involved in a ~~the model~~ program.

4. Collect uniform data on each child whose parent is served by the program and ensure that reporting of data is conducted through the child's unique identification number in the Florida Safe Families Network or any successor system, if applicable.

5. Develop consistent operational program policies and procedures throughout each region that establishes a ~~the model~~ program.

6. Obtain agreements with universities relating to approved placements for social work students to ensure the placement of social workers in the program.

7. Execute conflict of interest agreements with each team member.

(4) REPORTING.—

~~(a)~~ Beginning July 15, 2023 ~~October 1, 2022~~, and annually thereafter through July 15, 2026 ~~October 1, 2025~~, each office of criminal conflict and civil regional counsel ~~that establishes a multidisciplinary legal representation model program~~ must submit

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291 certain requested data ~~an annual report~~ to the Office of Program
292 Policy Analysis and Government Accountability to ensure its
293 ability to perform an analysis evaluating the use and efficacy
294 of the multidisciplinary legal representation or similar
295 program. The annual data ~~report~~ must include ~~use~~ the uniform
296 data collected on each unique child whose parents are served by
297 the program ~~and must detail, at a minimum, all of the following:~~

298 1. ~~Reasons the family became involved in the dependency~~
299 ~~system.~~

300 2. ~~Length of time it takes to achieve a permanency goal for~~
301 ~~children whose parents are served by the program.~~

302 3. ~~Frequency of each type of permanency goal achieved by~~
303 ~~children whose parents are served by the program.~~

304 4. ~~Rate of subsequent abuse or neglect which results in the~~
305 ~~removal of children whose parents are served by the program.~~

306 5. ~~Any other relevant factors that tend to show the impact~~
307 ~~of the use of such multidisciplinary legal representation model~~
308 ~~programs on the outcomes for children in the dependency system.~~
309 ~~Each region that has established a model program must agree on~~
310 ~~the additional factors and how to collect data on such~~
311 ~~additional factors for the annual report.~~

312 ~~(b)~~ The Office of Program Policy Analysis and Government
313 Accountability shall compile the data ~~results of the reports~~
314 ~~required under paragraph (a)~~ and conduct an analysis to
315 determine the utilization and efficacy of ~~comparing the reported~~
316 ~~outcomes from~~ the multidisciplinary legal representation or
317 similar model program ~~to known outcomes of children in the~~
318 ~~dependency system whose parents are not served by a~~
319 ~~multidisciplinary legal representation model program.~~ Each

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office of criminal conflict and civil regional counsel shall provide any additional information or data requested by the Office of Program Policy Analysis and Government Accountability for its analysis. By December 1, 2022, and annually thereafter through December 1, ~~2026~~ ~~2025~~, the Office of Program Policy Analysis and Government Accountability must submit its analysis in a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 3. Section 39.5035, Florida Statutes, is created to read:

39.5035 Deceased parents; special procedures.—

(1) (a) 1. If both parents of a child are deceased or the last known living parent dies and a legal custodian has not been appointed for the child through a probate or guardianship proceeding, an attorney for the department or any other person who has knowledge of alleged facts that support a petition for adjudication and permanent commitment, or is informed of the alleged facts and believes them to be true, may initiate a proceeding by filing such petition.

2. If a child has been placed in shelter status by order of the court but has not yet been adjudicated, a petition for adjudication and permanent commitment must be filed within 21 days after the shelter hearing. In all other cases, the petition must be filed within a reasonable time after the petitioner first becomes aware of the alleged facts that support the petition for adjudication and permanent commitment.

(b) If both parents die or the last known living parent dies after a child has already been adjudicated dependent, an attorney for the department or any other person who has

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349 knowledge of the alleged facts or is informed of the alleged
350 facts and believes them to be true may file a petition for
351 permanent commitment. The petition must be filed within a
352 reasonable timeframe after the petitioner first becomes aware of
353 the alleged facts that support the petition for permanent
354 commitment.

355 (2) The petition for commitment and the petition for
356 adjudication and commitment must be in writing and must contain
357 all of the following:

358 (a) An identification of the alleged deceased parent or
359 parents, and the facts that establish that both parents of the
360 child are deceased or the last known living parent is deceased,
361 and that a legal custodian has not been appointed for the child
362 through a probate or guardianship proceeding.

363 (b) A signature by the petitioner under oath stating the
364 petitioner is filing the petition in good faith.

365 (3) If a petition for adjudication and permanent commitment
366 or a petition for permanent commitment has been filed, the clerk
367 of the court must set the case before the court for an
368 adjudicatory hearing. The adjudicatory hearing must be held as
369 soon as practicable after the petition is filed, but no later
370 than 30 days after the filing date.

371 (4) Notice of the date, time, and place of the adjudicatory
372 hearing and a copy of the petition must be served on the
373 following persons:

374 (a) Any person who has physical custody of the child.

375 (b) A living relative of each parent of the child, unless a
376 living relative cannot be found after a diligent search or
377 inquiry.

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378 (c) The guardian ad litem for the child or a representative
379 of the guardian ad litem program, if applicable.

380 (5) The adjudicatory hearing must be conducted by the judge
381 without a jury, applying the rules of evidence in use in civil
382 cases and adjourning the hearing as necessary. At the hearing,
383 the court must determine whether the petitioner has established
384 by clear and convincing evidence that both parents of the child
385 are deceased, or that the last known living parent is deceased
386 and the other parent cannot be found after diligent search or
387 inquiry, and that a legal custodian has not been appointed for
388 the child through a probate or guardianship proceeding. A
389 certified copy of the death certificate for a parent is
390 sufficient evidence of proof of the parent's death.

391 (6) Within 30 days after an adjudicatory hearing on a
392 petition for adjudication and permanent commitment, the court
393 must make one of the following determinations:

394 (a) If the court finds that the petitioner has met the
395 burden of clear and convincing evidence, the court must enter a
396 written order adjudicating the child dependent and permanently
397 committing the child to the custody of the department for the
398 purpose of adoption. A disposition hearing must be scheduled no
399 later than 30 days after the entry of the order, in which the
400 department must provide a case plan that identifies the
401 permanency goal for the child to the court. Reasonable efforts
402 must be made to place the child in a timely manner in accordance
403 with the permanency plan and to complete all steps necessary to
404 finalize the permanent placement of the child. Thereafter, until
405 the adoption of the child is finalized or the child reaches the
406 age of 18 years, whichever occurs first, the court must hold

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407 hearings every 6 months to review the progress being made toward
408 permanency for the child.

409 (b) If the court finds that the petitioner has not met the
410 burden of clear and convincing evidence, but that a
411 preponderance of the evidence establishes that the child does
412 not have a parent or legal custodian capable of providing
413 supervision or care, the court must enter a written order
414 adjudicating the child dependent. A disposition hearing must be
415 scheduled no later than 30 days after the entry of the order as
416 provided in s. 39.521.

417 (c) If the court finds that the petitioner has not met the
418 burden of clear and convincing evidence and that a preponderance
419 of the evidence does not establish that the child does not have
420 a parent or legal custodian capable of providing supervision or
421 care, the court must enter a written order so finding and
422 dismissing the petition.

423 (7) Within 30 days after an adjudicatory hearing on a
424 petition for permanent commitment, the court must make one of
425 the following determinations:

426 (a) If the court finds that the petitioner has met the
427 burden of clear and convincing evidence, the court must enter a
428 written order permanently committing the child to the custody of
429 the department for purposes of adoption. A disposition hearing
430 must be scheduled no later than 30 days after the entry of the
431 order, in which the department must provide an amended case plan
432 that identifies the permanency goal for the child to the court.
433 Reasonable efforts must be made to place the child in a timely
434 manner in accordance with the permanency plan and to complete
435 all steps necessary to finalize the permanent placement of the

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child. Thereafter, until the adoption of the child is finalized or the child reaches the age of 18 years, whichever occurs first, the court must hold hearings every 6 months to review the progress being made toward permanency for the child.

(b) If the court finds that the petitioner has not met the burden of clear and convincing evidence, the court must enter a written order denying the petition. The order has no effect on the child's prior adjudication. The order does not bar the petitioner from filing a subsequent petition for permanent commitment based on newly discovered evidence that establishes that both parents of a child are deceased or that the last living known parent is deceased and that a legal custodian has not been appointed for the child through a probate or guardianship proceeding.

Section 4. Subsection (7) is added to section 39.522, Florida Statutes, to read:

39.522 Postdisposition change of custody.—

(7) Notwithstanding any other provision of this section, at any time a child's case manager, an authorized agent of the department, or a law enforcement officer may remove a child from a court-ordered placement and take the child into custody if the child's current caregiver requests immediate removal of the child from the home. An authorized agent of the department or a law enforcement officer may also remove a child from a court-ordered placement and take the child into custody under s. 39.401(1)(b).

(a) If at the time of the removal the child was not placed in licensed care in the department's custody, the department must file a motion to modify placement within 1 business day

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465 after the child is taken into custody. Unless all parties and
466 the current caregiver agree to the change of placement, the
467 court must set a hearing within 24 hours after the filing of the
468 motion. At the hearing, the court must determine whether the
469 department has established probable cause to support the
470 immediate removal of the child from his or her current
471 placement. The court may base its determination on a sworn
472 petition, testimony, or an affidavit and may hear all relevant
473 and material evidence, including oral or written reports, to the
474 extent of its probative value even though such evidence would
475 not be competent evidence at an adjudicatory hearing.

476 (b) If the court finds that probable cause is not
477 established to support the removal of the child from the
478 placement, the court must order that the child be returned to
479 his or her current placement. Such a finding does not preclude a
480 party from filing a subsequent motion pursuant to subsection
481 (2).

482 (c) If the current caregiver admits to a need for a change
483 of placement or probable cause is established to support the
484 removal, the court must enter an order changing the placement of
485 the child. If the child is not placed in foster care, then the
486 new placement for the child must meet the home study criteria in
487 this chapter.

488 (d) If the child's placement is modified based on a
489 probable cause finding, the court must conduct a hearing under
490 the procedures in subsection (2) or subsection (3), unless
491 waived by all parties and the caregiver.

492 Section 5. Subsections (4) and (5) of section 39.6013,
493 Florida Statutes, are amended to read:

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39.6013 Case plan amendments.—

(4) At any hearing, the case plan may be amended by the court or upon motion of any party ~~at any hearing~~ to change the goal of the plan, employ the use of concurrent planning, or add or remove tasks the parent must complete in order to substantially comply with the plan if there is ~~a preponderance of~~ evidence demonstrating the need for the amendment. The court may base its determination on testimony and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value, even though such evidence would not be competent evidence at an adjudicatory hearing. However, if the court changes a goal of reunification to a different permanency goal, the change does not eliminate the department's responsibility to provide reasonable efforts to provide services where reasonable efforts are otherwise required by law. The need to amend the case plan may be based on information discovered or circumstances arising after the approval of the case plan for:

(a) A previously unaddressed condition that, without services, may prevent the child from safely returning to the home or may prevent the child from safely remaining in the home;

(b) The child's need for permanency, taking into consideration the child's age and developmental needs;

(c) The failure of a party to substantially comply with a task in the original case plan, including the ineffectiveness of a previously offered service; or

(d) An error or oversight in the case plan.

(5) At any hearing, the case plan may be amended by the court or upon motion of any party ~~at any hearing~~ to provide

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appropriate services to the child if there is ~~competent~~ evidence demonstrating the need for the amendment. The court may base its determination on testimony and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value, even though such evidence would not be competent evidence at an adjudicatory hearing. The reason for amending the case plan may be based on information discovered or circumstances arising after the approval of the case plan regarding the provision of safe and proper care to the child.

Section 6. Paragraph (a) of section (1) of section 39.6221, Florida Statutes, is amended, and paragraph (g) is added to that subsection, to read:

39.6221 Permanent guardianship of a dependent child.—

(1) If a court determines that reunification or adoption is not in the best interest of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court if all of the following conditions are met:

(a) The child has been in the placement for not less than the preceding 6 months, or the preceding 3 months if the caregiver has been named as the successor guardian on the child's guardianship assistance agreement.

(g) The department has advised the caregiver of the caregiver's eligibility for the Guardianship Assistance Program under s. 39.6225.

Section 7. Paragraph (a) of subsection (4) of section 39.6251, Florida Statutes, is amended to read:

39.6251 Continuing care for young adults.—

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(4) (a) 1. The young adult must reside in a supervised living environment that is approved by the department or a community-based care lead agency. The young adult shall live independently, but in an environment in which he or she is provided supervision, case management, and supportive services by the department or lead agency. Such an environment must offer developmentally appropriate freedom and responsibility to prepare the young adult for adulthood. For the purposes of this subsection, a supervised living arrangement may include a licensed foster home, licensed group home, college dormitory, shared housing, apartment, or another housing arrangement if the arrangement is approved by the community-based care lead agency and is acceptable to the young adult. A young adult may continue to reside with the same licensed foster family or group care provider with whom he or she was residing at the time he or she reached the age of 18 years.

2. A young adult in a Department of Juvenile Justice detention center or commitment program, who otherwise would have been living in licensed care on the date of his or her 18th birthday and has not achieved permanency under s. 39.621, shall be deemed to have met the licensed placement eligibility requirement of subsection (2). The department's supervision of such young adult is limited to the community-based care lead agency providing case management services as needed to facilitate the young adult's transition upon release from a detention or a commitment program into a supervised living environment as described in subparagraph 1.

Section 8. Paragraph (c) of subsection (2) of section 39.701, Florida Statutes, is amended to read:

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39.701 Judicial review.—

(2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF AGE.—

(c) *Review determinations.*—The court and any citizen review panel shall take into consideration the information contained in the social services study and investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the foster parent or caregiver, the guardian ad litem or surrogate parent for educational decisionmaking if one has been appointed for the child, and any other person deemed appropriate; and any relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value. These reports and evidence may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of their probative value, even though not competent in an adjudicatory hearing. In its deliberations, the court and any citizen review panel shall seek to determine:

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

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

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

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litem in a case in which a guardian ad litem has been appointed.

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

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

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

7. The frequency, kind, and duration of contacts among siblings who have been separated during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interests of the child.

8. The compliance or lack of compliance of the parent in meeting specified financial obligations pertaining to the care of the child, including the reason for failure to comply, if applicable.

9. Whether the child is receiving safe and proper care according to s. 39.6012, including, but not limited to, the appropriateness of the child's current placement, including whether the child is in a setting that is as family-like and as close to the parent's home as possible, consistent with the child's best interests and special needs, and including maintaining stability in the child's educational placement, as

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documented by assurances from the community-based care lead agency that:

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

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

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

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

12. For a child who has reached 13 years of age but is not yet 18 years of age, the adequacy of the child's preparation for adulthood and independent living. For a child who is 15 years of age or older, the court shall determine if appropriate steps are being taken for the child to obtain a driver license or learner's driver license.

13. If amendments to the case plan are required. Amendments to the case plan must be made under s. 39.6013.

14. If the parents and caregivers have developed a productive relationship that includes meaningful communication and mutual support.

15. Whether there are any barriers to meeting the

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eligibility requirements for the Guardianship Assistance Program under s. 39.6225, if applicable.

Section 9. Present subsection (7) of section 39.801, Florida Statutes, is redesignated as subsection (8), paragraph (c) of subsection (3) of that section is amended, and a new subsection (7) is added to that section, to read:

39.801 Procedures and jurisdiction; notice; service of process.—

(3) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:

~~(c) Notice as prescribed by this section may be waived, in the discretion of the judge, with regard to any person to whom notice must be given under this subsection if the person executes, before two witnesses and a notary public or other officer authorized to take acknowledgments, a written surrender of the child to a licensed child-placing agency or the department.~~

(7) Notice as prescribed by this section may be waived, in the discretion of the judge, with regard to any person to whom notice must be given under this subsection if the person executes, before two witnesses and a notary public or other officer authorized to take acknowledgments, a written surrender of the child to a licensed child-placing agency or the department. Notice as prescribed by this section may be waived, in the discretion of the judge, with regard to any person to whom notice must be given under this subsection if that person appears before the court at the advisory hearing or any other hearing after the advisory hearing.

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Section 10. Subsections (4), (5), and (6) of section 39.812, Florida Statutes, are amended to read:

39.812 Postdisposition relief; petition for adoption.—

(4) The court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, the court may review any of the following:

(a) For good cause shown by the guardian ad litem for the child, ~~the court may review~~ the appropriateness of the adoptive placement of the child.

(b) The department's denial of an application to adopt a child. The department's decision to deny an application to adopt a child is reviewable only as provided in this section and is not subject to chapter 120.

1. If the department denies an application to adopt, the written notification of denial provided to the applicant must be filed with the court and copies provided to all parties within 10 business days after the decision.

2. A denied applicant may file a motion to review the department's denial within 30 days after the issuance of the department's written notification of the decision to deny the application.

3. A denied applicant has standing under this chapter only to file the motion to review in subparagraph 2. and to present evidence in support of the motion. Such standing is terminated

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upon entry of the court's order.

4. The motion to review under subparagraph 2. must allege the department unreasonably withheld its consent to the adoption and must request that the court allow the denied applicant to file a petition to adopt the child under chapter 63 without the department's consent.

5. The court must hold a hearing within 30 days after the filing of the motion to review. The court may only consider whether the department's denial of the application was consistent with its policies and made in an expeditious manner. The standard of review is whether the department's denial of the application was an abuse of discretion.

6. If the department selected a different applicant to adopt the child, the selected applicant may participate in the hearing as a participant as provided in s. 39.01(57) and may be granted leave by the court to be heard without the necessity of filing a motion to intervene.

7. The court must enter a written order within 15 days after the conclusion of the hearing either denying the motion to review or finding that the department unreasonably withheld its consent and authorizing the denied applicant to file a petition to adopt the child under chapter 63 without the department's consent.

(5) When a licensed foster parent or court-ordered custodian has applied to adopt a child who has resided with the foster parent or custodian for at least 6 months and who has previously been permanently committed to the legal custody of the department and the department does not grant the application to adopt, the department may not, in the absence of a prior

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755 court order authorizing it to do so, remove the child from the
756 foster home or custodian, except when all of the following
757 circumstances apply:

758 (a) There is probable cause to believe that the child is at
759 imminent risk of abuse or neglect.~~†~~

760 (b) A motion to review the department's denial of
761 application filed under paragraph (4)(b)2. has been denied by
762 the court.

763 (c) Thirty days have expired following written notice to
764 the foster parent or custodian of the denial of the application
765 to adopt, within which period no formal challenge of the
766 department's decision has been filed.~~† or~~

767 (d)~~(e)~~ The foster parent or custodian agrees to the child's
768 removal.

769 (6)~~(5)~~ The petition for adoption must be filed in the
770 division of the circuit court which entered the judgment
771 terminating parental rights, unless a motion for change of venue
772 is granted pursuant to s. 47.122. A copy of the consent executed
773 by the department must be attached to the petition, unless the
774 court has found the department unreasonably withheld its consent
775 under paragraph (4)(b) waived pursuant to s. 63.062(7). The
776 petition must be accompanied by a statement, signed by the
777 prospective adoptive parents, acknowledging receipt of all
778 information required to be disclosed under s. 63.085 and a form
779 provided by the department which details the social and medical
780 history of the child and each parent and includes the social
781 security number and date of birth for each parent, if such
782 information is available or readily obtainable. The prospective
783 adoptive parents may not file a petition for adoption until the

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judgment terminating parental rights becomes final. An adoption proceeding under this subsection is governed by chapter 63.

Section 11. Subsection (7) of section 63.062, Florida Statutes, is amended to read:

63.062 Persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.—

(7) If parental rights to the minor have previously been terminated, the adoption entity with which the minor has been placed for subsequent adoption may provide consent to the adoption. In such case, no other consent is required. If the minor has been permanently committed to the department for subsequent adoption, the department must consent to the adoption, or, if the department does not consent, the court order finding that the department unreasonably withheld its consent entered under s. 39.812(4) must be attached to the petition to adopt and ~~The consent of the department shall be waived upon a determination by the court that such consent is being unreasonably withheld and if the petitioner~~ must file ~~has filed~~ with the court a favorable preliminary adoptive home study as required under s. 63.092.

Section 12. Section 409.167, Florida Statutes, is amended, to read:

409.167 Statewide adoption exchange; establishment; responsibilities; registration requirements; rules.—

(1) The Department of Children and Families shall establish, either directly or through purchase, a statewide adoption exchange, with a photo listing component, which shall serve all authorized licensed child-placing agencies in the state for the purpose of facilitating family-matching between

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813 prospective adoptive parents and children who have been legally
814 freed for adoption and who have been permanently placed with the
815 department as a means of recruiting adoptive families for
816 ~~children who have been legally freed for adoption and who have~~
817 ~~been permanently placed with the department~~ or a licensed child-
818 placing agency. The exchange shall provide, in accordance with
819 rules established by the department ~~descriptions and photographs~~
820 ~~of such children, as well as any other~~ information deemed useful
821 in facilitating family-matching between children and prospective
822 adoptive parents for licensed child-placing agencies ~~the~~
823 ~~recruitment of adoptive families for each child.~~ The photo
824 listing component of the adoption exchange must be in a format
825 that is accessible only to persons who have completed or are in
826 the process of completing an adoption home study ~~updated~~
827 ~~monthly.~~ A child 12 years of age or older must be consulted
828 about his or her photo listing.

829 (2) (a) ~~Each district of~~ The department or community-based
830 care lead agency shall refer each child in its care who has been
831 legally freed for adoption to the adoption exchange no later
832 than 30 days after the date of acceptance by the department for
833 permanent placement. ~~The referral must be accompanied by a~~
834 ~~photograph and description of the child.~~

835 (b) The department shall establish criteria by which a
836 district may determine that a child need not be registered with
837 the adoption exchange. Within 30 days after the date of
838 acceptance by the department for permanent placement, the name
839 of the child accepted for permanent placement must be forwarded
840 to the statewide adoption exchange by the district together with
841 reference to the specific reason why the child should not be

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placed on the adoption exchange. ~~If the child has not been placed for adoption within 3 months after the date of acceptance by the department for permanent placement, the district shall provide the adoption exchange with the necessary photograph and information for registration of the child with the adoption exchange and the child shall be placed on the exchange.~~ The department shall establish procedures for monitoring the status of children who are not placed on the adoption exchange within 30 days after the date of acceptance by the department for permanent placement.

(3) In accordance with rules established by the department, the adoption exchange may accept, from licensed child-placing agencies, information pertaining to children meeting the criteria of this section, and to prospective adoptive families, for registration with the exchange.

~~(4) The adoption exchange shall provide the photo listing service to all licensed child placing agencies and, in accordance with rules established by the department, to all appropriate citizen groups and other organizations and associations interested in children's services.~~

~~(5)~~ Children who are registered with the statewide adoption exchange and for whom there is no available family resource shall be registered with existing regional and national adoption exchanges, consistent with the restrictions in this section.

(5)~~(6)~~ The department shall adopt rules governing the operation of the statewide adoption exchange.

Section 13. Paragraphs (d) and (e) of subsection (2) and paragraph (a) of subsection (4) of section 409.1678, Florida Statutes, are amended, and paragraph (h) is added to subsection

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(2) of that section, to read:

409.1678 Specialized residential options for children who are victims of commercial sexual exploitation.—

(2) CERTIFICATION OF SAFE HOUSES AND SAFE FOSTER HOMES.—

(d) Safe houses and safe foster homes shall provide services tailored to the needs of child victims of commercial sexual exploitation and shall conduct a comprehensive assessment of the service needs of each resident. In addition to the services required to be provided by residential child caring agencies and family foster homes, safe houses and safe foster homes must provide, arrange for, or coordinate, at a minimum, the following services:

1. Victim-witness counseling.
2. Family counseling.
3. Behavioral health care.
4. Treatment and intervention for sexual assault.
5. Education tailored to the child's individual needs, including remedial education if necessary.
6. Life skills and workforce training.
7. Mentoring by a survivor of commercial sexual exploitation, if available and appropriate for the child. A mentor who meets the survivor peer mentor model as detailed in s. 409.1754(5) must be used whenever possible.
8. Substance abuse screening and, when necessary, access to treatment.
9. Planning services for the successful transition of each child back to the community.
10. Activities structured in a manner that provides child victims of commercial sexual exploitation with a full schedule.

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(e) The community-based care lead agencies shall ensure that foster parents of safe foster homes and staff of safe houses complete intensive training regarding, at a minimum, the needs of child victims of commercial sexual exploitation, the effects of trauma and sexual exploitation, and how to address those needs using strength-based and trauma-informed approaches and any training required under s. 409.175(14)(e) for licensure. The department shall specify the contents of this training by rule and may develop or contract for a standard curriculum. The department may establish by rule additional criteria for the certification of safe houses and safe foster homes that shall address the security, therapeutic, social, health, and educational needs of child victims of commercial sexual exploitation.

(h) The department, in collaboration with the Florida Digital Service, must provide a confidential web-based portal that can be accessed by safe house operators and foster parents for safe foster homes. The portal must provide or maintain:

1. Access through the Internet and use an encrypted login and password or other user-specific security and access control;

2. Unique content for each of the following user types to assist them with developing, meeting, or expanding community services or bed capacity to serve children who are victims of commercial sexual exploitation or who are at risk of becoming victims of commercial sexual exploitation:

a. Prospective unlicensed safe house and safe foster home operators.

b. Prospective safe house and safe foster home operators that have a child-caring agency license.

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929 c. Actively licensed and certified safe house and safe
930 foster home operators;

931 3. Summaries of all current licensure and certification
932 requirements;

933 4. A frequently asked questions section;

934 5. A listing of safe house and safe foster home contacts
935 who are willing to provide support, advice, and counsel to new
936 operators; and

937 6. An interactive message board or similar system that
938 allows the posting of questions and responses by users.

939 (4) FUNDING FOR SERVICES; CASE MANAGEMENT.—

940 (a) ~~This section does not prohibit~~ Any provider of services
941 for child victims of commercial sexual exploitation must,
942 whenever possible, from appropriately bill ~~billing~~ Medicaid for
943 services rendered, contract ~~from contracting~~ with a local school
944 district for educational services, or obtain ~~from obtaining~~
945 federal or local funding for services provided, as long as two
946 or more funding sources do not pay for the same specific service
947 that has been provided to a child.

948 Section 14. Paragraph (i) of subsection (6), subsection
949 (7), and paragraph (e) of subsection (14) of section 409.175,
950 Florida Statutes, are amended to read:

951 409.175 Licensure of family foster homes, residential
952 child-caring agencies, and child-placing agencies; public
953 records exemption.—

954 (6)

955 (i) Upon determination that the applicant meets the state
956 minimum licensing requirements and has obtained a letter from a
957 community-based care lead agency which indicates that the family

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foster home meets the criteria established by the lead agency, the department shall issue a license without charge to a specific person or agency at a specific location. A license may be issued if all the screening materials have been timely submitted; however, a license may not be issued or renewed if any person at the home or agency has failed the required screening. The license is nontransferable. A copy of the license must ~~shall~~ be displayed in a conspicuous place. Except as provided in paragraph (k), the license is valid for a period of up to 1 year from the date of issuance, unless the license is suspended or revoked by the department or is voluntarily surrendered by the licensee. The license is the property of the department.

(7) The department may extend a license expiration date once for a period of up to 60 ~~30~~ days. ~~However, the department may not extend a license expiration date more than once during a licensure period.~~

(14)

(e)1. In addition to any other preservice training required by law, foster parents, as a condition of licensure, and agency staff must successfully complete preservice training related to human trafficking which must be uniform statewide and must include, but need not be limited to:

a. Basic information on human trafficking, such as an understanding of relevant terminology, and the differences between sex trafficking and labor trafficking;

b. Factors and knowledge on identifying children at risk of human trafficking; and

c. Steps that should be taken to prevent at-risk youths

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from becoming victims of human trafficking.

2. Foster parents, before licensure renewal, and agency staff, during each full year of employment, must complete inservice training related to human trafficking to satisfy the training requirement under subparagraph (5)(b)7., which must include, but need not be limited to, providing such persons with skills, tools, and strategies to:

a. Effectively communicate with children who are at risk of human trafficking or who are victims of human trafficking;

b. Mitigate specific maladaptive behaviors exhibited by, and barriers to accessing services or placement experienced by, this unique population; and

c. Mitigate secondary traumatic stress experienced by foster parents and agency staff.

Section 15. Effective upon becoming a law, paragraph (b) of subsection (1), paragraph (c) of subsection (3), and paragraph (a) of subsection (4) of section 409.1754, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

409.1754 Commercial sexual exploitation of children; screening and assessment; training; multidisciplinary staffings; service plans.—

(1) SCREENING AND ASSESSMENT.—

(b)1. By December 1, 2023, the department shall, in collaboration with the Department of Juvenile Justice, the Florida Institute for Child Welfare at Florida State University, and the Office of Program Policy Analysis and Government Accountability:

a. Implement any recommendations necessary to validate the current screening and assessment instruments; and

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1016 b. Develop an indicator tool and outcome algorithm to be
1017 used in conjunction with the screening and assessment
1018 instruments.

1019 2. The ~~initial~~ screening and assessment instruments must
1020 ~~shall~~ be validated by June 1, 2024, if possible, and must be
1021 used by the department, juvenile assessment centers as provided
1022 in s. 985.135, and community-based care lead agencies.

1023 3. If the screening and assessment instruments and
1024 indicator tool required by paragraph (b) are not validated by
1025 June 1, 2024, the department and the Department of Juvenile
1026 Justice shall identify and implement the use screening and
1027 assessment instruments and an indicator tool that have been
1028 previously validated.

1029 (3) TRAINING; LOCAL PROTOCOLS.—

1030 (c) Each region of the department and each community-based
1031 care lead agency shall jointly assess local service capacity to
1032 meet the specialized service needs of commercially sexually
1033 exploited children and establish a plan to develop the necessary
1034 capacity. Each plan shall be developed in consultation with
1035 community-based care lead agencies, local law enforcement
1036 officials, local school officials, runaway and homeless youth
1037 program providers, local probation departments, children's
1038 advocacy centers, guardians ad litem, public defenders, state
1039 attorneys' offices, safe houses, and child advocates and service
1040 providers who work directly with commercially sexually exploited
1041 children. By December 1, 2023, and on December 1 triennially
1042 thereafter, the department and each community-based care lead
1043 agency shall prepare a service capacity assessment and
1044 development plan. The plan must, at a minimum, detail all of the

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following factors as they relate to the specific local community service options for children who are victims of commercial sexual exploitation or are at risk of being commercially sexually exploited:

1. A summary of current specific community services and specific bed capacity.

2. Historical barriers to the development of specific community services and specific bed capacity.

3. An analysis of funding and funding sources, including Medicaid billing.

4. Any barriers to Medicaid billing.

5. A strategic action plan to develop specific bed capacity and specific services in the local service area.

(4) LOCAL RESPONSE TO HUMAN TRAFFICKING; TRAINING; TASK FORCE.—

(a) The department ~~To the extent that funds are available, the local regional director~~ may provide training to local law enforcement officials who are likely to encounter child victims of commercial sexual exploitation in the course of their law enforcement duties. Training must address this section and how to identify and obtain appropriate services for such children. The local circuit administrator may contract with a not-for-profit agency with experience working with commercially sexually exploited children to provide the training. Circuits may work cooperatively to provide training, which may be provided on a regional basis. The department shall assist circuits to obtain available funds for the purpose of conducting law enforcement training from the Office of Juvenile Justice and Delinquency Prevention of the United States Department of Justice.

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(5) SURVIVOR PEER MENTOR MODEL.—

(a) For purposes of this section, the term “survivor peer mentor” means a person who has previously been a victim of commercial sexual exploitation and received specialized training to become a survivor peer mentor.

(b) The Legislature finds that the use of a survivor peer mentor model is effective in reducing safety risks and providing improved outcomes for children who are, or are at risk of becoming, victims of commercial sexual exploitation. The use of a survivor peer mentor who has actual experience in surviving and treating the trauma of being a victim of commercial sexual exploitation, in collaboration with a social worker or victim advocate, when possible, will provide the child with a supportive mentor who has specialized knowledge and experience in navigating the multiple challenges such victims face, including, but not limited to, mental illness, substance use disorder, domestic violence or other trauma, unstable housing, or unemployment.

(c) Any community overlay service provider or operator of a safe house or safe foster home as those terms are defined in s. 409.1678 shall collaborate with local providers to ensure that survivor peer mentors are regularly accessible to the children served by the service or program. A survivor peer mentor must undergo a minimum number of hours of training, as established by the department’s rules, to ensure that the peer mentor is able to properly support and interact with the child in the dependency system.

Section 16. Paragraph (e) of subsection (1) of section 409.988, Florida Statutes, is amended to read:

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1103 409.988 Community-based care lead agency duties; general
1104 provisions.—

1105 (1) DUTIES.—A lead agency:

1106 (e) Shall ensure that all individuals providing care for
1107 dependent children receive:

1108 1. Appropriate training and meet the minimum employment
1109 standards established by the department. Appropriate training
1110 shall include, but is not limited to, training on the
1111 recognition of and responses to head trauma and brain injury in
1112 a child under 6 years of age developed by the Child Protection
1113 Team Program within the Department of Health.

1114 2. Contact information for the local mobile response team
1115 established under s. 394.495.

1116 3. Contact information for a foster-family support program
1117 available 24 hours a day, 7 days a week. The program must
1118 provide, at a minimum, the ability for foster parents to seek
1119 counsel and advice from former and current foster parents and
1120 access mental health crisis services and supports for foster
1121 parents, including, but not limited to, trauma counseling,
1122 placement stabilization, de-escalation, and parent coaching.

1123 Section 17. Present paragraph (f) of subsection (1) of
1124 section 409.996, Florida Statutes, is redesignated as paragraph
1125 (g), and a new paragraph (f) is added to that subsection, to
1126 read:

1127 409.996 Duties of the Department of Children and Families.—
1128 The department shall contract for the delivery, administration,
1129 or management of care for children in the child protection and
1130 child welfare system. In doing so, the department retains
1131 responsibility for the quality of contracted services and

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programs and shall ensure that, at a minimum, services are delivered in accordance with applicable federal and state statutes and regulations and the performance standards and metrics specified in the strategic plan created under s. 20.19(1).

(1) The department shall enter into contracts with lead agencies for the performance of the duties by the lead agencies established in s. 409.988. At a minimum, the contracts must do all of the following:

(f) Require lead agencies to provide a foster-family support program available 24 hours a day, 7 days a week. The program must provide, at a minimum, the ability for foster parents to seek counsel and advice from former and current foster parents and access mental health crisis services and supports for foster parents, including, but not limited to, trauma counseling, placement stabilization, de-escalation, and parent coaching.

Section 18. Effective upon this act becoming a law, the Department of Children and Families, the Agency for Health Care Administration, and the Department of Juvenile Justice shall, with consultation from stakeholders and subject matter experts, create a workgroup for the purpose of developing and enhancing the state's service array for persons who are victims of commercial sexual exploitation. The workgroup shall analyze the current bed rate for commercial sexual exploitation beds and recommend a bed rate that is sufficient to provide for the services, physical space, safety, and costs incidental to treatment for this population; analyze the funding for community-based services for commercial sexual exploitation

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1161 victims and develop a funding model that combines available
1162 funding sources to cover services, board, and administrative
1163 costs; and analyze the use of Medicaid services for commercial
1164 sexual exploitation victims and, subject to any required
1165 approval of the Centers for Medicare and Medicaid Services,
1166 establish a commercial sexual exploitation specific behavioral
1167 health overlay as a Medicaid-covered service. The Agency for
1168 Health Care Administration shall modify any state Medicaid plans
1169 and implement any federal waivers necessary to implement this
1170 act. The workgroup shall draft a joint strategic action plan to
1171 implement the recommended solutions from the analysis of the
1172 commercial sexual exploitation service array and submit a report
1173 on the recommendations for implementation of the new rates to
1174 the President of the Senate and the Speaker of the House of
1175 Representatives by December 1, 2023.

1176 Section 19. Except as otherwise expressly provided in this
1177 act and except for this section, which shall take effect upon
1178 becoming a law, this act shall take effect July 1, 2023.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1634

INTRODUCER: Senator Brodeur

SUBJECT: Child Welfare

DATE: March 24, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Tuzynski	Cox	CF	Pre-meeting
2. _____	_____	AHS	_____
3. _____	_____	FP	_____

I. Summary:

SB 1634 makes numerous changes to chapters 39, 409, and 63, F.S., to enhance the child welfare system including changes to protect vulnerable children, support caregivers and foster parents, and streamline court proceedings and legal processes. The bill also makes numerous changes to enhance the system of care for victims of human trafficking.

In regards to ch. 39, F.S., related to the child welfare system, the bill:

- Creates a process to permanently commit a child whose parents die while the child is in the dependency system or who otherwise does not have a safe relative to care for the child and must rely upon the Department of Children and Families' (DCF) services, but is not a victim of abuse, abandonment, or neglect.
- Creates an emergency modification of placement process to immediately address child safety risks of children in out-of-home care separate from a shelter hearing.
- Modifies the adoption exchange requirements related to public access and display of photographs of each child eligible for adoption.
- Changes the judicial review process to allow permanent guardians of children who may be eligible for the Guardianship Assistance Program to receive maximum available benefits to minimize placement disruption and time to permanency by reducing the number of months required to close a case in permanent guardianship from 6 to 3 months if the caregiver was previously named as a successor guardian.
- Allows judges to amend case plans at judicial review hearings that already require the court to evaluate the appropriateness of the permanency goal and services being offered.
- Eliminates the requirement to personally serve a parent with a petition when the parent appears at a termination of parental rights hearing, aligning statute with the dependency hearing process.

- Shifts judicial review of the DCF’s decision on adoption applications made to the DCF under ch. 39, F.S., from a separate administrative process under ch. 120, F.S., to the judge assigned to the dependency proceeding who has the most familiarity with the child and family.

In regards to human trafficking and commercial sexual exploitation, the bill:

- Requires additional inservice training for foster parents and agency staff to provide better tools to communicate and mitigate maladaptive behaviors and trauma for CSE victims and the caregivers that are caring for such youth.
- Requires the DCF and Department of Juvenile Justice (DJJ), by December 1, 2023, to implement recommendations for the HTST tool and implement a scoring mechanism to be utilized with the current tool.
- Requires the modified HTST tool to be validated by June 1, 2024 and, if it cannot be validated, for the DCF and DJJ to transition to a pre-validated tool.
- Requires the DCF and Community-Based Care Lead Agencies (CBC) to develop a long range plan and strategic plan for current capacity and how to expand CSE capacity, which will improve upon the current requirement of the DCF and CBCs to assess local service capacity.
- Removes the requirement that the DCF only provide training to local law enforcement to the extent that funds are available.
- Establishes the Survivor Peer Mentor Model and also requires that CSE providers use the model to provide mentorship to CSE youth whenever possible.
- Requires the CBCs to ensure that staff of safe houses and foster parents of safe foster homes complete any of the inservice training required for serving the CSE youth population.
- Requires the DCF to establish a confidential portal to provide services and information to prospective and current CSE safe homes, including an interactive message board for providers to communicate and work through challenges.
- Clarifies that providers must, whenever possible, bill for services through revenue maximization methods, rather than current law which says there is no prohibition on such billing practices.
- Requires the DCF, ACHA, and DJJ to work together to analyze the bed rates and develop funding models or a CSE-specific Behavioral Health Overlay rate.

The bill has an indeterminate positive fiscal impact on state government and an indeterminate negative fiscal impact on the private sector. See Section V. Fiscal Impact Statement.

Sections 15 and 18 of the bill are effective upon becoming law and the remainder of the bill is effective July 1, 2023.

II. Present Situation:

An estimated 3.9 million referrals of alleged child abuse and neglect were made nationwide in 2021.¹ Of that 3.9 million, approximately 2 million met the requirements for an investigation²

¹ U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, *Report on Child Maltreatment 2021*, p. 8, available at <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf> (last viewed March 19, 2023).

² *Id.* at 13; referred to as “screened in referrals.”

leading to approximately 588,000 children with a finding of maltreatment.³ More than 4.28 million children live in Florida, a vast majority of which, fortunately, never come to the attention of Florida's child welfare system.⁴ In 2021, the Department of Children and Families (DCF) investigated 256,060 reports of potential child abuse and approximately 11 percent (27,394) of those investigations resulted in a finding of maltreatment.⁵

Congress appropriates federal funds through various grants to the DCF to supplement state general revenue funds for the implementation of child welfare programs.⁶ The DCF uses these funds to contract with community-care based lead agencies (CBCs) to provide services.⁷

Florida's Child Welfare System - Generally

Chapter 39, F.S., creates Florida's dependency system that is charged with protecting the welfare of children; this system is often referred to as the "child welfare system." The DCF Office of Child and Family Well-Being works in partnership with local communities and the courts to ensure the safety, timely permanency, and well-being of children.

Child welfare services are directed toward the prevention of abandonment, abuse, and neglect of children.⁸ The DCF practice model is based on the safety of the child within his or her home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in his or her home environment. Such services are coordinated by the DCF-contracted community-based care lead agencies (CBC).⁹ The DCF remains responsible for a number of child welfare functions, including operating the central abuse hotline, performing child protective investigations, and providing children's legal services.¹⁰ Ultimately, the DCF is responsible for program oversight and the overall performance of the child welfare system.¹¹

Department of Children and Families

The DCF's statutory mission is to work in partnership with local communities to protect the vulnerable, promote strong and economically self-sufficient families, and advance personal and family recovery and resiliency.¹² The DCF must develop a strategic plan to fulfill this mission

³ *Id.* at 21; referred to as "victims of abuse and neglect."

⁴ U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *Child Population Data for Florida*, available at <https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/florida.html> (last viewed March 19, 2023).

⁵ *Id.*

⁶ The main federal grant programs that supplement state-level child welfare programs are Titles IV-E and IV-B of the Social Security Act.

⁷ Part V of ch. 409, F.S.

⁸ Section 39.001(8), F.S.

⁹ Section 409.986(1), F.S.; *See generally* The Department of Children and Families (The DCF), *About Community-Based Care*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care> (last viewed March 15, 2023).

¹⁰ Office of Program Policy Analysis and Government Accountability, *Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care*, Report 06-50, June 2006, available at <https://oppaga.fl.gov/Products/ReportDetail?rn=06-50> (last viewed March 19, 2023).

¹¹ *Id.*

¹² Section 20.19(1)(a), F.S.

and establish measurable goals, objectives, performance standards, and quality assurance requirements to ensure the DCF is accountable to taxpayers.¹³

The DCF is required to provide services relating to:

- Adult protection.
- Child care regulation.
- Child welfare.
- Domestic violence.
- Economic self-sufficiency.
- Homelessness.
- Mental health.
- Refugees.
- Substance abuse.¹⁴

The DCF must also deliver services by contract through private providers to the extent allowed by law and funding.¹⁵ These private providers include CBCs delivering child welfare services and managing entities (MEs) delivering behavioral health services.¹⁶

Dependency Case Process - Generally

When child welfare necessitates that the DCF remove a child from the home to ensure his or her safety, a series of dependency court proceedings must occur to place that child in out-of-home placement, adjudicate the child dependent, and if necessary terminate parental rights and free that child for adoption. Steps in the dependency process usually include:

- A report to the Florida Abuse Hotline.
- A child protective investigation to determine the safety of the child.
- The court finding the child dependent.
- Case planning for the parents to address the problems resulting in their child's dependency.
- Placement in out-of-home care, if necessary.
- Reunification with the child's parent or another option to establish permanency, such as adoption after termination of parental rights.¹⁷

Dependency Proceeding	Description of Process	Controlling Statute(s)
Removal	The DCF may remove a child from his or her home after a protective investigation determines that conditions in that child's home are unsafe and a safety plan cannot make the conditions safe.	s. 39.401, F.S.

¹³ Section 20.19(1)(b), F.S.

¹⁴ Section 20.19(4)(a), F.S.,

¹⁵ Section 20.19(1)(d), F.S.

¹⁶ Part V of ch. 409, F.S. and s. 394.9082, F.S.

¹⁷ The state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children. S. 63.022, F.S.

Dependency Proceeding	Description of Process	Controlling Statute(s)
Shelter Hearing	The court must hold a shelter hearing within 24 hours after removal. At this hearing, the judge determines whether there was probable cause to remove the child and whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	The DCF must file a petition for dependency within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	The court must hold an arraignment and shelter review within 28 days of the shelter hearing. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any previous shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	The court must hold an adjudicatory trial within 30 days of arraignment. The judge determines whether a child is dependent during this trial.	s. 39.507, F.S.
Disposition Hearing	The court must hold a disposition hearing within 15 days of arraignment (if the parents admits or consents to adjudication) or 30 days of adjudication if a court finds the child dependent. At this hearing, the judge reviews the case plan and placement of the child and orders the case plan and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Postdisposition Change of Custody Hearing	The court may change the temporary out-of-home placement of a child at a postdisposition hearing any time after disposition but before the child is residing in the permanent placement approved at a permanency hearing.	s. 39.522, F.S.
Judicial Review Hearings	The court must review the case plan and placement at least every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	If the DCF determines that reunification is no longer a viable goal and termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	s. 39.802, F.S. s. 39.8055, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	The court must hold an advisory hearing as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Hearing	The court must hold an adjudicatory trial within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

In-Home Services

The DCF is required to make all efforts to keep children with their families and provide interventions that allow children to remain safely in their own homes.¹⁸ Protective investigators and CBC case managers can refer families for in-home services to allow children who would otherwise be unsafe to remain in their own homes. As of September 30, 2022, 30,217 children were receiving in-home services.¹⁹

Out-of-home Placement

When a child protective investigator determines that in-home services are not enough to ensure safety, the investigator removes and places the child with a safe and appropriate temporary out-of-home placement, often referred to as “foster care.”²⁰ These out-of-home placements provide housing, support, and services to a child until the conditions in his or her home are safe enough to return or the child achieves permanency with another family through another permanency option, like adoption.²¹

The CBCs must maintain and license various out-of-home placement types²² to place children in the most appropriate available setting after conducting an assessment using child-specific factors.²³ Legislative intent is to place a child in the least restrictive, most family-like environment in close proximity to parents when removed from his or her home.²⁴

The DCF, through the CBCs, places children in a variety of settings. As of January 31, 2023 there were 21,066 children in out-of-home care with 5,420 with non-licensed relatives, 1,948 with non-licensed non-relative kin, 10,989 in licensed family foster homes (to include Level I licensed family and kin), and 1,588 in residential group care.²⁵

Out-of-home Placements as of January 31, 2023

¹⁸ Sections 39.402(7), 39.521(1)(f), and 39.701(d), F.S.

¹⁹ Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, January 2023, p. 30, available at https://www2.myflfamilies.com/service-programs/child-welfare/kids/results-oriented-accountability/performanceManagement/docs/KI_Monthly_Report_Jan2023.pdf (last viewed March 20, 2023).

²⁰ Sections 39.401 through 39.4022, F.S.

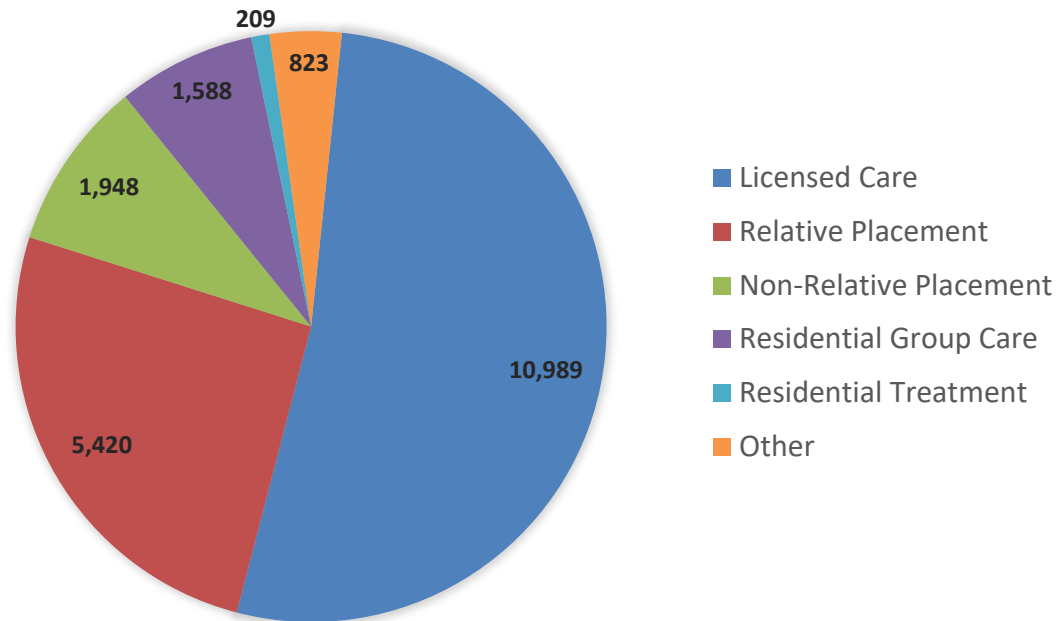
²¹ The Office of Program Policy and Government Accountability, *Program Summary*, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5053> (last visited March 15, 2023).

²² Chapter 65C-45, F.A.C.

²³ Rule 65C-28.004, F.A.C., provides that the child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement.

²⁴ Sections 39.001(1) and 39.4021(1), F.S.

²⁵ Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, January 2023, p. 31, available at https://www2.myflfamilies.com/service-programs/child-welfare/kids/results-oriented-accountability/performanceManagement/docs/KI_Monthly_Report_Jan2023.pdf (last viewed March 20, 2023).



Source: Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, January 2023, p. 31.

Case planning

For all children and families requiring services in the child welfare system, the DCF must develop and draft a case plan.²⁶ The purpose of a case plan is to develop a documented plan that details the identified concerns and barriers within the family unit, the permanency goal or goals, and the services designed to ameliorate those concerns and barriers and achieve the permanency goal.²⁷

The services detailed in a case plan must be designed in collaboration with the parent and stakeholders to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement.²⁸ The services offered must be the least intrusive possible into the life of the parent and child and must provide the most efficient path to quick reunification or other permanent placement.²⁹

Refer to Section III (Effect of Proposed Changes) of this Bill Analysis for a more detailed discussion of the specific sections of current law and the bill's effect on those sections.

²⁶ See Part VII of ch. 39, F.S.

²⁷ Section 39.6012(1), F.S.

²⁸ *Id.*

²⁹ *Id.*

III. Effect of Proposed Changes:

Confidentiality of Child Welfare Reports and Records (Section 1)

Section 39.202, F.S., provides for the confidentiality of reports and records in child welfare cases. The law requires that the DCF shall release records to “[a]ny person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect.”³⁰

Current law does not detail or specify whom must make the requisite determination that the death was the result of abuse, abandonment, or neglect or when that determination must occur. This lack of specificity has created issues with the DCF being unaware of ‘determinations’ made by other entities and being unknowingly liable for the release of records.³¹ The DCF is required to complete its investigation within 60 days after receiving

Effect of the Bill

The bill amends s. 39.202(2)(o), F.S., to clarify that access to child abuse records shall be granted to persons after the DCF has closed its investigation and met the requirements of 39.301(16), F.S., which state that the DCF must close its investigation within 60 days unless:

- There is an active, concurrent criminal investigation that is continuing beyond the 60-day period and closure of the DCF investigation may compromise successful criminal prosecution.
- The final report of a medical examiner is necessary for the DCF to close its investigation and the report has not been received.
- A child necessary to the investigation has been declared missing by the DCF, a law enforcement agency, or a court.

Clarifying s. 39.202(2)(o), F.S., provides for transparency and accuracy, giving the DCF time to conduct a proper investigation into the cause and circumstances into the death of a child, clarifies when an investigation is complete for purposes of record release, and also helps remaining family members, including siblings, by ensuring that no information is released pre-maturely, or inaccurately.

Multidisciplinary Legal Representation Model (Section 2)

Multidisciplinary legal representation models (MLRM) have been adopted in states around the country, including The Vermont Parent Representation Center, the Center for Family Representation, the Bronx Defenders, and the Detroit Center for Family Advocacy.³² While the traditional legal practice in the United States is to have a solo attorney represent a client, the MLRM promotes a team of individuals, including social workers and parent advocates.³³ A study

³⁰ Section 39.202(2)(o), F.S.

³¹ The DCF, 2023 Agency Legislative Bill Analysis, SB 1634, bill p. 3 (on file with Committee on Children, Families, and Elder Affairs Staff). (hereinafter cited as “DCF Bill Analysis”)

³² The Children’s Bureau Express, *Collaborating to Build Multidisciplinary, Family-Centered, Strengths-Based Courts*, May 2020, available at <https://cbexpress.acf.hhs.gov/article/2020/may/collaborating-to-build-multidisciplinary-family-centered-strengths-based-courts/e93880031b92c150517620efe54bcbf5> (last visited March 21, 2023).

³³ See *Id.* Children’s Bureau Express, *New Study Shows Providing Parents with Multidisciplinary Legal Representation in Child Welfare Cases furthers Everyone’s Interests*, July/August 2019, available at

by the Bronx Defenders that examined more than 28,000 New York dependency cases between 2007 and 2014 found that full implementation of the MLRM would have saved an estimated \$40 million per year for the foster care system.³⁴ This same study suggests that representation that utilized the multidisciplinary model were able to safely reunify children with their families 43 percent more often in their first year than solo practitioners, and 25 percent more often in the second year.³⁵

In 2018, Congress enacted the Family First Prevention Services Act (FFPSA) aimed at providing financial assistance with a focus on prevention services to turn the focus of the child welfare system toward keeping children safely with their families to avoid the trauma that results when children are placed in out-of-home care.³⁶ The FFPSA created a clear path to use Title IV-E federal funding for legal representation and advocacy for eligible children in foster care and their parents.³⁷

In 2021, the Legislature created s. 39.4092, F.S., with the intent of providing a statutory structure for Office of Criminal Conflict and Civil Regional Counsel's (OCCCRC) to establish and operate MLRM programs to serve families in dependency cases.³⁸ To monitor the use and collect data on the effect of the MLRM in Florida, the statute requires certain data to be collected and reported in an annual report to the Office of Program Policy Analysis and Government Accountability for analysis (OPPAGA).³⁹

Effect of the Bill

The bill changes the name from a Multidisciplinary Legal Representation Model Program to a Multidisciplinary Legal Representation Program (MLRP) and broadens the language of the MLRP requirements to allow "other similar professionals" as part of the model, not just parent-peer specialists and social workers. The bill also provides more flexibility for the establishment of MLRPs by changing the structure of the team from an attorney, forensic social worker, *and* a parent-peer specialist to at least an attorney and one other member, which may be a:

- Parent-peer specialist;
- Forensic social worker; *or*
- Similar professional.

The bill also reduces the reporting requirements on the OCCCRC from very specific data points in an annual report to "certain requested data" by OPPAGA and extends the annual data

<https://cbexpress.acf.hhs.gov/article/2019/july-august/new-study-shows-providing-parents-with-multidisciplinary-legal-representation-in-child-welfare-cases/c13840031b92c150517620efe54bcb67> (last visited March 21, 2023).

³⁴ NYU Law, *Providing Parents with the Right Kind of Legal Representation in Child Welfare Cases Significantly Reduces the Time Children Stay in Foster Care, New Study Finds*, May 7, 2009, available at <https://www.law.nyu.edu/martin-guggenheim-interdisciplinary-parental-representation-child-welfare> (last visited March 21, 2023).

³⁵ *Id.*

³⁶ U.S. Department of Health and Human Services, Administration for Children and Families, *Family First Prevention Services Act*, available at <https://www.childwelfare.gov/topics/systemwide/laws-policies/federal/family-first/> (last visited March 21, 2023).

³⁷ U.S. Department of Health and Human Services, Administration for Children and Families, *High Quality Memo*, p. 10-11, January 14, 2021, available at https://www.courts.ca.gov/documents/ffdrp_acf2021_high_quality_memo.pdf (last visited March 21, 2023).

³⁸ Chapter 2021-170, s. 14, L.O.F.

³⁹ *Id.*

collection through 2026. These changes allow OCCCRC to operate MLRP with personnel that may fit their particular programs better and for OPPAGA to analyze and study the data from OCCCRC from around the state without forcing those offices into highly prescriptive data collection that may not be as instructive as other data points, ultimately leaving the data request up to OPPAGA.

Procedures related to Deceased Parents (Section 3)

Currently, when both parents of a child are deceased with no family member to serve as legal guardian or custodian through a probate or guardianship proceeding, the DCF can adjudicate a child dependent. However, there is no legal mechanism to permanently commit a child to the custody of DCF for subsequent adoption.⁴⁰

In *F.L.M. v. Department of Children and Families*,⁴¹ the court held that when the parents or guardians of a child have died, they have not abandoned the child because the definition of abandonment contemplates the failure to provide a minor child with support and supervision while being able and the parents who died are no longer able. Instead, the courts have held that an orphaned child without a legal custodian can be adjudicated dependent based upon s. 39.01(14)(e), F.S., in a child has no parent or legal custodian capable of providing supervision and care.⁴² As such, the DCF relies upon s. 39.01(14)(e), F.S., to adjudicate orphaned children dependent.

Section 39.811(2), F.S., permits a court to commit a child to the custody of the DCF for the purpose of adoption if the court finds by clear and convincing evidence that the grounds for termination of parental rights are established. Section 39.806(1), F.S., outlines various grounds for termination of parental rights. However, all available grounds require that a parent engage in behavior that puts a child at risk. The DCF cannot seek termination of a deceased parent's parental rights based on available grounds because a deceased parent has not and can no longer engage in behavior that puts a child at risk. Furthermore, even if there were a statutory ground to seek the termination of a deceased parent's rights, there are benefits that a child may be receiving such as social security benefits or an inheritance and the DCF would not want seek a termination of the deceased parent's rights and disrupt those benefits.⁴³ Currently, courts are permanently committing children to the custody of the DCF without meeting the requirements of s. 39.811(2), F.S., which requires termination of parental rights by clear and convincing evidence.⁴⁴

Effect of the Bill

The bill creates s. 39.5035, F.S., to create a process that allows a court to permanently commit a child whose parents are deceased to the custody of DCF for the purpose of adoption without terminating the parental rights of the deceased parents.

⁴⁰ DCF Bill Analysis, p. 3.

⁴¹ 912 So. 2d 1264 (Fla. 4th DCA 2005)

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

The bill allows an attorney for the DCF or any person with knowledge of the facts that support a petition for adjudication and permanent commitment to initiate proceedings with the filing of such petition. The bill requires that both parents of a child be deceased and there has not been an appointment of a legal custodian or guardian through probate or a guardianship proceeding.

For a child who has not previously been adjudicated dependent, the bill requires the filing of a petition for adjudication and permanent commitment within 21 days after the shelter hearing and placement in shelter status by court order or within a reasonable time after becoming aware of the facts that support the petition in all other cases. For a child who has already been adjudicated dependent, a petition for permanent commitment must be filed within a reasonable time after becoming aware of the facts that support the petition.

The bill requires the petition for adjudication and permanent commitment and the petition for permanent commitment to be in writing and contain all of the following:

- Identification of the deceased parent or parents;
- The facts that establish that both parents of the child are deceased;
- The facts that establish that a legal custodian or guardian has not been appointed; and
- The signature of the petitioner stating the filing of the petition is in good faith.

The bill requires an adjudicatory hearing be set as soon as practicable, but no later than 30 days after the filing of the petition. Notice of the date, time, and place of the adjudicatory hearing and a copy of the petition must be served on:

- Any person who has physical custody of the child.
- A living relative of each parent of the child, unless a living relative cannot be found after diligent search or inquiry.
- The guardian ad litem for the child or a representative of the guardian ad litem program, if applicable.

The bill requires the adjudicatory hearing to be conducted by a judge without a jury and applying the rules of evidence in use in civil cases. The court must determine by clear and convincing evidence that the petitioner has established that both parents of the child are deceased and that a legal custodian or guardian has not been appointed for the child. The bill provides that a certified copy of a death certificate is sufficient evidence of proof of a parent's death.

The bill also requires the court to make one of the following determinations within 30 days after the adjudicatory hearing:

- For a petition for adjudication and permanent commitment:
 - If the court finds the petition has been proven by clear and convincing evidence, the court must adjudicate the child dependent and permanently commit the child to the custody of the DCF for the purpose of adoption, hold a disposition hearing no later than 30 days after the entry of the order, and the DCF must provide a case plan that identifies the permanency goal for the child. Reasonable efforts must be made to timely place the child and finalize the permanent placement of the child. The court must hold review hearings every 6 months until the child is adopted or reaches 18 years of age.
 - If the court does not find the petition has been proven by clear and convincing evidence, but that a preponderance of evidence establishes the child does not have a parent capable

- of providing supervision or care, the court must adjudicate the child dependent and hold a disposition hearing no later than 30 days after the entry of the order.
 - If the court does not find the petition has been proven by clear and convincing evidence and that a preponderance of evidence does not establish the child does not have a parent capable of providing supervision or care, the court must dismiss the petition.
- For a petition for permanent commitment:
 - If the court finds that the petition has been proven by clear and convincing evidence the court must permanently commit the child to the custody of the DCF for the purposes of adoption. A disposition hearing must be held no later than 30 days after the entry of the order, and the DCF must provide a case plan that identifies the permanency goal for the child. Reasonable efforts must be made to timely place the child and finalize the permanent placement of the child. The court must hold review hearings every 6 months until the child is adopted or reaches 18 years of age.
 - If the court does not find the petition has been proven by clear and convincing evidence, the court must deny the petition. The order denying the petition has no effect on the child's prior adjudication and does not bar the petitioner from filing a subsequent petition for permanent commitment based on newly discovered evidence.

Emergency Postdisposition Change of Placement (Section 4)

Section 39.522, F.S., details the process for a dependency court to grant changes of placement for children who are in the dependency system. The law allows a petition to be brought before the court alleging the need for the change of placement of a child who is placed by the DCF under protective supervision. If any party or the current caregiver denies the need for the change, the court must hear all parties through an evidentiary hearing. Upon the admission of a need for a change or after such hearing and finding of a need for change of placement, the court must enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered. The standard for postdisposition change of placement is the best interests of the child.⁴⁵

When determining whether a change of legal custody or placement is in the best interests of the child, the court must consider 15 best interest factors,⁴⁶ and any report filed by the

⁴⁵ Section 39.01375, F.S.

⁴⁶ Section 39.01375, F.S. lists 15 factors the court must consider when determining whether a proposed placement change is in a child's best interest: The child's age; the physical, mental, and emotional health benefits to the child by remaining in his or her current placement or moving to the proposed placement; the stability and longevity of the child's current placement; the established bonded relationship between the child and the current or proposed caregiver; the reasonable preference of the child, if the child is of a sufficient age and capacity to express a preference; the recommendation of the child's current caregiver, if applicable; the recommendation of the child's guardian ad litem, if one has been appointed; the child's previous and current relationship with a sibling and if the change of legal or physical custody or placement will separate or reunite siblings, evaluated in accordance with s. 39.4024, F.S.; the likelihood of the child attaining permanency in the current or proposed placement; the likelihood the child will be required to change schools or child care placement, the impact of such change on the child, and the parties' recommendations as to the timing of the change, including an education transition plan required under s. 39.4023, F.S.; the child's receipt of medical, behavioral health, dental, or other treatment services in the current placement; the availability of such services and the degree to which they meet the child's needs; and whether the child will be able to continue to receive services from the same providers and the relative importance of such continuity of care; the allegations of any abuse, abandonment, or neglect, including sexual abuse and human trafficking history, which caused the child to be placed in out-of-home care and any history of additional allegations of abuse, abandonment, or neglect; the likely impact on activities that are important to the child and the ability of the child to continue such activities in the

multidisciplinary team. The court must also consider the priority of placements established in law when making a decision regarding the best interest of the child in out-of-home care.⁴⁷

Importantly, s. 39.522(2), F.S., does not provide for an emergency hearing when a child's placement must be immediately modified. Because there is no emergency process for modification of placement, when a child is at risk of abuse, abandonment, or neglect in his or her current licensed placement, the DCF has been exercising its shelter power to protect the child and the court conducts a shelter hearing.⁴⁸ This leads to confusion as to whether the standard to be used to move the child is probable cause to shelter or best interests of the child to modify placement.⁴⁹

The DCF reports that during FY 2021-2022 dependency courts granted a postdisposition change of placement for 6,921 children in the dependency system.⁵⁰

Effect of the Bill

The bill amends s. 39.522, F.S., to create a process for emergency modifications of placement for children who have already been subject to disposition in his or her dependency case.

The bill allows, at any time, an authorized agent of the DCF or a law enforcement officer to remove a child from a court-ordered placement and take the child into custody if the child's current caregiver requests immediate removal of the child from the home or if the circumstances meet the criteria of a shelter.⁵¹

The bill requires that if at the time of the removal the child was not placed in licensed foster care, the DCF must file a motion to modify placement within one business day of the child being taken into custody. Unless all parties stipulate to the change of placement, the court must set a hearing within 24 hours of the filing of the motion. The bill requires the court to determine whether the DCF has established probable cause that reasonable grounds exist to immediately remove the child from the current placement. This determination may be based on a sworn motion or affidavit and the court may hear all relevant and material evidence, including oral and written reports to the extent of its probative value even though it would not be competent evidence at an adjudicatory hearing. The bill requires the court to order the return of the child to his or her placement, if probable cause is not established to support the removal. If the caregiver admits to a need for a change of placement, the court must enter an order changing the placement. If the need for a change of placement is made based on a finding of probable cause, the court must conduct a change of placement hearing.

proposed placement; the likely impact on the child's access to education, Medicaid, and independent living benefits if moved to the proposed placement; and any other relevant factor.

⁴⁷ Section 39.4021(2)(a), F.S. lists the priority of placements that must be considered, as follows: 1. Nonoffending parent; 2. Relative caregiver; 3. Adoptive parent of the child's sibling, when the DCF or CBC is aware of such sibling; 4. Fictive kin with a close existing relationship with the child; 5. Nonrelative caregiver that does not have an existing relationship with the child; 6. Licensed foster care; 7. Group or congregate care.

⁴⁸ DCF Bill Analysis, p. 4.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Section 39.401, F.S., details the conditions in which a child may be sheltered.

The bill also requires that when a child's placement is changed to a non-licensed placement, the new placement must meet the home study criteria of ch. 39, F.S.⁵²

Case Plan Amendments (Section 5)

Dependency courts have routinely amended case plan goals and tasks during regular judicial review hearings required under s. 39.701, F.S.,⁵³ which provides that the court must conduct a judicial review hearing to review the child's permanency goal. Historically, the courts have relied on the judicial review social study report filed by the DCF, the information therein, and information relayed to the case managers by service providers as evidence in the court's review of the case plan goals and tasks.⁵⁴

In March of 2022, the Third District Court of Appeal in *R.R. v. Department of Children & Families*⁵⁵ ruled that a judicial review hearing is not a hearing to amend a case plan and that an evidentiary standard higher than what applies to judicial reviews is necessary to amend a case plan goal. Under the principles restated in *Pardo v. State*,⁵⁶ the Third District Court of Appeals' decision is binding on all Florida trial courts.

As a result, the DCF is no longer able to rely on the judicial review social study report to change case plan goals; case managers and providers statewide must attend judicial review hearings and directly testify to the need to change the goal. Furthermore, case managers may no longer testify to information learned from providers about the parent's progress toward reunification with the child.

Effect of the Bill

The bill amends s. 39.6013(4), F.S., to provide that, at any hearing, the case plan may be amended to change the goal, employ concurrent planning, or change tasks the parent must complete if there is evidence demonstrating the need for the case plan amendment, which includes testimony and oral and written reports, even if not competent at an adjudicatory hearing. The bill provides that any change in the goal from reunification to another permanency goal does not eliminate the DCF's responsibility to provide reasonable efforts to provide services where reasonable efforts are otherwise required by law.

The bill also amends s. 39.6013(5), F.S., provide that, at any hearing, the case plan may be amended to provide appropriate services to the child if there is evidence demonstrating the need

⁵² Section 39.521(2)(o), F.S., requires that a proposed shelter or postdisposition placement for a child must have a favorable home study report, unless the court otherwise finds the placement in the child's interest.

⁵³ DCF Bill Analysis, p. 4.

⁵⁴ *Id.*

⁵⁵ 338 So. 3d 1026 (Fla. 3d DCA 2022).

⁵⁶ 596 So. 2d 665, 666 (Fla. 1992); the court held that "in the absence of interdistrict conflict, district court decisions bind all Florida trial courts." Further quoting *State v. Hayes*, 333 So.2d 51, 53 (Fla. 4th DCA 1976) to state that "The District Courts of Appeal are required to follow Supreme Court decisions. As an adjunct to this rule it is logical and necessary in order to preserve stability and predictability in the law that, likewise, trial courts be required to follow the holdings of higher courts—District Courts of Appeal. The proper hierarchy of decisional holdings would demand that in the event the only case on point on a district level is from a district other than the one in which the trial court is located, the trial court be required to follow that decision."

for the case plan amendment, which includes testimony and oral and written reports, even if not competent at an adjudicatory hearing.

With these changes, the court is allowed to rely on reports filed by the DCF or Guardian ad Litem program, including any provider reports and information provided at the hearing, to change a case plan goal or to order additional services for a child without the need to schedule an additional hearing.

Permanent Guardianship and Guardian Assistance Program (Sections 6 and 8)

Congress approved the Fostering Connections and Increasing Adoptions Act in 2008.⁵⁷ A key element of the legislation is the creation of a federally-supported Guardianship Assistance Program (GAP) for relatives and fictive kin. The GAP gives states the option of using federal Title IV-E funds to support kinship guardianship payments for children living in the homes of relative caregivers who become these children's legal guardians. The GAP reflects a significant body of research establishing the importance of linking foster children with relatives and other adults with whom they have a close relationship.

Florida established its GAP program in law in 2018.⁵⁸ Establishment of the GAP framework allows the state to receive other Title IV-E funds to support guardians and allows the DCF to provide caregivers who establish legal guardianship with a larger monthly stipend relative to existing state programs.

The eligibility requirements to participate in Florida's GAP are set by statute.⁵⁹ In keeping with federal requirements, for a guardian to qualify to receive benefits on behalf of the child, he or she must:

- Have the child's placement approved by the court;
- Have the court grant legal custody to the guardian;
- Be licensed as a Level I provider of foster care under s. 409.175, F.S.; and,
- Be a guardian for a child who was eligible for federal foster care maintenance payments under Title IV-E for at least six consecutive months while the child resided in the home of the guardian and the guardian was licensed as a provider of foster care.⁶⁰

The DCF provides GAP participants assistance payments of \$4,000 annually, or another amount specified in a written agreement, paid on a monthly basis.⁶¹ The DCF must redetermine eligibility annually for GAP participants. Payments can continue even if the family moves out of the state, or until the child reaches 18 or 21 if a guardianship assistance agreement was first established when the child was 16 or 17 years old.

Federal law allows for the identification of a successor guardian for families receiving a GAP payment.⁶² The successor guardian is intended to maintain a relationship with the child while the

⁵⁷ H.R. 6893 of 2008. P.L. 110-351.

⁵⁸ Chapter 2018-103 s. 10, L.O.F.

⁵⁹ Section 39.6225, F.S.

⁶⁰ *Id.*

⁶¹ Section 39.6225(5)(d), F.S.

⁶² Title IV-E, 42 U.S.C. s. 673(d)(3)(C).

child is placed with the initial guardian and to care for the child in the event of death or incapacitation of the initial guardian. A successor guardian must be identified and documented in the Guardianship Assistance Agreement and must complete background screening.⁶³

Current law requires a child to be placed with a caregiver for a minimum of six months prior to closing out to permanent guardianship.⁶⁴ If a successor guardian were needed, the court would be required to re-open the dependency case for the full six-month post-placement supervision. This six-month timeframe unnecessarily prolongs the time to permanency for a child, especially considering that the successor guardians already have a relationship with the child prior to becoming their guardian.

Section 39.701, F.S., which outlines the judicial review process, does not currently contemplate that the dependency court will inquire about the caregiver's progress toward meeting the eligibility criteria for the GAP. As a result, permanency hearings to close cases to permanent guardianship are often continued to complete the eligibility requirements before closure, which prolongs how long the child remains in the dependency system.⁶⁵ Alternatively, some dependency courts have prematurely closed cases to permanent guardianship before all eligibility criteria were met and preclude caregivers from receiving the full range of benefits that have been made available to promote stable placements.⁶⁶ The DCF has received guidance that federal funding cannot be used to support GAP payments unless all eligibility criteria were met prior to closure.⁶⁷ Upon notification to caregivers that they will not be receiving GAP payments, some are requesting that the guardianship be dissolved or are filing Chapter 120 appeals of the denial of payments.⁶⁸

Effect of the Bill

The bill amends s. 39.6221, F.S., to require a child to be placed with a successor guardian for a minimum of three months prior to closing out to permanent guardianship. The requirement would only apply, if the individual has been identified as the child's successor guardian and was listed on the child's Guardianship Assistance Agreement. All other caregivers would be required to complete a minimum of six months of placement prior to closing out to permanent guardianship. Monitoring the child's placement for three months, is sufficient and will allow for establishing services and ensuring the child is adapting to the change in placement.

Section 39.6221(1), F.S., is amended to add, as a prerequisite to a court establishing a permanent guardianship, that the court inquire of the eligibility status under s. 39.6225, F.S., to determine if the prospective permanent guardian intends to enter the GAP.

Section 39.701(2)(c), F.S., is modified to require the dependency court to determine at a judicial review whether there are any barriers to meeting the eligibility requirements of the GAP. This amendment would ensure that, when it is in the child's best interests, the case can close to

⁶³ Rule 65C-44.0045, F.A.C.

⁶⁴ Section 39.6221(1)(a), F.S.

⁶⁵ DCF Bill Analysis, p. 5.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

permanent guardianship with the caregiver receiving the necessary benefits to prevent disruption due to financial instability.

Continuing Care for Young Adults in DJJ placements (Section 7)

In 2013, the Legislature created a path for youth who have not achieved permanency and turned 18 years of age while in licensed care to remain in licensed care and receive case management services until the date of the young adult's 21st birthday.⁶⁹ This program is commonly referred to as "extended foster care." To be eligible for extended foster care, a young adult must be:

- Completing secondary education or a program leading to an equivalent credential;
- Enrolled in an institution that provides postsecondary or vocational education;
- Participating in a program or activity designed to promote or eliminate barriers to employment;
- Employed at least 80 hours per month; or
- Unable to participate in the above listed activities due to a physical, intellectual, emotional, or psychiatric condition that limits participation.⁷⁰

The young adult must live in a supervised living arrangement that is approved by the DCF or CBC and must live independently, but in an environment in which he or she is provided supervision, case management, and supportive services. These supervised living arrangements may include a:

- Licensed foster home;
- Licensed group home;
- College dormitory;
- Shared housing;
- Apartment; or
- Other housing arrangement approved by the CBC.⁷¹

Effect of the Bill

The bill amends s. 39.6251, F.S., to clarify that a young adult in a DJJ detention center or commitment program, who otherwise would have been living in licensed care on the date of his or her 18th birthday, must be deemed to have met the licensed placement eligibility requirement for extended foster care. The DCF's supervision of such young adults is limited to CBC case management services to facilitate the young adult's transition to a supervised living environment upon release from a DJJ detention or commitment program.

Judicial Notice in Termination of Parental Rights Cases (Section 9)

During the dependency phase of a case, current law provides that personal appearance of any person in a hearing before the court obviates the necessity of serving process on that person.⁷² However, there is no similar provision during the termination of parental rights phase of the

⁶⁹ Chapter 2013-178 s. 5, L.O.F., codified as s. 39.6251, F.S.

⁷⁰ Section 39.6251(2), F.S.

⁷¹ Section 39.6251(4)(a), F.S.

⁷² Section 39.502(2), F.S.

case.⁷³ When a case has entered the termination of parental rights phase, even if a parent arrives to a hearing, the DCF must personally serve that parent and the hearing must be reset to a later date. When hearings are conducted remotely, the DCF is not able to personally serve the parent during the hearing; therefore, the hearing cannot be re-held until service by a formal process server is completed.⁷⁴ This can result in delays in the termination of parental rights process and permanency for children.

Effect of the Bill

The bill amends s. 39.801(3), F.S., to mirror language relating to the dependency phase of the case that allows for personal appearance at a termination advisory hearing, or any other subsequent hearing, to remove the need for personal service.⁷⁵

This language will enable a trial court to conduct an advisory hearing if a parent has personally appeared regardless of whether the parent was personally served with the petition, eliminating continuances and delays, and reducing time to permanency for children.

Child Welfare Adoptions and Adoption Decision Review Process (Sections 10 and 11)

The Florida Adoption Act, codified in ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities:

- The DCF under ch. 39, F.S.;
- Child-placing agencies licensed by the DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is licensed by the DCF to place children in Florida.⁷⁶

Child Welfare Adoptions

Ultimately, if a child's home remains unsafe and the court is unable to reunify him or her, the child welfare system may seek a permanent home for that child through the adoption process.⁷⁷ Adoption is the act of creating a legal relationship between a parent and child where one did not previously exist, declaring the child to be legally the child of the adoptive parents and entitled to all rights and privileges and subject to all obligations of a child born to the adoptive parents.⁷⁸ Adoption is one of the legally recognized child-welfare permanency goals that may be ordered by a court for a child within the child welfare system.⁷⁹

⁷³ See generally Part X of ch. 39, F.S.

⁷⁴ DCF Bill Analysis, p. 5.

⁷⁵ Section 39.502(2), F.S.

⁷⁶ Section 63.032(3), F.S.

⁷⁷ Section 39.811(2), F.S.; See generally Parts VIII and X of ch. 39, F.S.

⁷⁸ Section 39.01(5), F.S.

⁷⁹ Section 39.01(59), F.S., defines "permanency goal" to mean the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time as another permanency goal is pursued. See also Section 39.621(3), F.S.

To free a child for adoption, the DCF must terminate the legal relationship between the child and his or her current parents in a proceeding known as a termination of parental rights. Once this process has occurred and parental rights have been terminated, the court retains jurisdiction over the child until the child is adopted.⁸⁰ The DCF may place the child with a licensed child-placing agency, a registered child-caring agency, or a family home for prospective adoption if given custody of a child that has been made available for a subsequent adoption under ch. 39, F.S.⁸¹

The DCF's ability to place a child in its custody for adoption and the court's review of that placement is controlled by s. 39.812, F.S. The law provides that the DCF may place a child in a home and the DCF's consent alone, in all cases, is sufficient.⁸² The dependency court retains jurisdiction over any child placed in the custody of the DCF until the child is adopted.⁸³ After custody of a child for subsequent adoption has been given to the DCF, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement.⁸⁴ As part of this continuing jurisdiction, the court may review the appropriateness of the adoptive placement upon good cause shown by the Guardian ad Litem for the child.⁸⁵

Adoption Decision Review Process

When a child is available for adoption, the DCF through its contractors receives applications to adopt the child.⁸⁶ Some applicants are denied because their adoption home study is denied based on criminal history.⁸⁷ When there are two or more families with approved home studies, the DCF sends these conflicting applications through the adoption applicant review committee (AARC) for resolution.⁸⁸ The decision of the AARC is then reviewed and the DCF issues its consent to one applicant while communicating its denial to the other applicants through certified letter.⁸⁹

Unsuccessful applicants are able to seek review of the DCF action through the administrative hearing process under ch. 120, F.S. Designated hearing officers at the DCF hear these reviews. The assignment of adoption decision disputes to the ch. 120, F.S., process did not originate with, nor was it inspired by, legislative directive. This process arose due to the opinion in *Department of Children & Family Services v. I.B. and D.B.*⁹⁰ Notwithstanding this opinion, the Legislature's overall intent in relation to permanency and the resolution of disputes in the dependency case is to proceed under ch. 39, F.S. Furthermore, the ch. 120, F.S., process precludes the selected applicant from participating, which is statutorily permissible in the dependency court proceeding.⁹¹

⁸⁰ Section 39.811(9)

⁸¹ Section 39.812(1), F.S.; *See generally* Parts VIII and X of ch. 39, F.S.

⁸² Section 39.812(1), F.S.

⁸³ *See ss.* 39.811(9), 39.812(4), and 39.813, F.S.

⁸⁴ Section 39.812(4), F.S.

⁸⁵ Section 39.811(9), F.S.

⁸⁶ Rule 65C-16.004, F.A.C.

⁸⁷ Rule 65C-16.007, F.A.C.

⁸⁸ Rule 65C-16.005(9), F.A.C.

⁸⁹ *Id.*

⁹⁰ *See generally* 891 So. 2d 1168 (Fla. 1st DCA 2005).

⁹¹ DCF Bill Analysis, p. 6.

Florida law also permits denied adoption applicants to initiate legal action under ch. 63, F.S., by filing a petition for adoption.⁹² Upon filing the petition, the petitioner must demonstrate that the DCF has unreasonably withheld its consent to the adoption.⁹³ Because ch. 63, F.S., permits anyone who meets the requirements of s. 63.042(2), F.S., to adopt and any petitioner may argue the DCF's consent to the adoption should be waived because it was unreasonably withheld, multiple parties may file a petition to adopt the same child.⁹⁴

There can be up to four proceedings simultaneously addressing the adoption of a single child:

- The Chapter 39, F.S., dependency proceeding;
- The Chapter 63, F.S., adoption proceeding filed by the family who has the DCF's consent;
- The Chapter 63, F.S., adoption proceeding filed by the applicant whose application was denied; and
- The Chapter 120, F.S., proceeding to dispute the adoption decision by the DCF.

Multiple competing adoption petitions and proceedings require additional court hearings to resolve the conflict and lead to a delay of the child's adoption.⁹⁵ These court proceedings often occur concurrently with the administrative hearing process, which can lead to disparate results.⁹⁶

⁹² Section 63.042(2), F.S.

⁹³ Section 63.062(7), F.S.

⁹⁴ DCF Bill Analysis, p. 6.

⁹⁵ *Id.*

⁹⁶ The DCF, Electronic email from John Paul Fiore, Legislative Affairs Director, *RE: Senate Request: OCFW Bill – Adoption Proceedings*, February 9, 2022 (on file with the Committee on Children, Families, and Elder Affairs)

Chapter 120 Administrative Hearings		
Year	Number of Hearings	Decision Overturned by Hearing Officer
2018	38	1
2019	58	0
2020	51	0
2021	43	1
2022	41	3

Each of these cases involves attorneys for DCF serving as lead trial counsel as well as a separate attorney serving as a designated hearing officer.⁹⁷ The amount of hourly work performed by staff in each of these cases is as follows:

- Hearing officer: approximately 33 hours.
- Assigned counsel: approximately 49 hours.
- Agency clerk's office: approximately 17 hours.
- Designated representative: approximately 35 hours.⁹⁸

In total, each case involves an average of 134 hours of resources by the DCF.

In addition to the hourly cost associated with staff time, there are fixed costs associated with each case, to include a standard appearance fee, necessary for each hearing by statute, is generally \$1000 for a two day case.⁹⁹ This \$1,000 fee is compounded by the costs of transcripts, generally a \$1,750 expense.¹⁰⁰ The total costs associated with these administrative matters for 58 cases annually equate to \$555,524 with total hourly commitment by Department staff equating to 7,772 hours, or four FTEs.¹⁰¹

These numbers do not include the hours, time, and monetary resources required by the DCF contracted staff, agency witnesses, or other individuals required to give/present testimony and resolve these matters. These cases routinely involve multiple individuals, many of whom have primary responsibilities as front-line investigators, case managers, nurses, or even psychologist and doctors. It is difficult to estimate the costs of these individuals' time due to the varied nature of their employment, but it likely equals or surpasses the dollar and time amounts from Department counsel, agency clerk, and agency representative.¹⁰²

Beyond the agency costs are the delays inherent in these procedures that work counter to the ch. 39, F.S. goal of permanency. Twenty-five ch. 120, F.S., contested adoption matters were sampled from 2020 and 2021, and the average length of time between the receipt of a hearing request and entry of a final order was 206 days.¹⁰³ Of note, this does not include any additional

⁹⁷ Section 120.80(7), F.S.

⁹⁸ DCF Bill Analysis, p. 6.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

delays caused by appeal of the administrative hearing decision to the District Court which adds, on average, an additional 120 days of delay.¹⁰⁴

Effect of the Bill

The bill amends s. 39.812(4), F.S., to provide that the court may review the DCF's denial of an application to adopt a child. The DCF's decision to deny an application will now be reviewable only under s. 39.812, F.S., and is not subject to ch. 120, F.S. The bill requires the DCF to file the denial with the court and provide copies to the parties within 10 days after the decision. The bill allows a denied applicant to file a motion to review the denial within 30 days of the issuance of DCF's written notification. The denied applicant is given limited standing in the ch. 39, F.S., proceeding to file such a motion and to present evidence in support of the motion. Such standing is terminated upon entry of the court's order. The motion must allege the DCF unreasonably withheld its consent and request that the court allow the denied applicant to file a petition to adopt the child under ch. 63, F.S., without the DCF's consent. The bill maintains the standard of review for these cases that is applicable in the ch. 120, F.S., proceedings.

The bill requires the court to hold a hearing within 30 days after the filing of the motion. The court may only consider whether the DCF's review of the application was consistent with the agency's policies and made in an expeditious manner using an abuse of discretion review. If the DCF selected another applicant to adopt the child, the selected applicant may participate in the hearing as a participant and may be granted leave by the court to be heard without filing a motion to intervene. The bill gives applicants selected by the DCF who don't currently have custody of the child the ability to be informed of the hearing, attend the hearing, and provide information to the court. Thereafter, the court must enter a written order within 15 days after the hearing either denying the motion to review

The bill amends s. 39.812(5), F.S., to allow the DCF to remove a child from a foster home or court-ordered custodian whose application to adopt has been denied and the court has denied the motion to review the DCF's denial.

The bill amends s. 39.812(6), F.S., to require the DCF to attach a copy of the executed consent to adoption must be attached to the petition to adopt, unless waived.

The bill also amends s. 63.062(7), F.S., to provide that when a court permanently commits a minor to the DCF for subsequent adoption, the DCF must consent to the adoption or the petitioner must attach to his or her petition to adopt the court order with a finding that the DCF unreasonably withheld its consent. The petitioner must also file a favorable preliminary adoptive home study as required under s. 63.092, F.S.

The bill will reduce the number of simultaneous adoption actions that can be filed by multiple parties to adopt the same child by requiring that a denied applicant seek ch. 39, F.S., court review of a determination by the DCF to deny consent and only allow the filing of a ch. 63, F.S., petition to adopt upon a court's determination that the DCF unreasonably withheld its consent.

¹⁰⁴ *Id.*

The DCF estimates that approximately 116 days (almost four months) of delay to permanency delay can be removed if ch. 120, F.S., proceedings are eliminated by using the review process detailed in the bill.¹⁰⁵

Adoption Exchange (Section 12)

Section 409.167, F.S., establishes a statewide adoption exchange (exchange), the purpose of which is to serve all authorized licensed child-placing agencies in the state as a means of recruiting adoptive families for children who have been legally freed for adoption and have been permanently placed with the DCF or a licensed child-placing agency. The DCF currently contracts with a third-party vendor to operate exchange, which by law is required to post a description of the child along with a photograph and other relevant information.¹⁰⁶

The law was implemented in 1983, long before the internet was a viable option for the display of this information.¹⁰⁷ In subsequent updates to the law in 1994, 1997, and 2014 the language has not been updated to take into account the unique privacy concerns the internet creates.¹⁰⁸ The exchange currently operates as a website with profiles and photos of children eligible for adoption open and searchable to the general public.¹⁰⁹

Effect of the Bill

The bill amends s. 409.167, F.S., to clean up language and clarify that the purpose of the adoption exchange is family-matching. The bill requires the exchange to provide information deemed useful in facilitating family-matching in accordance with rules established by the DCF. The bill requires that the photo listing component of the adoption exchange to be in a format that is only accessible to persons who have completed or in the process of completing an adoption home study, not open and available to the general public. The bill also requires consultation with a child 12 years of age or older about his or her photo listing.

These changes will provide the DCF the ability to establish in rule the processes and procedures needed to protect the privacy of children who do not want photos or specific information about themselves made available on a public website.

Foster-family Support Program (Sections 16 and 17)

Community-Based Care Lead Agencies

The DCF contracts for case management, out-of-home care (foster care), adoption, and other child welfare related services with the CBCs; this model is designed to increase local community ownership of service delivery and design of child welfare services.¹¹⁰

¹⁰⁵ DCF Bill Analysis, p. 12.

¹⁰⁶ Section 409.167(2), F.S.

¹⁰⁷ Chapter 1983-246 s. 2, L.O.F.

¹⁰⁸ Chapters 1994-164 s. 47, 1997-101 s. 114, and 2014-19 s. 175, L.O.F.

¹⁰⁹ The DCF, *Explore Adoption*, available at <http://www.adoptflorida.org/> (last viewed March 23, 2023).

¹¹⁰ The DCF, *About Community-Based Care*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care> (last visited March 19, 2023).

The DCF, through the CBCs, administers a system of care¹¹¹ for children that is directed toward:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had children removed from their care;
- Safety for children who are separated from their families;
- Promoting the well-being of children through emphasis on educational stability and timely health care;
- Permanency; and
- Transition to independence and self-sufficiency.¹¹²

The CBCs must give priority to services that are evidence-based and trauma informed.¹¹³ The CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.¹¹⁴ The CBCs employ case managers that serve as the primary link between the child welfare system and families with children under the DCF's supervision. These case managers work with affected families to ensure that a child reaches his or her permanency goal in a timely fashion.¹¹⁵

Currently, there is no requirement for the DCF to contract with or for the CBCs to provide any form of foster-family support program.

Effect of the Bill

The bill expands the duties of a CBCs under s. 409.988, F.S., and the contract requirements of the DCF under s. 409.996, F.S., to require a lead agency to provide a foster-family support program that is available 24 hours a day, 7 days a week. The bill requires the program to provide, at a minimum, the ability for foster parents to seek counsel and advice from former and current foster parents and access mental health crisis services and supports for foster parents including, but not limited to:

- Trauma counseling.
- Placement stabilization.
- De-escalation.
- Parent coaching.

Human Trafficking (Sections 13, 14, 15, and 18)

Human trafficking is a form of modern-day slavery whose victims include young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.¹¹⁶ Many human trafficking victims are induced with false promises of financial or emotional security, but are

¹¹¹ *Id.*

¹¹² *Id.*; Also see generally s. 409.988, F.S.

¹¹³ Section 409.988(3), F.S.

¹¹⁴ The DCF, *Lead Agency Information*, available at <https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information> (last visited March 7, 2023).

¹¹⁵ Section 409.988(1), F.S.

¹¹⁶ *Id.*

forced or coerced into commercial sex, domestic servitude, or other types of forced labor.¹¹⁷ Federal law views any minor who is younger than 18 years old who is induced to perform a commercial sex act as a human trafficking victim even if there is no force, fraud, or coercion.¹¹⁸

Human Trafficking in Florida

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,¹¹⁹ purchasing, patronizing, procuring, or obtaining¹²⁰ another person for the purpose of exploitation of that person.¹²¹ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.¹²² Florida law sets out several circumstances which give rise to specified penalties including, in part:

- Labor or services of any child under the age of 18 commits a first degree felony;¹²³
- Labor or services of any child under the age of 18 who is an unauthorized alien¹²⁴ commits a first degree felony;¹²⁵
- Labor or services who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;¹²⁶
- Commercial sexual activity¹²⁷ who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;¹²⁸ or

¹¹⁷ The Department of Education, *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.shtml> (last visited March 19, 2023).

¹¹⁸ 22 U.S.C. s. 7101 et seq.; Federal Victims of Trafficking and Violence Protection Act of 2000, P.L. 106-386.

¹¹⁹ Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

¹²⁰ Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

¹²¹ Section 787.06(2)(d), F.S.

¹²² Section 787.06(3), F.S.

¹²³ Section 787.06(3)(a)1., F.S. A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

¹²⁴ Section 787.06(2)(j), F.S., defines “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

¹²⁵ Section 787.06(3)(c)1., F.S.

¹²⁶ Section 787.06(3)(e)1., F.S.

¹²⁷ Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines “sexual explicit performance” as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

¹²⁸ Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

- Commercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective¹²⁹ or mentally incapacitated¹³⁰ is involved commits a life felony.¹³¹

The above-mentioned first-degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.¹³² Ignorance of the human trafficking victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.¹³³

Florida is ranked the third highest state of reported human trafficking cases in the United States.¹³⁴ In 2021, reports of commercially exploited children to the Florida Abuse Hotline remained relatively stable, increasing from 3,181 reports in 2020 to 3,182 reports in 2021.¹³⁵

Safe Houses and Safe Foster Homes for Child-victims of Human Trafficking

Current law defines and provides for the certification of specialized residential options for children who are victims of human trafficking or commercial sexual exploitation (CSE).¹³⁶ The law defines a "safe foster home" to mean a foster home certified by the DCF to care for sexually exploited children and a "safe house" to mean a group residential placement certified by the DCF to care for sexually exploited children.¹³⁷ To be certified, a safe house or safe foster home must:

- Use strength-based and trauma-informed approaches to care, to the extent possible and appropriate.
- Serve exclusively one sex.
- Group child victims of CSE by age or maturity level.
- Care for child victims of CSE in a manner that separates those children from children with other needs. Safe houses and safe foster homes may care for other populations if the children who have not experienced commercial sexual exploitation do not interact with children who have experienced commercial sexual exploitation.
- Have awake staff members on duty 24 hours a day, if a safe house.
- Provide appropriate security through facility design, hardware, technology, staffing, and siting, including, but not limited to, external video monitoring or door exit alarms, a high staff-to-client ratio, or being situated in a remote location that is isolated from major transportation centers and common trafficking areas.

¹²⁹ Section 794.011(1)(c), F.S., defines "mentally defective" as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

¹³⁰ Section 794.011(1)(d), F.S., defines "mental incapacitated" as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

¹³¹ A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in s. 775.082(3)(a)6., F.S., s. 775.083, F.S., or s. 775.084, F.S.

¹³² Section 787.06(8)(b), F.S.

¹³³ Section 787.06(9), F.S.

¹³⁴ Florida Alliance to End Human Trafficking, *The Issue*, available at <https://floridaallianceendht.com/the-issue/> (last visited March 19, 2023).

¹³⁵ The Office of Program Policy Analysis and Government Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida*, 2022, p. 2, July 2022, available at <https://oppaga.fl.gov/Documents/Reports/22-05.pdf> (last visited March 19, 2023).

¹³⁶ Section 409.1678, F.S.

¹³⁷ Section 409.1678(1), F.S.

- Meet other criteria established by department rule,¹³⁸ which may include, but are not limited to, personnel qualifications, staffing ratios, and types of services offered.¹³⁹

At-Risk Houses

At-Risk Houses are group care homes that are certified to serve children considered to be at-risk for sex trafficking. Children are deemed to be “at risk of sex trafficking” if they have experienced trauma, such as abuse, neglect, and/or maltreatment, and present one or more of the accompanying risk factors: history of running away and/or homelessness; history of sexual abuse and/or sexually acting out behavior; inappropriate interpersonal and/or social media boundaries; family history of or exposure to human trafficking; or, out-of-home placement instability demonstrated by repeated moves from less restrictive levels of care. There are currently 157 At-Risk Houses licensed by DCF to provide services to youth who are at risk of sex trafficking.¹⁴⁰

Human Trafficking Screening Tool for Child-victims of Human Trafficking

In 2014, the Legislature directed the DCF to develop an initial screening and assessment instrument (commonly referred to as the “Human Trafficking Screening Tool” or the “HTST”) for use with child-victims of human trafficking and validate the instrument, if possible.¹⁴¹ The HTST must assess the appropriate placement of a child-victim of CSE, including whether to place in a safe house or safe foster home, and must consider, at a minimum, the following factors:

- Runaway risk.
- Recruitment risk.
- Attachment to the exploiter.
- Level and type of trauma the child has endured.
- Nature of the child’s interactions with law enforcement.
- Length of time that the child has been exploited.
- Extent of any substance abuse by the child.¹⁴²

The screening tool is to be used by the DCF, the DJJ, and CBCs to screen youth and help identify potential victims.¹⁴³ The Office of Program Policy Analysis and Government Accountability (OPPAGA) has recommended the DCF validate the HTST in their annual reports in 2015, 2016, and 2017.¹⁴⁴ Since 2017, Florida State University’s Institute for Child Welfare has collaborated with DCF to determine the validity and reliability of the tool in identifying trafficked youth; to date, the institute has been unable to validate the tool.¹⁴⁵

¹³⁸ Rule 65C-46.020, F.A.C.

¹³⁹ Section 409.1678(2)(c), F.S.

¹⁴⁰ The DCF, 2023 Agency Legislative Bill Analysis, SB 1690, *Human Trafficking*, p. 3 (on file with Committee on Children, Families, and Elder Affairs Staff).

¹⁴¹ Chapter 2014-161 s. 1, L.O.F.; codified as s. 409.1754, F.S.

¹⁴² Section 409.1754(1)(a), F.S.

¹⁴³ Section 409.1754(1)(b), F.S.

¹⁴⁴ Office of Program Policy Analysis and Government Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida*, p. 5, July 2022, available at <https://oppaga.fl.gov/Documents/Reports/22-05.pdf> (last viewed March 22, 2023).

¹⁴⁵ *Id.* p. 1.

Peer Mentor Support Models

Peer support is a type of group therapy that includes a variety of programmatic aspects, leadership types, and guidelines.¹⁴⁶ There is not one set program model for peer support; instead, it is an overarching framework that is adaptable to a variety of settings, including substance use recovery and mental health.¹⁴⁷ The core components of peer support include:

- Participants who are peers with similar lived experience;
- A trainer or volunteer facilitator who may or may not have lived experience and
- Voluntary participation.¹⁴⁸

Regardless of the specific type or location of a peer support, there are overarching themes that are foundational to peer support models.¹⁴⁹ The foundational aspects of peer support include shared experiences, the diverse background of participants, focusing on strength, and supporting one another to grow and heal.¹⁵⁰ Peer support recovery programs are rooted in the theoretical framework of social support; more specifically, peer-led support groups are formed through a shared identity or experience and provide emotional support through an empathetic, caring relationship.¹⁵¹

Effect of the Bill

The bill makes numerous changes to laws related to human trafficking and commercial sexual exploitation. The bill seeks to provide better assessment for identification of human trafficking/CSE victims, training for staff, increase services and bed capacity, and reduce barriers for providers seeking to enter this specialized area of treatment and care.

The bill amends s. 409.1754(1), F.S., to require the DCF, in collaboration with certain stakeholders, to implement any recommendations necessary to validate the current HTST and develop an indicator tool and outcome algorithm to be used in conjunction with the HTST. The bill requires the HTST to be validated, if possible, by June 1, 2024. If not validated by this date, the DCF must identify and implement the use of a screening and assessment instrument and indicator tool that has been previously validated.

Related to training, the bill amends s. 409.175(14)(e), F.S., to require enhanced inservice training for foster parents and agency staff that provides better tools and strategies to communicate with CSE youth, mitigate maladaptive behaviors and trauma for CSE victims, and mitigate secondary traumatic stress experienced by the caregivers for such youth. The bill also amends s. 409.1678(2)(e), F.S., to require a CBC ensure that staff of safe houses and foster parents of safe foster homes complete this enhanced inservice training related to CSE youth. The bill also amends s. 409.1754(4), F.S., to remove language making the requirement for the DCF to train

¹⁴⁶ US Department of Health and Human Services, Administration for Children and Families, Office of Trafficking in Persons, *Adapting Peer Support Models for Survivors at the Intersection of Trafficking and Substance Use*, p. 7, August 2019, available at <https://nhtac.acf.hhs.gov/sites/default/files/2020-02/Peer-to-Peer%20Literature%20Review.pdf> (last viewed March 22, 2023).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at p. 8

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

local law enforcement contingent on the availability of funds. These changes will enhance the human trafficking/CSE training to caregivers, agency staff, and law enforcement statewide.

Related to services and bed capacity, the bill amends s. 409.1754(3), F.S., to require the DCF and each CBC to prepare a service capacity assessment and development plan by December 1, 2023, and every three years thereafter. At a minimum, the plan must detail the following specific factors as they relate to local community service options for CSE youth:

- A summary of current specific community services and bed capacity;
- Historical barriers to the development of specific community services and bed capacity;
- An analysis of funding and funding sources, to include Medicaid;
- Any barriers to Medicaid billing; and
- A strategic action plan to develop specific services and bed capacity in the local service area.

The bill changes the permissive wording in s. 409.1678(4), F.S., related to billing Medicaid for services rendered for CSE youth, to a requirement that such providers maximize revenue and bill Medicaid whenever possible.

The bill further amends s. 409.1678, F.S., to establish a survivor peer mentor model for victims of CSE, and requires the use of a peer mentor whenever possible. A survivor peer mentor is defined as a person who has previously been a victim of CSE and received specialized training to become a peer mentor. The bill provides legislative findings related to the effectiveness of such models and their use to help CSE victims navigate the unique issues of this population. The bill requires a survivor peer mentor to undergo a minimum number of training hours, established by the DCF's rule, to ensure the peer mentor is able to properly support and interact with youth in the dependency system. The bill requires any community overlay service provider or safe house or safe foster home operator to collaborate with local providers to ensure survivor peer mentors are regularly accessible to CSE youth.

The bill also amends s. 409.1678(2), F.S., to require the DCF, in collaboration with the Florida Digital Service, to establish a confidential portal to provide services and information to prospective and current CSE safe houses and foster homes, including an interactive message board for providers to communicate and work through challenges.

Finally, the bill creates an unnumbered section of law that requires the DCF, the Agency for Health Care Administration (AHCA), and the DJJ to work in consultation with stakeholders and subject matter experts to create a workgroup for the purpose of developing and enhancing the state's service array for persons who are victims of CSE. The bill requires the workgroup to:

- Analyze the current bed rate for CSE beds and recommend a bed rate that is sufficient to provide for the services, physical space, safety, and costs incidental to treatment for the CSE population;
- Analyze the CBC funding specific to CSE victims and develop a funding model that combines available funding sources to cover services, board, and administrative costs;
- Analyze the use of Medicaid services for CSE victims and establish a CSE specific behavioral health overlay as a Medicaid-covered service.¹⁵²

¹⁵² The bill also instructs the AHCA to modify any state Medicaid plans and implement any federal waivers necessary to implement this requirement.

- Draft a joint strategic action plan to implement the recommendations of the new rates and submit a report on such to the President of the Senate and Speaker of the House of Representatives by December 1, 2023.

Effective Dates

Sections 15¹⁵³ and 18¹⁵⁴ of the bill are effective upon becoming law and the remaining sections of the bill are effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 7

The DCF projects that providing the monthly allowance provided by the EFC program to the potential expanded DJJ population contemplated in this section could have a fiscal

¹⁵³ Section 15 is related to the commercial sexual exploitation of children, validating the HTST, training, and peer survivor mentor model.

¹⁵⁴ Section 18 of the bill is related to the CSE service and bed capacity workgroup.

impact of approximately \$200,000 per 1.75 caseworkers needed for the new population at a client to case-worker ratio of 12:1.¹⁵⁵ The DCF projects an increase in the EFC population by approximately 21 participants per year.¹⁵⁶

However, the child welfare system was appropriated a record amount of money in the 2022 General Appropriations Act to cover the workforce issues identified, particularly around case-worker vacancies. The cost of these case workers could likely be absorbed into this budget.

Sections 10 and 11

The DCF provides that these sections will result in a significant positive fiscal impact to the DCF of a total annual cost avoidance of approximately 1.1 million dollars due to expected workload reduction for staff. They project a staff savings of \$6,828 and fixed-cost savings of \$2,750 or \$9,578 per case. They project at 58 cases that cost avoidance to equal \$555,524 per year.¹⁵⁷

The DCF also states that it anticipates a significant positive fiscal impact to the DCF as a result of these changes expediting permanency. The DCF calculates an average reduction of case time by 116 days at \$37.64 per day (2020 rate of average daily cost of child in out-of-home care) The DCF assumes an average of 2 children per case for a total cost avoidance of cost-of-care at \$9,861 per case, or \$506,484 per year.¹⁵⁸

Section 13

The DCF estimates that this section will have a significant negative fiscal impact on the DCF to implement the confidential web-based portal, specifically a projected cost of 2 to 2.5 million dollars¹⁵⁹. However, the development of the portal, or similar functionality may be able to be included within ongoing IT projects. See Section VII. Related Issues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DCF reports concerns with developing the confidential web-based portal outside of the ongoing IT project to modernize the Child Welfare Information System to new federal CCWIS standards. The portal or similar functionality may be able to be developed within the licensing module of the CCWIS modernization project.¹⁶⁰

¹⁵⁵ DCF Bill Analysis, pp. 18-19.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at p. 17.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at p. 19.

¹⁶⁰ *Id.* at p. 20.

VIII. Statutes Affected:

This bill substantially amends sections 39.202, 39.4092, 39.522, 39.6013, 39.6221, 39.6251, 39.701, 39.801, 39.812, 63.062, 409.167, 409.1678, 409.175, 409.1754, 409.988, and 409.996 of the Florida Statutes.

This bill creates section 39.5035 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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



117838

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Between lines 803 and 804
insert:

Section 12. Subsection (4) of section 409.1454, Florida Statutes, is amended to read:

409.1454 Motor vehicle insurance and driver licenses for children in care and certified unaccompanied homeless youth.—

(4) Payment must be made to eligible recipients in the order of eligibility until available funds are exhausted. If a



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child determined to be eligible reaches permanency status or turns 18 years of age, the program may pay for that child to complete a driver education program and obtain a driver license for up to 6 months after the date the child reaches permanency status or 6 months after the date the child turns 18 years of age. A child may be eligible to have the costs of and incidental to licensure paid if he or she demonstrates that such costs are creating barriers to obtaining employment or completing educational goals, if the child meets any of the following criteria:

(a) Is continuing in care under s. 39.6251;

(b) ~~Was in licensed care when the child reached 18 years of age and~~ Is currently receiving postsecondary education services and support under s. 409.1451(2); or

(c) Is an unaccompanied homeless youth certified under s. 743.067 who is a citizen of the United States or legal resident of this state and is:

1. Completing secondary education;

2. Employed at least part time;

3. Attending any postsecondary education program at least part time; or

4. Has a disability that precludes full-time work or education.

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

And the title is amended as follows:

Delete line 93

and insert:

by the act; amending s. 409.1454, F.S.; revising



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40 eligibility criteria to participate in a specified
41 program covering certain costs for a driver license
42 and motor vehicle insurance; amending s. 409.167,
43 F.S.; revising the



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Between lines 1175 and 1176
insert:

Section 19. If the recommendations necessary to validate the current screening and assessment instruments are implemented by December 1, 2023, as required in Section 15 of this bill, the Florida Institute for Child Welfare shall validate the screening and assessment instruments by June 1, 2024. The cost of validation shall be absorbed within the Florida Institute for



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Child Welfare's base appropriation.

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

And the title is amended as follows:

 Delete line 162

and insert:

 report to the Legislature by a specified date; require
 the Florida Institute for Child Welfare to validate
 the current screening and assessment by a certain date
 and for it to complete validation within its base
 appropriations;

By Senator Ingoglia

11-00446B-23

20231690__

A bill to be entitled

An act relating to human trafficking; amending s. 787.29, F.S.; requiring the Department of Children and Families to develop age-appropriate public awareness signs for display in specified locations that provide shelter and care for dependent children; providing sign requirements; making technical changes; creating s. 402.88, F.S.; defining terms; requiring the Department of Children and Families to develop a process to certify adult safe houses that provide housing and care to adult survivors of human trafficking; providing certification requirements; authorizing rulemaking; requiring the department to inspect adult safe houses before certification and annually thereafter; requiring the department to ensure the staff of each adult safe house completes specified intensive training; providing for department actions for noncompliance; amending s. 409.1678, F.S.; providing security requirements for certain group homes and safe houses; creating s. 409.16781, F.S.; requiring the Department of Children and Families to develop age-appropriate educational programming for children in certain facilities concerning human trafficking; providing an effective date.

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

Section 1. Subsections (3) and (5) of section 787.29, Florida Statutes, are amended, and subsection (4) of that

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section is republished, to read:

787.29 Human trafficking public awareness signs.—

(3) (a) The employer at each of the following establishments shall display a public awareness sign developed under subsection (4) in a conspicuous location that is clearly visible to the public and employees of the establishment:

1. ~~(a)~~ A strip club or other adult entertainment establishment.

2. ~~(b)~~ A business or establishment that offers massage or bodywork services for compensation that is not owned by a health care practitioner regulated pursuant to chapter 456 and defined in s. 456.001.

(b) In addition to enforcement by the Department of Children and Families, the county commission may adopt an ordinance to enforce this subsection. A violation of this subsection is a noncriminal violation and punishable by a fine only as provided in s. 775.083.

(4) The required public awareness sign must be at least 8.5 inches by 11 inches in size, must be printed in at least a 16-point type, and must state substantially the following in English and Spanish:

"If you or someone you know is being forced to engage in an activity and cannot leave—whether it is prostitution, housework, farm work, factory work, retail work, restaurant work, or any other activity—call the National Human Trafficking Resource Center at 1-888-373-7888 or text INFO or HELP to 233-733 to access help and services. Victims of slavery and human

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trafficking are protected under United States and
Florida law."

(5) In conjunction with its development of educational programming on human trafficking under s. 409.16781, the Department of Children and Families shall develop age-appropriate public awareness signs on that topic for display in each emergency shelter, runaway shelter, group home, agency-operated group treatment home, nonpsychiatric residential group care facility, psychiatric residential treatment facility, safe house as defined in s. 409.1678(1), and other appropriate facilities that provide shelter and care for dependent children. The department shall have the signs conspicuously placed in each such location to warn youth of the dangers of human trafficking and to encourage the reporting of individuals observed attempting to engage in human trafficking activity. The signs must contain the telephone number for either the National Human Trafficking Resource Center or such other number that the Department of Law Enforcement uses to detect and stop human trafficking ~~The county commission may adopt an ordinance to enforce subsection (3). A violation of subsection (3) is a noncriminal violation and punishable by a fine only as provided in s. 775.083.~~

Section 2. Section 402.88, Florida Statutes, is created to read:

402.88 Adult safe houses for adults who have been sexually exploited or trafficked.—

(1) As used in this section the term:

(a) "Adult safe house" means a group residential facility

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certified by the department under this section to care for adults who have been sexually exploited or trafficked.

(b) "Department" means the Department of Children and Families.

(2) The department shall establish a process to certify adult safe houses that provide housing and care to adult survivors of human trafficking as defined in s. 787.06. The adult safe houses certified under this section must:

(a) Provide a facility which will serve as an adult safe house to receive and house persons who are victims of human trafficking. For the purpose of this section, minor children and other dependents of a victim, when such dependents are partly or wholly dependent on the victim for support or services, may be sheltered with the victim in an adult safe house.

(b) Receive the annual written endorsement of local law enforcement agencies.

(c) Provide minimum services that include, but are not limited to, information and referral services, licensed counseling and case management services, substance abuse screening and, when necessary, access or referral to treatment, temporary emergency shelter for more than 24 hours, a 24-hour hotline, nonresidential outreach services, training for law enforcement personnel, assessment and appropriate referral of resident children, and educational services for community awareness relative to the incidence of human trafficking, the prevention of such crimes, and the services available for persons subject to human trafficking. If a 24-hour hotline, professional training, or community education is already provided by an adult safe house within its designated service

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117 area, the department may exempt such certification requirements
118 for a new center serving the same service area to avoid
119 duplication of services.

120 (d) Participate in the provision of orientation and
121 training programs developed for law enforcement officers, social
122 workers, and other professionals and paraprofessionals who work
123 with human trafficking victims to better enable such persons to
124 deal effectively with incidents of human trafficking.

125 (e) Provide a safe, therapeutic environment tailored to the
126 needs of commercially sexually exploited or trafficked adults
127 who have endured significant trauma. Adult safe houses shall use
128 a model of treatment that includes strength-based and trauma-
129 informed approaches.

130 (f) File with the department a list of the names of the
131 human trafficking advocates who are employed or who volunteer at
132 the adult safe house who may claim a privilege under s. 90.5037
133 to refuse to disclose a confidential communication between a
134 victim of human trafficking and the advocate regarding the human
135 trafficking inflicted upon the victim. The list must include the
136 title of the position held by the advocate whose name is listed
137 and a description of the duties of that position. An adult safe
138 house shall file amendments to this list as necessary.

139 (g) Comply with rules adopted under this section.

140 (3) The department may adopt rules to implement this
141 section.

142 (4) The department shall inspect adult safe houses before
143 certification and annually thereafter to ensure compliance with
144 the requirements of this section.

145 (5) The department shall ensure the staff of each adult

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safe house completes intensive training that, at a minimum, includes the needs of victims of commercial sexual exploitation, the effects of trauma and sexual exploitation, and how to address victims' needs using strength-based and trauma-informed approaches. The department shall specify by rule the contents of this training and may develop or contract for a standard curriculum.

(6) If the department finds that there is failure by an adult safe house to comply with the requirements established, or rules adopted, under this section, the department may deny, suspend, or revoke the certification of the adult safe house.

Section 3. Paragraph (c) of subsection (2) of section 409.1678, Florida Statutes, is amended to read:

409.1678 Specialized residential options for children who are victims of commercial sexual exploitation.—

(2) CERTIFICATION OF SAFE HOUSES AND SAFE FOSTER HOMES.—

(c) To be certified, a safe house must hold a license as a residential child-caring agency, as defined in s. 409.175, and a safe foster home must hold a license as a family foster home, as defined in s. 409.175. A safe house or safe foster home must also:

1. Use strength-based and trauma-informed approaches to care, to the extent possible and appropriate.
2. Serve exclusively one sex.
3. Group child victims of commercial sexual exploitation by age or maturity level.
4. Care for child victims of commercial sexual exploitation in a manner that separates those children from children with other needs. Safe houses and safe foster homes may care for

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other populations if the children who have not experienced commercial sexual exploitation do not interact with children who have experienced commercial sexual exploitation.

5. Have awake staff members on duty 24 hours a day, if a safe house.

6. Provide appropriate security through facility design, hardware, technology, staffing, and siting, including, but not limited to, external video monitoring or door exit alarms, a high staff-to-client ratio, or being situated in a remote location that is isolated from major transportation centers and common trafficking areas. Appropriate security must include at least one individual on staff that has law enforcement, investigative, or other similar training, as established by rule by the department, for the detection of possible trafficking activity around a facility, to be an emergency responder to look for absent or missing children, and for coordination with law enforcement.

7. Meet other criteria established by department rule, which may include, but are not limited to, personnel qualifications, staffing ratios, and types of services offered.

Section 4. Section 409.16781, Florida Statutes, is created to read:

409.16781 Educating children in facilities regarding human trafficking; age-appropriate educational programming.—

(1) As used in this section the term "facility" means either a licensed residential facility, as defined in s. 393.063, or a safe house or safe foster home as defined in s. 409.1678(1).

(2) The department shall develop age-appropriate

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204 educational programming for facilities educating children
205 regarding the signs and dangers of human trafficking and how to
206 report human trafficking.

207 (3) Each facility with teenage children, at least annually,
208 shall use the department's educational programming regarding
209 human trafficking.

210 Section 5. This act shall take effect July 1, 2023.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SB 1690

INTRODUCER: Senator Ingoglia

SUBJECT: Human Trafficking

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Cox	CF	Pre-meeting
2.			AHS	
3.			FP	

I. Summary:

SB 1690 creates s. 402.88, F.S., to codify a certification process for adult safe houses. These safe houses must be certified by the Department of Children and Families (DCF) to care for adults who have been sexually exploited or trafficked. The bill requires the DCF to establish a process to certify, inspect, and annually recertify adult safe houses that:

- Provide a facility that serves as an adult safe house to receive and shelter persons who are victims of human trafficking.
- Allow minor children and other dependents of the victim when such dependents are partly or wholly dependent on the victim, to be sheltered with the victim in an adult safe house.
- Receive annual written endorsement of local law enforcement.
- Provide certain minimum services;
- Participate in providing orientation and training programs developed for law enforcement, social workers, and other professionals who work with human trafficking victims.
- Provide a safe, therapeutic environment tailored to the needs of CSE or trafficked adults who have endured significant trauma using strength-based and trauma-informed treatment models.
- File with the DCF a list of specified information, amended as necessary, of human trafficking advocates employed or volunteering at the adult safe house who may claim privilege under s. 90.5037, F.S., to refuse to disclose certain information.
- Comply with rules adopted under the section.

The bill allows the DCF to deny, suspend, or revoke the certification of an adult safe house that fails to comply with the requirements of the bill.

The bill allows the DCF to exempt the hotline, professional training, or community education requirements for a new adult safe house if already provided by another adult safe house within the designated service area to avoid duplication of services.

The bill also outlines the training of adult safe house staff and requires the DCF to ensure that staff has completed said training, the contents of which are to be specified by rule.

The bill creates s. 409.16781, F.S. to require the DCF to develop age-appropriate educational programming for children regarding the signs and dangers of, and how to report, human trafficking. The educational programming must be developed for facilities, which includes licensed residential facilities under s. 393.063, F.S.,¹ or safe houses or safe foster homes.² The bill requires each facility with teenage children to provide the training at least annually.

The bill amends s. 787.29, F.S., F.S., requiring the DCF to develop age-appropriate public awareness signs on human trafficking in conjunction with this educational programming for display in certain settings. The bill requires the signs be conspicuously placed to warn youth of the dangers of human trafficking and to encourage the reporting of individuals observed attempting to engage in human trafficking activity and contain the telephone number for either the National Human Trafficking Resource Center or other number that the Florida Department of Law Enforcement uses to detect and stop human trafficking.

The bill also amends s. 409.1678, F.S. to detail that appropriate security for Safe Houses and Safe Foster Homes must include a least one individual on staff with law enforcement, investigative, or other similar training, as established by rule by the DCF. The purpose of this staff member is the detection of possible trafficking activity around a facility, to be an emergency responder to look for absent or missing children, and for coordination with law enforcement.

The bill will have a significant negative fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Human Trafficking

The Florida Legislature recognizes human trafficking as a form of modern-day slavery whose victims include young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.³ While victims of human trafficking are forced to work in prostitution or sexual

¹ Residential facilities defined under this section of law are: “Foster Care Facility” meaning a licensed residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility may not be more than three residents; “Group Home Facility,” meaning licensed residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall be at least 4 but not more than 15 residents; “Intermediate care facility for the developmentally disabled” meaning the same as part VIII of ch. 400, F.S.; and “Residential habilitation center” meaning a licensed community residential facility which provides habilitation services. The capacity of such a facility may not be fewer than nine residents, in existence prior to October 1, 1989.

² Section 409.1678, F.S. defines “Safe foster home” as a foster home certified by the DCF to care for sexually exploited children and “Safe house” as a group residential placement certified by the DCF to care for sexually exploited children.

³ Section 787.06, F.S.

entertainment, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, factory work, and agricultural work.⁴ Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced⁵ into commercial sexual activity,⁶ domestic servitude, or other types of forced labor.⁷

Human Trafficking in Florida

Florida law defines “human trafficking” as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,⁸ purchasing, patronizing, procuring, or obtaining⁹ another person for the purpose of exploitation of that person.¹⁰ In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.¹¹ Florida law sets out several circumstances which give rise to specified penalties including, in part:

- Labor or services of any child under the age of 18 commits a first degree felony;¹²
- Labor or services of any child under the age of 18 who is an unauthorized alien¹³ commits a first degree felony;¹⁴
- Labor or services who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;¹⁵

⁴ *Id.*

⁵ Section 787.06(2)(a), F.S., defines “coercion” in the context of human trafficking as using or threatening physical force; restraining, isolating, or confining or threatening the same without lawful authority and against his or her will; using lending or other credit methods to establish a debt when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or services is not applied toward liquidation of the debt, and the length and nature of the labor or service and not limited and defined; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document of any person; causing or threatening to cause financial harm, enticing or luring by fraud or deceit; or providing controlled substances to any person for the purpose of exploitation.

⁶ Section 787.062(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography.

⁷ The Department of Education, *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited March 19, 2023).

⁸ Section 787.06(2)(f), F.S., provides “maintain” means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines “services” as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.

⁹ Section 787.06(2)(g), F.S., provides “obtain” means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides “labor” means work of economic or financial value.

¹⁰ Section 787.06(2)(d), F.S.

¹¹ Section 787.06(3), F.S.

¹² Section 787.06(3)(a)1., F.S. A first degree felony is punishable by a state prison term not exceeding 30 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

¹³ Section 787.06(2)(j), F.S., defines “unauthorized alien” as an alien who is not authorized under federal law to be employed in the United States, as provided in 8 U.S.C. s. 1324a(h)(3).

¹⁴ Section 787.06(3)(c)1., F.S.

¹⁵ Section 787.06(3)(e)1., F.S.

- Commercial sexual activity¹⁶ who does so by the transfer or transport of any child under the age of 18 from outside of Florida to within Florida commits a first degree felony;¹⁷ or
- Commercial sexual activity in which any child under the age of 18, or in which any person who is mentally defective¹⁸ or mentally incapacitated¹⁹ is involved commits a life felony.²⁰

The above-mentioned first-degree felonies are reclassified as a life felony if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense.²¹ Ignorance of the human trafficking victim's age, the victim's misrepresentation of his or her age, or a bona fide belief of the victim's age cannot be raised as a defense by a defendant.²²

Florida is ranked the third highest state of reported human trafficking cases in the United States.²³ In 2021, reports of commercially exploited children to the Florida Abuse Hotline remained relatively stable, increasing from 3,181 reports in 2020 to 3,182 reports in 2021.²⁴

Child Sexual Exploitation in Florida

It is difficult to obtain an accurate count of commercial sexual exploitation (CSE) victims who are children because these victims are not readily identifiable.²⁵ CSE victims do not have immediately recognizable characteristics, many do not have identification, and they are often physically or psychologically controlled by adult traffickers; as such, they rarely disclose or provide information on exploitation.²⁶

¹⁶ Section 787.06(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(i), F.S., defines “sexual explicit performance” as an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

¹⁷ Section 787.06(3)(f)1., F.S., provides that an offense committed under these circumstances is punishable by a term of imprisonment not exceeding life or as provided in ss. 775.082, 775.083, or 775.084, F.S.

¹⁸ Section 794.011(1)(c), F.S., defines “mentally defective” as a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

¹⁹ Section 794.011(1)(d), F.S., defines “mental incapacitated” as temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

²⁰ A life felony is punishable by a term of life imprisonment, \$15,000 fine, or both as provided in s. 775.082(3)(a)6., F.S., s. 775.083, F.S., or s. 775.084, F.S.

²¹ Section 787.06(8)(b), F.S.

²² Section 787.06(9), F.S.

²³ Florida Alliance to End Human Trafficking, *The Issue*, available at <https://floridaallianceendht.com/the-issue/> (last visited March 19, 2023).

²⁴ The Office of Program Policy Analysis and Government Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida*, 2022, p. 2, July 2022, available at <https://oppaga.fl.gov/Documents/Reports/22-05.pdf> (last visited March 19, 2023).

²⁵ Office of Program Policy Analysis & Government Accountability, *Placement Challenges Persist for Child Victims of Commercial Sexual Exploitation; Questions Regarding Effective Interventions and Outcomes Remain*, (Jul. 2016), available at <https://oppaga.fl.gov/Products/ReportDetail?rn=16-04> (last visited March 22, 2023).

²⁶ U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Commercial Sexual Exploitation of Children and Sex Trafficking*, available at https://ojdp.ojp.gov/model-programs-guide/literature-reviews/commercial_sexual_exploitation_of_children_and_sex_trafficking.pdf (last visited March 22, 2023).

For calendar year 2021, the DCF verified 377 child victims of commercial sexual exploitation from 3,182 reports alleging commercial sexual exploitation made to the hotline.²⁷ Of the reports that were referred for investigation, most came from the Department of Juvenile Justice (DJJ), the Department of Corrections, or criminal justice personnel and law enforcement.²⁸ Of the 377 verified commercially sexually exploited children, 25% were in out-of-home care, including the care of relatives or in foster homes, residential group care, or residential treatment centers.²⁹

Safe Houses and Safe Foster Homes for Child-victims of Human Trafficking

Current law defines and provides for the certification of specialized residential options for children who are victims of human trafficking or commercial sexual exploitation (CSE).³⁰ The law defines a “safe foster home” to mean a foster home certified by the DCF to care for sexually exploited children and a “safe house” to mean a group residential placement certified by the DCF to care for sexually exploited children.³¹ To be certified, a safe house or safe foster home must:

- Use strength-based and trauma-informed approaches to care, to the extent possible and appropriate.
- Serve exclusively one sex.
- Group child victims of CSE by age or maturity level.
- Care for child victims of CSE in a manner that separates those children from children with other needs. Safe houses and safe foster homes may care for other populations if the children who have not experienced commercial sexual exploitation do not interact with children who have experienced commercial sexual exploitation.
- Have awake staff members on duty 24 hours a day, if a safe house.
- Provide appropriate security through facility design, hardware, technology, staffing, and siting, including, but not limited to, external video monitoring or door exit alarms, a high staff-to-client ratio, or being situated in a remote location that is isolated from major transportation centers and common trafficking areas.
- Meet other criteria established by department rule,³² which may include, but are not limited to, personnel qualifications, staffing ratios, and types of services offered.³³

At-Risk Houses

At-Risk Houses are group care homes that are certified to serve children considered to be at-risk for sex trafficking. Children are deemed to be “at risk of sex trafficking” if they have experienced trauma, such as abuse, neglect, and/or maltreatment, and present one or more of the accompanying risk factors: history of running away and/or homelessness; history of sexual abuse and/or sexually acting out behavior; inappropriate interpersonal and/or social media boundaries; family history of or exposure to human trafficking; or, out-of-home placement instability

²⁷ Office of Program Policy Analysis & Government Accountability, *Annual Report on the Commercial Sexual Exploitation of Children in Florida*, 2022, Report 22-05, July 2022, pp. i and 2, available at <https://oppaga.fl.gov/Products/ReportDetail?rn=22-05> (last viewed March 22, 2023).

²⁸ *Id.*

²⁹ *Id.*, p. 4.

³⁰ Section 409.1678, F.S.

³¹ Section 409.1678(1), F.S.

³² Rule 65C-46.020, F.A.C.

³³ Section 409.1678(2)(c), F.S.

demonstrated by repeated moves from less restrictive levels of care. There are currently 157 At-Risk Houses licensed by DCF to provide services to youth who are at risk of sex trafficking.³⁴

Safe Houses for Adult Survivors of Human Trafficking

The DCF reports they are aware of 13 adult safe houses that provide services to adult survivors of human trafficking.³⁵ Of these, two allow for the survivor's minor children to also reside in the home.³⁶

The DCF does not regulate or monitor any of the 13 adult safe houses³⁷ and current law provides no framework for any agency to do so.

Privileged Communication between Human Trafficking Victims and Others

Section 90.5037, F.S., creates a privilege to refuse to disclose confidential communications or records between human trafficking victims and human trafficking victim advocates or trained volunteers made in the course of advising, counseling, or providing services. The law gives a human trafficking victim the power to not personally disclose and also prevent disclosure by any other person.³⁸

This privilege may be claimed by:

- The victim of human trafficking.
- The guardian or conservator of a victim.
- The personal representative of a deceased victim.
- The human trafficking victim advocate or trained volunteer, but only on behalf of the human trafficking victim. The authority to claim this privilege is presumed in the absence of evidence to the contrary.³⁹

III. Effect of Proposed Changes:

Adult Safe Houses

The bill creates s. 402.88, F.S., to codify a certification process for adult safe houses. These safe houses must be certified by the Department of Children and Families (DCF) to care for adults who have been sexually exploited or trafficked.

The bill requires the DCF to establish a process to certify adult safe houses that:

- Provide a facility that serves as an adult safe house to receive and house persons who are victims of human trafficking.
 - Minor children and other dependents of the victim when such dependents are partly or wholly dependent on the victim, may be sheltered with the victim in an adult safe house.

³⁴ The DCF, 2023 Agency Legislative Bill Analysis, SB 1690, *Human Trafficking*, p. 3 (on file with Committee on Children, Families, and Elder Affairs Staff).

³⁵ The DCF, 2023 Agency Legislative Bill Analysis, SB 1690, 3/14/23, p. 2. (On file with the Committee on Children, Families, and Elder Affairs).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Section 90.5037(3), F.S.

³⁹ Section 90.5037(4), F.S.

- Receive annual written endorsement of local law enforcement.
- Provide the following minimum services:
 - Information and referral;
 - Licensed counseling and case management;
 - Substance abuse screening and access or referral to treatment;
 - Temporary emergency shelter for more than 24 hours;
 - Operation of a 24-hour hotline;
 - Nonresidential outreach services;
 - Training for law enforcement personnel;
 - Assessment and appropriate referral of resident children; and
 - Educational services for community awareness, prevention, and services available for persons subject to human trafficking.
- Participate in providing orientation and training programs developed for law enforcement, social workers, and other professionals who work with human trafficking victims.
- Provide a safe, therapeutic environment tailored to the needs of CSE or trafficked adults who have endured significant trauma using strength-based and trauma-informed treatment models.
- File with the DCF a list, amended as necessary, of human trafficking advocates employed or volunteering at the adult safe house who may claim privilege under s. 90.5037, F.S.,⁴⁰ to refuse to disclose certain information. The list must include the title of the position held by the advocate and a description of the duties of his or her position.
- Comply with rules adopted under the section.

The bill allows the DCF to exempt the hotline, professional training, or community education requirements for a new adult safe house if already provided by another adult safe house within the designated service area to avoid duplication of services.

The bill requires the DCF to inspect and annually certify adult safe houses to ensure compliance with the requirements of the section and allows the denial, suspension, or revocation of certification if an adult safe house fails to comply with those requirements.

The bill also outlines the training of adult safe house staff and requires the DCF to ensure that staff has completed said training, the contents of which are to be specified by rule.

The bill allows the DCF to adopt rules to implement the section.

Education and Signage

The bill creates s. 409.16781, F.S. to require the DCF to develop age-appropriate educational programming for children regarding the signs and dangers of, and how to report, human trafficking. The educational programming must be developed for facilities, defined as a licensed

⁴⁰ Section 90.5037, F.S. makes certain communications between certain human trafficking victim's advocates and human trafficking victims confidential.

residential facility under s. 393.063, F.S.,⁴¹ or safe house or safe foster home.⁴² The bill requires each facility with teenage children to provide the training at least annually.

The bill amend s. 787.29, F.S., F.S., requiring the DCF to develop age-appropriate public awareness signs on human trafficking in conjunction with this educational programming for display in each:

- Emergency shelter;
- Runaway shelter;
- Group home;
- Agency-operated group treatment home;
- Non-psychiatric residential group care facility;
- Psychiatric residential treatment facility;
- Safe house; and
- Other appropriate facilities that provide shelter and care for dependent children.

The bill requires the signs be conspicuously placed to warn youth of the dangers of human trafficking and to encourage the reporting of individuals observed attempting to engage in human trafficking activity and contain the telephone number for either the National Human Trafficking Resource Center or other number that the Florida Department of Law Enforcement uses to detect and stop human trafficking.

The bill also moves and renumbers a paragraph related to county ordinance enforcement for clarity.

Certification of Safe Houses and Safe Foster Homes

The bill also amends s. 409.1678, F.S. to detail that appropriate security for Safe Houses and Safe Foster Homes includes a least one individual on staff with law enforcement, investigative, or other similar training, as established by rule by the department. The purpose of this staff member is the detection of possible trafficking activity around a facility, to be an emergency responder to look for absent or missing children, and for coordination with law enforcement.

The bill takes effect July 1, 2023

⁴¹ Residential facilities defined under this section of law are: “Foster Care Facility” meaning a licensed residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility may not be more than three residents; “Group Home Facility,” meaning licensed residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall be at least 4 but not more than 15 residents; “Intermediate care facility for the developmentally disabled” meaning the same as part VIII of ch. 400, F.S.; and “Residential habilitation center” meaning a licensed community residential facility which provides habilitation services. The capacity of such a facility may not be fewer than nine residents, in existence prior to October 1, 1989.

⁴² Section 409.1678, F.S. defines “Safe foster home” as a foster home certified by the DCF to care for sexually exploited children and “Safe house” as a group residential placement certified by the DCF to care for sexually exploited children.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It is unknown how many new adult safe houses will require certification. The DCF projects a fiscal impact of \$370,145 recurring and \$404,275 nonrecurring for staff and technology to certify the 13 known adult safe houses.⁴³

Staff

The DCF projects an estimated 100 hours of staff time, per safe house, to complete pre-monitoring, travel, inspections, post site monitoring/follow up, and administrative actions and anticipates needing at least three FTEs for regional certification specialists to implement, including: three Operation Review Specialists as Certification Specialists: **\$301,420** (\$285,145 recurring / \$16,275 nonrecurring). This includes a base salary

⁴³ The Department of Children and Families, 2023 Agency Legislative Bill Analysis, SB 1690, *Human Trafficking*, p. 7 (on file with Committee on Children, Families, and Elder Affairs Staff).

(\$50,192) and benefits package (\$24,347) for each of the three certification specialists, plus travel, and other recurring and nonrecurring expenses.⁴⁴

Technology

The DCF projects needing three consultants to develop the technology platform to support adult safe house certification and one FTE for ongoing maintenance and operation to implement the requirements of the bill.⁴⁵ The three consultants would require **\$388,000 in nonrecurring funding** and the one FTE would require **\$75,000 in recurring funding**.⁴⁶

VI. Technical Deficiencies:

Lines 42 through 43: The DCF does not have the authority to enforce a requirement to display human trafficking awareness signs in strip clubs and massage and bodywork establishments.

Lines 62 through 81: The DCF has some rule authority governing residential child-caring agencies, safe homes, and residential treatment centers; however, the new language requiring the display of signs developed by DCF by those agencies and centers, and the use of educational programming in safe houses and homes are in sections where DCF does not have rule-making authority.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 787.29 and 409.1678 of the Florida Statutes. This bill creates section 402.88 and 409.16781 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

⁴⁴ *Id.*

⁴⁵ *Id.* at pp. 8-9

⁴⁶ *Id.*



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (8) of section 394.875, Florida
Statutes, is amended to read:

394.875 Crisis stabilization units, residential treatment
facilities, and residential treatment centers for children and
adolescents; authorized services; license required.—

(8) (a) The department, in consultation with the agency,



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must adopt rules governing a residential treatment center for children and adolescents which specify licensure standards for: admission; length of stay; program and staffing; discharge and discharge planning; treatment planning; seclusion, restraints, and time-out; rights of patients under s. 394.459; use of psychotropic medications; and standards for the operation of such centers.

(b) Residential treatment centers for children and adolescents must conspicuously place signs on their premises to warn children and adolescents of the dangers of human trafficking and to encourage the reporting of individuals observed attempting to engage in human trafficking activity. The signs must contain the telephone number for the National Human Trafficking Hotline or such other number that the Department of Law Enforcement uses to detect and stop human trafficking. The department, in consultation with the agency, shall specify, at a minimum, the content of the signs by rule.

Section 2. Subsections (3) and (5) of section 787.29, Florida Statutes, are amended, and subsection (4) of that section is republished, to read:

787.29 Human trafficking public awareness signs.—

(3) (a) The employer at each of the following establishments shall display a public awareness sign developed under subsection (4) in a conspicuous location that is clearly visible to the public and employees of the establishment:

1. ~~(a)~~ A strip club or other adult entertainment establishment.

2. ~~(b)~~ A business or establishment that offers massage or bodywork services for compensation that is not owned by a health



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care practitioner regulated pursuant to chapter 456 and defined in s. 456.001.

(b) The county commission may adopt an ordinance to enforce this subsection. A violation of this subsection is a noncriminal violation and punishable by a fine only as provided in s. 775.083.

(4) The required public awareness sign must be at least 8.5 inches by 11 inches in size, must be printed in at least a 16-point type, and must state substantially the following in English and Spanish:

"If you or someone you know is being forced to engage in an activity and cannot leave—whether it is prostitution, housework, farm work, factory work, retail work, restaurant work, or any other activity—call the National Human Trafficking Resource Center at 1-888-373-7888 or text INFO or HELP to 233-733 to access help and services. Victims of slavery and human trafficking are protected under United States and Florida law."

~~(5) The county commission may adopt an ordinance to enforce subsection (3). A violation of subsection (3) is a noncriminal violation and punishable by a fine only as provided in s. 775.083.~~

Section 3. Section 402.88, Florida Statutes, is created to read:

402.88 Adult safe houses for adults who have been sexually exploited or trafficked.—



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(1) As used in this section the term:

(a) "Adult safe house" means a group residential facility certified by the department under this section to care for adults who have been sexually exploited or trafficked.

(b) "Department" means the Department of Children and Families.

(2) The department shall establish a process to certify adult safe houses that provide housing and care to adult survivors of human trafficking as defined in s. 787.06. The adult safe houses certified under this section must:

(a) Provide a facility which will serve as an adult safe house to receive and house persons who are victims of human trafficking. For the purpose of this section, minor children and other dependents of a victim, when such dependents are partly or wholly dependent on the victim for support or services, may be sheltered with the victim in an adult safe house.

(b) Receive the annual written endorsement of local law enforcement agencies.

(c) Provide minimum services that include, but are not limited to, information and referral services, licensed counseling and case management services, substance abuse screening and, when necessary, access or referral to treatment, temporary emergency shelter for more than 24 hours, a 24-hour hotline, nonresidential outreach services, training for law enforcement personnel, assessment and appropriate referral of resident children, and educational services for community awareness relative to the incidence of human trafficking, the prevention of such crimes, and the services available for persons subject to human trafficking. If a 24-hour hotline,



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professional training, or community education is already
provided by an adult safe house within its designated service
area, the department may exempt such certification requirements
for a new center serving the same service area to avoid
duplication of services.

(d) Participate in the provision of orientation and
training programs developed for law enforcement officers, social
workers, and other professionals and paraprofessionals who work
with human trafficking victims to better enable such persons to
deal effectively with incidents of human trafficking.

(e) Provide a safe, therapeutic environment tailored to the
needs of commercially sexually exploited or trafficked adults
who have endured significant trauma. Adult safe houses shall use
a model of treatment that includes strength-based and trauma-
informed approaches.

(f) File with the department a list of the names of the
human trafficking advocates who are employed or who volunteer at
the adult safe house who may claim a privilege under s. 90.5037
to refuse to disclose a confidential communication between a
victim of human trafficking and the advocate regarding the human
trafficking inflicted upon the victim. The list must include the
title of the position held by the advocate whose name is listed
and a description of the duties of that position. An adult safe
house shall file amendments to this list as necessary.

(g) Comply with rules adopted under this section.

(3) The department may adopt rules to implement this
section. The rules adopted must include health and safety
provisions, including but not limited to protection from
recruitment, to ensure that the minor children and other



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dependents of a victim that shelter in the adult safe house
under paragraph (2) (a) do not become at risk of becoming, or
become victims of commercial sexual exploitation.

(4) The department shall inspect adult safe houses before
certification and annually thereafter to ensure compliance with
the requirements of this section.

(5) The department shall ensure the staff of each adult
safe house completes intensive training that, at a minimum,
includes the needs of victims of commercial sexual exploitation,
the effects of trauma and sexual exploitation, and how to
address victims' needs using strength-based and trauma-informed
approaches. The department shall specify by rule the contents of
this training and may develop or contract for a standard
curriculum.

(6) If the department finds that there is failure by an
adult safe house to comply with the requirements established, or
rules adopted, under this section, the department may deny,
suspend, or revoke the certification of the adult safe house.

Section 4. Paragraphs (c) and (d) of subsection (2) of
section 409.1678, Florida Statutes, is amended to read:

409.1678 Specialized residential options for children who
are victims of commercial sexual exploitation.—

(2) CERTIFICATION OF SAFE HOUSES AND SAFE FOSTER HOMES.—

(c) To be certified, a safe house must hold a license as a
residential child-caring agency, as defined in s. 409.175, and a
safe foster home must hold a license as a family foster home, as
defined in s. 409.175. A safe house or safe foster home must
also:

1. Use strength-based and trauma-informed approaches to



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care, to the extent possible and appropriate.

2. Serve exclusively one sex.

3. Group child victims of commercial sexual exploitation by age or maturity level.

4. Care for child victims of commercial sexual exploitation in a manner that separates those children from children with other needs. Safe houses and safe foster homes may care for other populations if the children who have not experienced commercial sexual exploitation do not interact with children who have experienced commercial sexual exploitation.

5. Have awake staff members on duty 24 hours a day, if a safe house.

6.a. Provide appropriate security through facility design, hardware, technology, staffing, and siting, including, but not limited to, external video monitoring or door exit alarms, a high staff-to-client ratio, or being situated in a remote location that is isolated from major transportation centers and common trafficking areas.

b. If a safe house, appropriate security must provide for, at a minimum, the detection of possible trafficking activity around a facility, coordination with law enforcement, and be part of the emergency response to search for absent or missing children. For a safe house to be in compliance with providing appropriate security under this subparagraph, the safe house must either:

i. Employ or contract with at least one individual that has law enforcement, investigative, or other similar training, as established by rule by the department; or

ii. Execute a contract or memorandum of understanding with



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a law enforcement agency to perform these functions.

7. If a safe house, conspicuously place signs on the premises to warn children of the dangers of human trafficking and to encourage the reporting of individuals observed attempting to engage in human trafficking activity. The signs must advise children to report concerns to the local law enforcement agency or the Department of Law Enforcement, specifying the appropriate telephone numbers used for such reports. The department shall specify, at a minimum, the content of the signs by rule.

8. Meet other criteria established by department rule, which may include, but are not limited to, personnel qualifications, staffing ratios, and types of services offered.

(d) Safe houses and safe foster homes shall provide services tailored to the needs of child victims of commercial sexual exploitation and shall conduct a comprehensive assessment of the service needs of each resident. In addition to the services required to be provided by residential child caring agencies and family foster homes, safe houses and safe foster homes must provide, arrange for, or coordinate, at a minimum, the following services:

1. Victim-witness counseling.
2. Family counseling.
3. Behavioral health care.
4. Treatment and intervention for sexual assault.
5. Education tailored to the child's individual needs, including remedial education if necessary.
6. Life skills and workforce training.
7. Mentoring by a survivor of commercial sexual



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exploitation, if available and appropriate for the child.

8. Substance abuse screening and, when necessary, access to treatment.

9. Planning services for the successful transition of each child back to the community.

10. Activities structured in a manner that provides child victims of commercial sexual exploitation with a full schedule.

11. Deliver age-appropriate programming to educate children regarding the signs and dangers of commercial sexual exploitation and how to report commercial sexual exploitation. The department shall develop or approve such programming.

Section 5. Paragraph (b) of subsection (5) of section 409.175, Florida Statutes, is amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(5) The department shall adopt and amend rules for the levels of licensed care associated with the licensure of family foster homes, residential child-caring agencies, and child-placing agencies. The rules may include criteria to approve waivers to licensing requirements when applying for a child-specific license.

(b) The requirements for licensure and operation of family foster homes, residential child-caring agencies, and child-placing agencies shall include:

1. The operation, conduct, and maintenance of these homes and agencies and the responsibility which they assume for children served and the evidence of need for that service.

2. The provision of food, clothing, educational



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opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served.

3. The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide for the physical comfort, care, and well-being of the children served.

4. The ratio of staff to children required to provide adequate care and supervision of the children served and, in the case of family foster homes, the maximum number of children in the home.

5. The good moral character based upon screening, education, training, and experience requirements for personnel and family foster homes.

6. The department may grant exemptions from disqualification from working with children or the developmentally disabled as provided in s. 435.07.

7. The provision of preservice and inservice training for all foster parents and agency staff.

8. Satisfactory evidence of financial ability to provide care for the children in compliance with licensing requirements.

9. The maintenance by the agency of records pertaining to admission, progress, health, and discharge of children served, including written case plans and reports to the department.

10. The provision for parental involvement to encourage preservation and strengthening of a child's relationship with the family.

11. The transportation safety of children served.

12. The provisions for safeguarding the cultural,



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religious, and ethnic values of a child.

13. Provisions to safeguard the legal rights of children served.

14. Requiring signs to be conspicuously placed on the premises of facilities maintained by child-caring agencies to warn children of the dangers of human trafficking and to encourage the reporting of individuals observed attempting to engage in human trafficking activity. The signs must advise children to report concerns to the local law enforcement agency or the Department of Law Enforcement, specifying the appropriate telephone numbers used for such reports. The department shall specify, at a minimum, the content of the signs by rule.

Section 6. This act shall take effect July 1, 2023.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to sexual exploitation and human trafficking; amending s. 394.875, F.S.; requiring residential treatment centers for children and adolescents to place specified signage; requiring the Department of Children and Families, in consultation with the Agency for Health Care Administration, to adopt rules; amending s. 787.29, F.S.; making technical changes; creating s. 402.88, F.S.; defining terms; requiring the Department of Children and Families to develop a process to certify adult safe houses that provide housing and care to adult



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survivors of human trafficking; providing
certification requirements; authorizing rulemaking;
requiring the department to inspect adult safe houses
before certification and annually thereafter;
requiring the department to ensure the staff of each
adult safe house completes specified intensive
training; providing for department actions for
noncompliance; amending s. 409.1678, F.S.; providing
requirements for safe houses and safe foster homes;
requiring the Department of Children and Families to
develop or approve educational programming on
commercial sexual exploitation; amending s. 409.175,
F.S.; requiring specified signage to be placed on the
premises of facilities maintained by licensed child-
caring agencies; requiring the Department of Children
and Families to adopt rules; providing an effective
date.



RON DeSANTIS
GOVERNOR

RECEIVED

2023 JAN 13 AM 11:41

DIVISION OF ELECTIONS
TALLAHASSEE, FL

January 3, 2023

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following reappointment under the provisions of Section 20.19(a), Florida Statutes:

Mrs. Shevaun Harris

as Secretary of the Department of Children and Families, subject to confirmation by the Senate. This appointment is effective January 3, 2023, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to be "Ron DeSantis", written over a horizontal line.

Ron DeSantis
Governor

RD/ch

HAND DELIVERED

OATH OF OFFICE

(Art. II. § 5(b), Fla. Const.)

RECEIVED

2023 FEB -8 AM 10:50

DIVISION OF ELECTIONS
TALLAHASSEE, FL

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Florida Department of Children and Families

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature

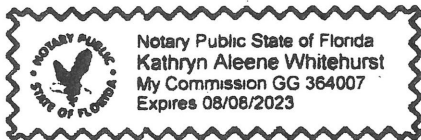
Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 7 day of February, 2023.

Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

Street or Post Office Box

City, State, Zip Code

Shevaun L. Harris

Print Name

Signature

HAND DELIVERED

RECEIVED

CERTIFICATION

2023 FEB -8 AM 10:50

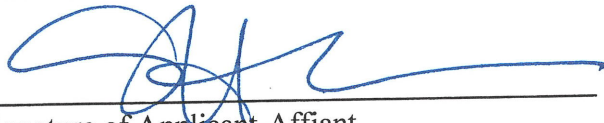
STATE OF FLORIDA
COUNTY OF Leon

DIVISION OF ELECTIONS
TALLAHASSEE, FL

Before me, the undersigned Notary Public of Florida, personally appeared

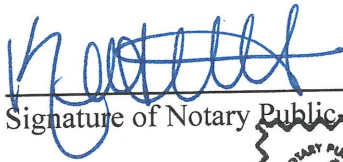
Shevaun Harris

who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

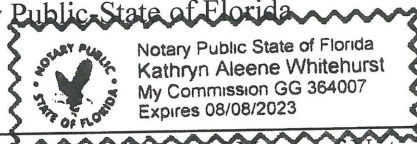


Signature of Applicant-Affiant

Sworn to and subscribed before me this 7 day of February, 2023.



Signature of Notary Public, State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 08/08/23

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

(seal)



RON DeSANTIS
GOVERNOR

RECEIVED

2023 FEB -2 PM 2:15

DIVISION OF ELECTIONS
TALLAHASSEE, FL

January 26, 2023

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following appointment under the provisions of Section 20.197, Florida Statutes:

Ms. Taylor Hatch

as Director of the Agency for Persons with Disabilities, succeeding Barbara Palmer, subject to confirmation by the Senate. This appointment is effective January 26, 2023, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to be "Ron DeSantis", written over a horizontal line.

Ron DeSantis
Governor

RD/ch

HAND DELIVERED

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

County of Leen

2023 FEB 21 AM 10:13

DIVISION OF ELECTIONS
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Director of the Agency for Persons with Disabilities
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]
Signature

Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 21 day of February, 2023

Doria Moody

Signature of Officer Administering Oath or of Notary Public

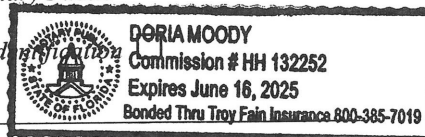
Doria Moody

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Id

Type of Identification Produced



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

Street or Post Office Box

City, State, Zip Code

Taylor N. Hatch

Print Name

[Signature]
Signature

HAND DELIVERED RECEIVED

CERTIFICATION

2023 FEB 20 AM 11:39

STATE OF FLORIDA

COUNTY OF Leon

DIVISION OF ELECTIONS
TALLAHASSEE, FL

Before me, the undersigned Notary Public of Florida, personally appeared

_____,
who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Joseph H. Hatcher
Signature of Applicant-Affiant

Sworn to and subscribed before me this 13 day of February, 2023

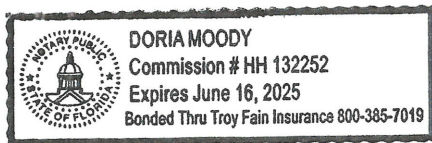
Doria Moody
Signature of Notary Public-State of Florida

Doria Moody
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: June 16, 2025

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



(seal)

**The Florida Senate
Committee Notice Of Hearing**

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Michelle Branham

Secretary of Elderly Affairs

NOTICE OF HEARING

TO: Secretary Michelle Branham

YOU ARE HEREBY NOTIFIED that the Committee on Children, Families, and Elder Affairs of the Florida Senate will conduct a hearing on your executive appointment on Monday, March 27, 2023, in the Mallory Horne Committee Room, 37 Senate Building, commencing at 11:30 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 22nd day of March, 2023

Committee on Children, Families, and Elder
Affairs

Senator Ileana Garcia
As Chair and by authority of the committee

cc: Members, Committee on Children, Families, and Elder Affairs
Office of the Sergeant at Arms