

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 1079	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Child Welfare	114	Y's 0	N's
<b>SPONSOR(S):</b>	Health & Human Services Committee; Children, Families & Seniors Subcommittee; Burton	<b>GOVERNOR'S ACTION:</b>	Approved	
<b>COMPANION BILLS:</b>	CS/CS/SB 1360			

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**SUMMARY ANALYSIS**

CS/CS/HB 1079 passed the House on March 7, 2018, as amended, and subsequently passed the Senate on March 8, 2018. The bill includes the principal substance of CS/HB 7065 and CS/HB 487.

The bill establishes a federally-subsidized Guardianship Assistance Program (GAP) administered by the Department of Children and Families (DCF) to begin July 1, 2019, and sets initial payment rates for GAP participants, in accordance with federal standards. The bill modifies DCF's extended foster care program to allow DCF to earn additional federal Title IV-E funding. The existing program serves young adults aged 18 to 21 who have not achieved permanency. The bill revises the parameters of adoption assistance to include young adults aged 18 to 21 who were adopted between the ages of 16 and 18, provided that these individuals meet certain educational or employment requirements, in compliance with federal requirements for GAP. The bill establishes a five-tier licensure model for foster homes based on the characteristics of the child or children to be placed with the foster parent. The bill also:

- Requires an evaluation of GAP implementation to be completed by the Florida Institute for Child Welfare;
- Changes the equity allocation model used to fund community-based care lead agencies around the state;
- Allows DCF to exempt household members in prospective child welfare placements who have serious physical, developmental, or cognitive disabilities from fingerprinting requirements;
- Requires parents to actively engage with DCF and case managers during the dependency case process and requires the court to consider engagement levels when making permanency decisions;
- Requires crimes relating to drug abuse and trafficking to be disqualifying offenses for child care personnel for a period of five years after an offense is committed;
- Requires additional transportation safety standards for child care facility licensure;
- Requires DCF to provide the results of abuse registry checks for private adoptions to agencies conducting the home study, and allows such agencies to set adoptive parent training requirements for private adoptions;
- Removes the requirements that residential treatment centers care for child sexual exploitation survivors in a manner that separates those children from children with other needs;
- Limits liability and prohibits auto insurance premium increases for a caregiver who signs a learner's driver's license application for a child in the child welfare system;
- Gives DCF the ability to intervene when substance abuse compromises a parent's ability to care for a newborn child; and,
- Requires development of a reviser's bill to capitalize the term "child protection team" in the Florida Statutes.

The bill has a significant positive recurring fiscal impact on state revenues, and a significant negative fiscal impact to the DCF. See Fiscal Comments.

The bill was approved by the Governor on March 23, 2018, ch. 2018-103, L.O.F., and will become effective on July 1, 2018.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1079z1.CFS

**DATE:** March 27, 2018

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Child Welfare System

The child welfare system identifies families whose children are in danger of suffering or have suffered abuse, abandonment, or neglect and works with those families to address the problems that are endangering children, if possible. If the problems cannot be addressed, the child welfare system finds safe out-of-home placements for these children. Out-of-home placements range from temporary placement with a family member to a family foster home to a residential child-caring agency to a permanent adoptive placement with a family previously unknown to the child.<sup>1</sup>

Florida uses funds from a variety of sources for child welfare services, such as the federal Social Services Block Grant, the federal Temporary Assistance to Needy Families block grant, federal Title XIX Medicaid administration, federal Title IV-B, federal Title IV-E, various other child welfare grants, and state general revenue.

##### Community-Based Care Organizations and Services

DCF contracts for case management, out-of-home care, and related services with lead agencies, also known as community-based care organizations (CBCs). The model of using CBCs to provide child welfare services is designed to increase local community ownership of service delivery and design.<sup>2</sup>

DCF, through the CBCs, administers a system of care<sup>3</sup> 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.

CBCs are responsible for providing foster care and related services. These services include, but are not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.<sup>4</sup> The CBC must give priority to services that are evidence-based and trauma informed.<sup>5</sup> 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.<sup>6</sup> The CBCs employ case managers that serve as the primary link between the child welfare system and families with children under DCF supervision. These case managers work with affected families to ensure that a child reaches his or her permanency goal in a timely fashion.<sup>7</sup>

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<sup>1</sup> S. 409.175, F.S.

<sup>2</sup> Community-Based Care, Department of Children and Families, accessible at <http://www.myflfamilies.com/service-programs/community-based-care> (last accessed January 11, 2018).

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> S. 409.988(3), F.S.

<sup>6</sup> Community Based Care Lead Agency Map, Department of Children and Families, available at: <http://www.myflfamilies.com/service-programs/community-based-care/cbc-map> (last accessed January 12, 2018).

<sup>7</sup> S. 409.988(1), F.S.

DCF must provide funding to the CBCs based on an equity allocation model. The model was designed to allocate funds among CBCs based on the particular population served by each organization. The model includes “core services funding”, which is defined to mean all funds allocated to the CBCs operating under contract with DCF pursuant to s. 409.987, F.S., with a number of exceptions.<sup>8</sup>

Since Fiscal Year 2015-2016, recurring core services funding to each CBC has been based fully on the prior year’s recurring base funding.<sup>9</sup> Additional core services funding that may become available is distributed based on the equity allocation model, as follows:

- 20 percent of any new funding is allocated among all CBCs;
- 80 percent of any new funding is allocated to CBCs that are currently funded below their equitable share. Funds are weighted based on each CBC’s proportion of the total amount of funding below the equitable share.<sup>10</sup>

The equity allocation model dictates that these additional funds be distributed among the CBCs based on the following factors:

- The proportion of the child population in the relevant geographic area being served by the CBC;
- The proportion of the child abuse hotline workload serviced by the CBC; and,
- The proportion of children in care, weighted as 60 percent based on children in out-of-home care and 40 percent based on children in in-home care.<sup>11</sup>

These factors are then used by DCF for funding allocation purposes, with distribution of core services funds for each CBC calculated as follows:

- Proportion of the child population, weighted as 5 percent of the total;
- Proportion of child abuse hotline workload, weighted as 15 percent of the total; and
- Proportion of children in care, weighted as 80 percent of the total.<sup>12</sup>

### Dependency Case Process

When child welfare necessitates that DCF remove a child from his or her home, a series of dependency court proceedings must occur to adjudicate the child dependent and place him or her in out-of-home care.

Throughout the dependency process, DCF must develop and refine a case plan with input from all parties to the dependency case that details the problems being addressed as well as the goals, tasks, services, and responsibilities required to ameliorate the concerns of the state.<sup>13</sup> The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights.<sup>14</sup> Once a child is found dependent, a judge reviews the case plan, and if the judge accepts the case plan as drafted, orders the case plan to be followed.<sup>15</sup>

Section 39.6011, F.S., details the development of the case plan and who must be involved, such as the parent, guardian ad litem, and if appropriate, the child. This section also details what must be in the case plan, such as descriptions of the identified problems, the permanency goal, timelines, and notice requirements.

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<sup>8</sup> S. 409.991, F.S.

<sup>9</sup> S. 409.991(3), F.S.

<sup>10</sup> S. 409.991(4), F.S.

<sup>11</sup> S. 409.991(1)(e), F.S.

<sup>12</sup> S. 409.991(2), F.S.

<sup>13</sup> Ss. 39.6011 and 39.6012, F.S.

<sup>14</sup> S. 39.01(11), F.S.

<sup>15</sup> S. 39.521, F.S.

Section 39.6012, F.S., details the types of tasks and services that must be provided to the parents as well as the type of care that must be provided to the child. The services must be designed to improve the conditions in the home, facilitate the child's safe return to the home, ensure proper care of the child, and facilitate permanency. The case plan must describe each task with which the parent must comply, the services provided that address the identified problem in the home, and all available information relevant to the child's care.

When determining whether to return a child to the home from which he or she was removed or to move forward with another permanency option, the court assesses whether the circumstances that caused the out-of-home placement have been remedied to the extent that the safety, well-being and health of the child are not endangered by an in-home placement.<sup>16</sup> To support the permanency goal, the court continues to monitor a parent's efforts to comply with the tasks assigned in the case plan.<sup>17</sup>

### The Dependency Process

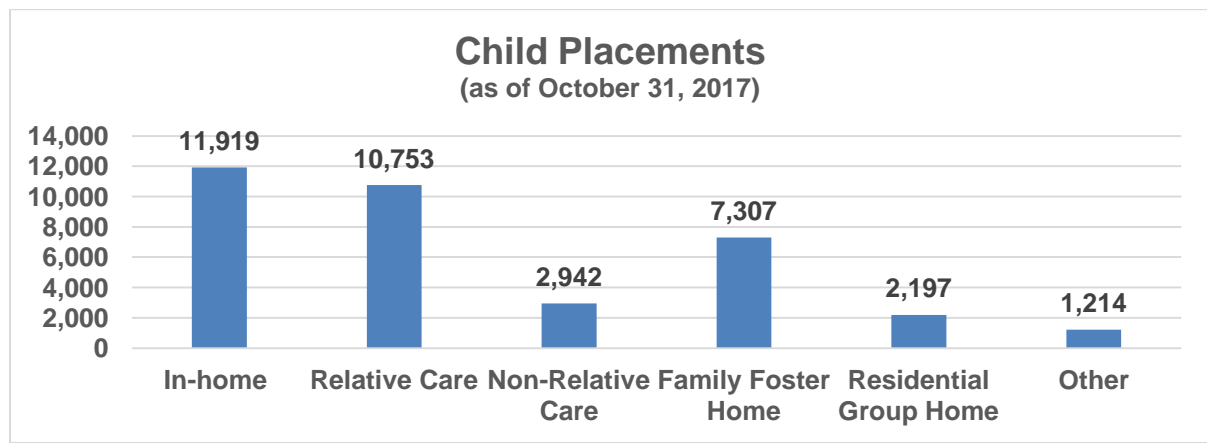
Dependency Proceeding	Description of Process	Controlling Statute
Removal	A child protective investigation determines a child's home is unsafe, and the child is removed.	s. 39.401, F.S.
Shelter Hearing	A shelter hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	A petition for dependency occurs within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arrestment Hearing and Shelter Review	An arrestment and shelter review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	An adjudicatory trial is held within 30 days of arrestment. The judge determines whether a child is dependent during this trial.	s. 39.507, F.S.
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arrestment or 30 days of adjudication. The judge reviews the case plan and placement of the child. The judge orders the case plan for the family and the appropriate placement of the child.	s. 39.506, F.S. s. 39.521, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.
Petition for Termination of Parental Rights	Once the child has been out of home for 12 months, if DCF determines that reunification is no longer a viable goal, 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. 39.805, F.S. s. 39.806, F.S. s. 39.810, F.S.
Advisory Hearing	This hearing is set 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 Trial	An adjudicatory trial shall be set 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.

<sup>16</sup> S. 39.522, F.S.

<sup>17</sup> S. 39.621, F.S.

## Placements of Children in the Child Welfare System

DCF places children under departmental supervision in a variety of settings, and a recent accounting of those placements is reflected below.



Source: Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, November 2017, p. 29-30.

### *In-Home and Out-of-Home Care*

DCF is required to administer a system of care that endeavors to keep children with their families and provides interventions to allow children to remain safely in their own homes.<sup>18</sup> 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 October 31, 2017, 11,909 children were receiving services in their homes.<sup>19</sup>

When a child protective investigator determines that in-home services are not enough to allow a child to safely remain in his or her home, the investigator removes the child from his or her home and places the child with a safe and appropriate temporary placement. These temporary placements, referred to as out-of-home care, provide housing and services to children until they can return home to their families or achieve permanency with other families through adoption or guardianship.<sup>20</sup> Out-of-home placements range from temporary placement with a family member to a family foster home to a residential child-caring agency to a permanent adoptive placement with a family previously unknown to the child.<sup>21</sup> As of October 31, 2017, 24,576 children were in out-of-home care.<sup>22</sup>

CBCs must place all children in out-of-home care in the most appropriate available setting after conducting an assessment using child-specific factors.<sup>23</sup> Legislative intent is to place children in a family-like environment when they are removed from their homes.<sup>24</sup> When possible, child protective investigators and lead agency case managers place children with relatives or responsible adults whom they know and with whom they have a relationship. These out-of-home placements are referred to as

<sup>18</sup> *Supra* note 1.

<sup>19</sup> Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, November 2017, p. 29, available at [http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_Nov2017.pdf](http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_Nov2017.pdf) (last accessed January 9, 2018).

<sup>20</sup> Office of Program Policy and Government Accountability, Research Memorandum, Florida's Residential Group Care Program for Children in the Child Welfare System (December 22, 2014) (on file with the Children, Families & Seniors Subcommittee).

<sup>21</sup> *Supra* note 1.

<sup>22</sup> *Supra* note 19.

<sup>23</sup> Child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement. (Rule 65C-28.004, F.A.C.)

<sup>24</sup> S. 39.001(1), F.S.

relative and non-relative caregivers. When a relative or non-relative caregiver placement is not possible, case managers try to place children in family foster homes licensed by DCF.

Some children have extraordinary needs, such as multiple placement disruptions, behavioral health problems, juvenile justice involvement, or disabilities, which may require case managers to place them in residential group care. The primary purpose of residential group care is to provide a setting that addresses the unique needs of children and youth who require more intensive services than a family setting can provide.<sup>25</sup>

### *Relatives and Non-Relative Caregivers*

Research indicates that children in the care of relatives and non-relatives, such as grandparents or family friends, benefit from increased placement stability compared to children placed in general foster care. As opposed to children living in foster care, children living in relative and non-relative care are more likely to remain in their own neighborhoods, be placed with their siblings, and have more consistent interactions with their birth parents than do children who are placed in foster care, all of which might contribute to less disruptive transitions into out-of-home care.<sup>26</sup> Relative and non-relative caregivers are not required to be licensed but do undergo a walk-through of their homes to determine if the homes are appropriate to place the children.

Florida created the Relative Caregiver Program in 1998<sup>27</sup> to provide financial assistance to eligible relatives caring for children who would otherwise be in the foster care system. In 2014, the Legislature expanded the program to include nonrelatives with whom a child may have a close relationship but are not blood relatives or relatives by marriage.<sup>28</sup> Those nonrelatives are eligible for financial assistance if they are able and willing to care for the child and provide a safe, stable home environment. The court must find that a proposed placement is in the best interest of the child.<sup>29</sup>

### *Family Foster Homes*

A family foster home means a licensed private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Foster homes are licensed<sup>30</sup> and are inspected regularly, and foster parents go through a rigorous interview and training process before being approved.<sup>31</sup> Such homes also include specialized foster homes for children with special needs.<sup>32</sup>

### *Residential Group Care*

Residential group care (RGC) placements are licensed by DCF as residential child-caring agencies<sup>33</sup> that provide staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged.<sup>34</sup> These include maternity homes, runaway shelters, group homes, and emergency shelters.<sup>35</sup> The two primary models of group care are the shift model, with staff working in shifts providing 24-hour supervision, and the family model, which has a

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<sup>25</sup> S. 39.521, F.S.

<sup>26</sup> David Rubin and Downes, K., et al., The Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care (June 2, 2008), available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2654276/> (last accessed January 10, 2018).

<sup>27</sup> S. 39.5085, F.S.

<sup>28</sup> Ch. 2014-224, Laws of Florida.

<sup>29</sup> *Supra* note 15.

<sup>30</sup> *Supra* note 1.

<sup>31</sup> Florida Department of Children and Families, Fostering Definitions, available at <http://www.myflfamilies.com/service-programs/foster-care/definitions> (last accessed January 10, 2018).

<sup>32</sup> *Supra* note 1.

<sup>33</sup> *Supra* note 20.

<sup>34</sup> *Supra* note 1.

<sup>35</sup> *Id.*

house parent or parents who live with and are responsible for 24-hour care of children within the group home.<sup>36</sup>

Lead agencies must consider placement in RGC if the following specific criteria are met:

- The child is 11 or older;
- The child has been in licensed family foster care for six months or longer and removed from family foster care more than once; and
- The child has serious behavioral problems or has been determined to be without the options of either family reunification or adoption.<sup>37</sup>

In addition, lead agencies must consider information from several sources, including psychological evaluations, professionals with knowledge of the child, and the desires of the child concerning placement.<sup>38</sup> If the lead agency case managers determine that RGC would be an appropriate placement, the child must be placed in RGC if a bed is available. Children who do not meet the specified criteria may be placed in RGC if it is determined that such placement is the most appropriate for the child.<sup>39</sup>

Not only does RGC provide a placement option, it can also serve as a treatment component of the children's mental health system of care.<sup>40</sup> Children in RGC with behavioral health needs receive mental health, substance abuse, and support services that are provided through Medicaid-funded Behavioral Health Overlay Services.<sup>41</sup> Residential group homes also directly employ or contract with therapists and counselors.<sup>42</sup>

Because RGC can be part of a dependent child's mental health system of care, it is one of the most expensive placement options for children in the child welfare system. Unlike rates for foster parents and relative caregivers, which are set in statute or by rule, CBCs annually negotiate rates for RGC placements with providers.

### *Extended Foster Care*

In 2013, the Legislature established the framework for extended foster care, which applies to young adults aged 18 to 21 who have not achieved permanency prior to their 18<sup>th</sup> birthdays.<sup>43</sup> The program builds on independent living assistance services that were previously available to young adults who "aged-out" of the foster care system.<sup>44</sup> Section 39.6251, F.S., sets the parameters for extended foster care services, which are available to young adults who are living in licensed care on their 18<sup>th</sup> birthday and who are:

- 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 for at least 80 hours per month; or,

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<sup>36</sup> *Supra* note 20.

<sup>37</sup> S. 39.523(1), F.S.

<sup>38</sup> *Id.*

<sup>39</sup> S. 39.523(4), F.S.

<sup>40</sup> Richard Barth, *Institutions vs. Foster Homes: The Empirical Base for the Second Century of Debate*. Chapel Hill, NC: University of North Carolina, School of Social Work, Jordan Institute for Families (June 17, 2002), available at:

[http://www.researchgate.net/publication/237273744\\_vs.\\_Foster\\_Homes\\_The\\_Empirical\\_Base\\_for\\_a\\_Century\\_of\\_Action](http://www.researchgate.net/publication/237273744_vs._Foster_Homes_The_Empirical_Base_for_a_Century_of_Action).

<sup>41</sup> Office of Program Policy and Government Accountability, Research Memorandum, Florida's Child Welfare System: Out-of-Home Care (November 12, 2015) (on file with the Children, Families & Seniors Subcommittee).

<sup>42</sup> *Id.*

<sup>43</sup> Ch. 2013-178, L.O.F.

<sup>44</sup> For additional detail, see *Bill Analysis and Fiscal Impact Statement of CS/SB 1036*, Senate Appropriations Committee, April 21, 2013. Available at

<http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=2013s1036.ap.DOCX&DocumentType=Analysis&BillNumber=1036&Session=2013> (last accessed January 17, 2018).

- Unable to participate in programs or activities listed above full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation.<sup>45</sup>

Program eligibility is also contingent on the living situation of a young adult. Participants are required to live independently, but in an environment in which they are provided supervision, case management, and support services by either DCF or a relevant CBC. Examples of such an environment include college dormitories, shared housing, and foster family homes.<sup>46</sup>

### *Licensure*

DCF is required to license most out-of-home placements, including family foster homes, residential child-caring agencies (residential group care), and child-placing agencies.<sup>47</sup>

The following placements do not require licensure under the licensing statute:

- Relative caregivers,<sup>48</sup>
- Non-relative caregivers,<sup>49</sup>
- An adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption,<sup>50</sup> and
- Persons or neighbors who care for children in their homes for less than 90 days.<sup>51</sup>

Licensure involves meeting rules and regulations pertaining to:

- The operation, conduct, and maintenance of these homes,
- The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served,
- 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,
- The ratio of staff to children required to provide adequate care and supervision of the children served,
- The maximum number of children in the home, and
- The good moral character based upon screening, education, training, and experience requirements for personnel.<sup>52</sup>

These licensure standards are the minimum requirements that must be met to care for children within the child welfare system. The department must issue a license for those homes and agencies that meet the minimum licensure standards.<sup>53</sup> However, the issuance of a license does not require a lead agency to place a child with any home or agency.<sup>54</sup>

### Title IV-E Funding for Child Welfare

While states bear primary responsibility for child welfare, Congress appropriates funds to states through a variety of funding streams for services to children who have suffered maltreatment. One of

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<sup>45</sup> S. 39.6251(2), F.S.

<sup>46</sup> S. 39.6251(4), F.S.

<sup>47</sup> *Supra* note 1.

<sup>48</sup> S. 409.175(1)(e), F.S.

<sup>49</sup> *Id.*

<sup>50</sup> S. 409.175(4)(d), F.S.

<sup>51</sup> S. 409.175(1)(e), F.S.

<sup>52</sup> *Supra* note 1.

<sup>53</sup> S. 409.175(6)(h), F.S.

<sup>54</sup> S. 409.175(6)(i), F.S.



these funding streams is established in Title IV-E of the Social Security Act. Title IV-E provides federal reimbursement to states for a portion of the cost of foster care, adoption assistance, and (in states electing to provide this kind of support) kinship guardianship assistance on behalf of each child who meets federal eligibility criteria. Title IV-E also authorizes funding to support services to youth who “age out” of foster care, or are expected to age out without placement in a permanent family. While Title IV-E funding is an entitlement, eligibility is limited to those children who:

- Are from a home with very low income (less than 50% of federal poverty level in most states),
- Have been determined by a judge to need certain care,
- Are living in a licensed family foster home or a “child care institution”, and
- Are under 18 years old, unless the state has included older youth in its Title IV-E plan.

A Congressional Research Service analysis estimates that less than half of the children in foster care met Title IV-E foster care eligibility criteria in 2015, which signals the relative restrictiveness of traditional Title IV-E funding.<sup>55</sup>

In addition to narrow eligibility, Title IV-E places strict limits on the use of federal matching funds. Eligible Title IV-E expenditures include:

- Foster care maintenance payments (for the child’s room and board);
- Caseworker time to perform required activities on behalf of eligible children in foster care or children at imminent risk of entering foster care (e.g., finding a foster care placement for a child and planning services needed to ensure a child does not need to enter care, is reunited with his or her parents, has a new permanent home, or is otherwise prepared to leave foster care);
- Program-related data system development and operation, training, and recruitment of foster care providers; and
- Other program administration costs.<sup>56</sup>

The federal government pays a share of these costs ranging from 50% to 83%, depending on the nature of the expenditure, and additionally in regard to foster care maintenance payments, the state’s per capita income.<sup>57</sup> Florida was projected to spend an estimated \$182 million in Title IV-E funds in Fiscal Year 2016-17, about 15% of total child welfare spending.<sup>58</sup>

However, Title IV-E funds generally cannot be used for an array of services that may be vital to the foster care population, such as family support services, intensive in-home services, and mental health and substance abuse services. While Title IV-E is an entitlement program that may be used to pay a portion of the foster care maintenance costs of all eligible children, it cannot be used to provide services to either prevent out-of-home placement or to hasten a child’s return home.<sup>59</sup>

### Title IV-E Waivers

In 1994, Congress authorized the U.S. Department of Health and Human Services (HHS) to approve state demonstration projects made possible by waiving certain provisions of Title IV-E. This provided states flexibility in using federal funds for services promoting safety, well-being, and permanency for

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<sup>55</sup> Emelie Stoltzfus, *Child Welfare: An Overview of Federal Programs and their Current Funding*, CONGRESSIONAL RESEARCH SERVICE, January 10, 2017, p. 13-15, available at <https://fas.org/sgp/crs/misc/R43458.pdf> (last accessed November 27, 2017).

<sup>56</sup> *Id.*, at 14-15.

<sup>57</sup> *Id.*

<sup>58</sup> Department of Children and Families, *Child Welfare Funding Basics for Florida in Light of Our Title IV-E Demonstration Waiver and the Family First Prevention Services Act of 2016 - HR 5456*, presented at the Florida Coalition for Children Foundation’s 2016 Annual Conference (on file with the Children, Families & Seniors Subcommittee).

<sup>59</sup> U.S. Department of Health and Human Services, Administration for Children and Families. *Synthesis of Findings: Title IV-E Flexible Funding Child Welfare Waiver Demonstrations*. September 2005. Available at [https://www.acf.hhs.gov/sites/default/files/cb/synthesis\\_of\\_findings\\_assisted\\_guardianship\\_flexible\\_funding.pdf](https://www.acf.hhs.gov/sites/default/files/cb/synthesis_of_findings_assisted_guardianship_flexible_funding.pdf) (last accessed February 12, 2018).

children in the child welfare system.<sup>60</sup> HHS may waive compliance with standard Title IV-E requirements and instead allow states to establish projects that allow them to serve children and provide services that are not typically eligible. To do so, states must enter into an agreement with the federal government outlining the terms and conditions to which the state will adhere in using the federal funds. The states also agree to evaluate the projects.<sup>61</sup> Currently 26 states have approved projects, including Florida.<sup>62</sup>

### *Florida's Title IV-E Waivers*

Florida's original Title IV-E waiver was initially effective October 1, 2006, and was to extend for five years. Key features of the waiver were:

- A capped allocation of funds, similar to a block grant, distributed to community-based care lead agencies for service provision;
- Flexibility to use funds for a broader array of services beyond out-of-home care; and
- Ability to serve children who did not meet Title IV-E criteria.<sup>63</sup>

The original waiver tested the hypotheses that under this approach<sup>64</sup>:

- An expanded array of community-based care services would become available;
- Fewer children would need to enter out-of-home care;
- Child outcomes would improve; and,
- Out-of-home care costs would decrease while expenditures for in-home and preventive services would increase.

Results indicated that the waiver generally achieved these goals, though evaluators noted areas of improvement available regarding the ongoing assessment of fathers' needs; assessment of children's dental, educational, and physical health needs and provision of needed services; frequency of case manager visits with parents; and engagement of fathers in services.<sup>65</sup>

The federal government extended Florida's original waiver to 2014, then approved a renewal retroactively beginning October 1, 2013. The renewal is authorized until September 30, 2018. The renewal waiver's terms and conditions include the following goals:

- Improving child and family outcomes through flexible use of Title IV-E funds;
- Providing a broader array of community-based services and increasing the number of children eligible for services; and
- Reducing administrative costs associated with the provision of child welfare services by removing current restrictions on Title IV-E eligibility and on the types of services that may be paid for using Title IV-E funds.<sup>66</sup>

Like the original waiver, the renewal waiver also involves a capped allocation of funds, flexibility to use funds for a wider array of services, and expanded eligibility for children.<sup>67</sup> The renewal waiver also

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<sup>60</sup> Amy C. Vargo et al., *Final Evaluation Report, IV-E Waiver Demonstration Evaluation, SFY 11-12*, March 15, 2012, p. 5, available at <http://www.centerforchildwelfare.org/kb/LegislativeMandatedRpts/IV-EWaiverFinalReport3-28-12.pdf> (last accessed January 8, 2018).

<sup>61</sup> 42 U.S.C. §1320a-9(f).

<sup>62</sup> *Supra* note 60, at 15.

<sup>63</sup> *Supra* note 60, at 5-6.

<sup>64</sup> Armstrong, M.I., Vargo, A.C., Jordan, N., Sharrock, P., Sowell, C, Yampolskaya, S., Kip, S. (2009). Evaluation brief on the status, activities and findings related to Florida's IV-E waiver demonstration project: Two years post-implementation. (Florida's IV-E Waiver Demonstration Project – Evaluation Brief Series, 250-2). Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute.

<sup>65</sup> *Id.* at 2-3.

<sup>66</sup> *Demonstration Project Terms and Conditions*, p. 4, available at <http://www.centerforchildwelfare.org/kb/GenIVE/WaiverTERms2013-2018.pdf> (last accessed November 16, 2017).

<sup>67</sup> *Waiver Authority*, p.1, available at <http://www.centerforchildwelfare.org/kb/GenIVE/WaiverTERms2013-2018.pdf> (last accessed January 8, 2017).

required that the state procure an independent evaluation of the processes and outcomes under the waiver. The University of South Florida was chosen to complete these evaluations, which are available on the DCF website.<sup>68</sup>

### *Sunset of Waiver and Non-Renewal*

Florida's waiver is due to end September 30, 2018, but can be renewed for one more year. However, federal law prohibits the federal government from establishing new waivers or allowing current waivers to operate after September 30, 2019.<sup>69</sup> Thus Florida will revert to more restrictive (non-waived) Title IV-E federal funding requirements beginning in 2018, or in 2019 if the waiver is renewed for an additional year.

When the waiver expires, the state will be required to revert to a traditional Title IV-E service model, which will both eliminate federal support for many current services and create a significant funding deficit for the state. DCF estimates that expiration of the waiver will lead to an operating deficit of roughly \$70-\$90 million per year over the next five fiscal years.<sup>70</sup>

### Family First Prevention Services Act

On February 9, 2018, Congress enacted and the president signed into law H.R. 1862, also known as the Bipartisan Budget Act of 2018.<sup>71</sup> The bill is primarily a continuing resolution that funds the federal government through March 23, 2018, but it also includes the substance of the Family First Prevention Services Act (FFPSA), a bill that was introduced in both the 2016-17 and 2017-18 congressional terms.

The FFPSA has permanent provisions impacting federal support for child welfare and foster care. Unlike the previous Title IV-E provisions which primarily funded out-of-home care for families with very low incomes, the FFPSA gives states the ability to earn federal Title IV-E matching funds in support of certain prevention services provided on a time-limited basis that avoid an out-of-home placement for children without regard to family income. The services that states can be reimbursed for providing to children and their families meeting eligibility requirements address mental health, substance abuse, family counseling, and parent skills training. However, the FFPSA also introduces new limits on federal funding for placements in congregate settings.<sup>72</sup>

The FFPSA also includes funding opportunities for states that establish and operate kinship navigator programs.<sup>73</sup> These programs would offer information to help relative caregivers and fictive kin learn about and access the range of support services available to them and children in their care provided by public, private, community, and faith-based organizations.<sup>74</sup>

As Florida provides these types of preventative services to families in the child welfare system, the state may be able to offset some of the costs associated with the expiration of the Title IV-E waiver by taking advantage of the new and enhanced federal funds available under the FFPSA. Florida also uses Title IV-E funds for placements in congregate settings. How much additional federal revenue the state

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<sup>68</sup> Department of Children and Families, *IV-E Waiver Evaluation Reports*, available at <http://centerforchildwelfare.fmhi.usf.edu/IVEReport.shtml> (last accessed January 9, 2018).

<sup>69</sup> 42 U.S.C. § 1320a-9(d)(2).

<sup>70</sup> Department of Children and Families. Agency bill analysis, dated December 6, 2017. (On file with the Children, Families & Seniors Subcommittee).

<sup>71</sup> H.R. 1862 of 2018. P.L. 115-123.

<sup>72</sup> John Kelly. "One Month of Spending, Years of Child Welfare Reform." *Chronicle of Social Change*. February 9, 2018. Available at <https://chronicleofsocialchange.org/child-welfare-2/one-month-spending-years-child-welfare-reform> (last accessed February 12, 2018).

<sup>73</sup> *Supra* note 71.

<sup>74</sup> For more information, see "Kinship Navigator Programs – Summary & Analysis." Grandfamilies.org. Available at <http://www.grandfamilies.org/Topics/Kinship-Navigator-Programs/Kinship-Navigator-Programs-Summary-Analysis> (last accessed February 12, 2018).

will be able to earn under the FFPSA is unknown at present. The Congressional Budget Office estimates that the FFPSA will result in new federal outlays nationally over the next ten years of approximately \$1.5 billion for foster care prevention services (an average of \$150 million per year, nationwide) and programs and approximately \$125 million in Title IV-E payments for evidenced-based kinship navigator programs over the next ten fiscal years (an average of \$12.5 million per year, nationwide).<sup>75</sup> The FFPSA may partially reduce the amount of the deficit Florida will experience with the loss of its Title IV-E waiver.

### Kinship Care and Guardianship

Kinship care has been defined as "the full-time nurturing and protection of children who must be separated from their parents, by relatives, members of their tribes or clans, godparents, stepparents, or other adults who have a kinship bond with a child."<sup>76</sup> The benefits of permanent placements with relatives are well established. Evidence demonstrates that children in kinship care:

- Experience less trauma as a result of being separated from parents and placed with strangers;
- Are more likely to be placed together with their siblings;
- Experience fewer behavioral problems than children in traditional foster care;
- Are able to stay connected to their extended family networks and maintain cultural and familial ties; and,
- Are less likely to be on psychotropic medication.<sup>77</sup>

Moreover, recent research indicates that children placed with relative guardians are more likely to achieve permanency goals with those guardians than children placed in other forms of foster care.<sup>78</sup>

### Relative and Non-Relative Care in Florida

Florida law already maintains strong preferences for relative guardians throughout its child welfare system of care. Section 39.5085, F.S., includes guidelines for relative care and indicates that DCF should endeavor to:

- **Recognize family relationships** in which a grandparent or other relative is the head of household that includes a child otherwise at risk of foster care placement.
- **Enhance family preservation and stability** by recognizing that most children in such placements with grandparents and other relatives do not need intensive supervision of the placement by the courts or by the department. (emphasis added)<sup>79</sup>

There are four options for placement with relatives or fictive kin in Florida, which vary in the amount of funding and fund source and the relationship of the caregiver to the child. These options are:

- Relative Caregiver program (relative component);
- Relative Caregiver program (non-relative component);
- TANF Child-only funding; or,
- Placement or permanent guardianship without funding.

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<sup>75</sup> Congressional Budget Office. "Estimated Direct Spending and Revenue Effects of Division E of Senate Amendment 1930, the Bipartisan Budget Act of 2018." February 8, 2018. Available at <https://www.cbo.gov/publication/53557> (last accessed February 12, 2018).

<sup>76</sup> Child Welfare League of America. *Kinship care: A natural bridge*. Washington, DC: 1994.

<sup>77</sup> MaryLee Allen and Jennifer Miller. "Kinship Care and the Fostering Connections Act." Perspectives on Fostering Connections: A Series of White Papers on the Fostering Connections to Success and Increasing Adoptions Act of 2008. February 2013. Available at <http://www.childrensdefense.org/library/data/state-data-repository/perspectives-on-fostering.pdf> (last accessed January 9, 2018).

<sup>78</sup> Tessa Bell and Elisa Romano. "Permanency and Safety Among Children in Foster Family and Kinship Care: A Scoping Review." *Trauma, Violence, & Abuse* Vol 18, Issue 3, pp. 268 – 286. October 11, 2015.

<sup>79</sup> S. 39.001(1)(b)4.f. and S. 39.001(1)(b)4.j., F.S.

### *Relative Caregiver Program*

The Legislature established the Relative Caregiver Program (RCP) in 1998, which provides temporary cash assistance to individuals who meet eligibility rules and have custody of a relative child under age 18 who has been placed in his or her home through the dependency system.<sup>80</sup> In 2014, the program expanded to include to nonrelatives with whom a child may have a close relationship, though its name remained the same.<sup>81</sup>

The intent of the RCP is to provide support to relative caregivers who would otherwise struggle with the financial impact of taking children into their homes. The program is funded with a combination of federal revenues under the Temporary Assistance to Needy Families (TANF) program and state revenues (particularly for the non-relative component, which does not qualify for TANF funding).<sup>82</sup> At present, the basic monthly payment amount to relatives and non-relative caregivers under the program is linked to the age of the child under care:

- Age 0 through age 5 - \$242 per month;
- Age 6 through age 12 - \$249 per month;
- Age 13 through age 18 - \$298 per month.<sup>83</sup>

Relative and nonrelative caregivers may become eligible for these subsidies without having to meet foster care licensure standards.<sup>84</sup>

### *TANF Child-Only Funding*

The TANF program is a block grant that provides states, territories, and tribes with federal funds each year to cover benefits, administrative expenses, and services targeted to needy families. States receive block grants to operate their individual programs and to accomplish the goals of the TANF program. Florida's Temporary Cash Assistance (TCA) Program is funded through the TANF block grant and provides cash assistance to needy families with children who meet eligibility requirements.

Children and caregivers who do not meet the eligibility criteria for the Relative Caregiver Program may be eligible for child-only subsidies under TCA if:

- The child has not been adjudicated dependent, but is living with a relative,<sup>85</sup> or
- The child still resides with his or her custodial parent, but that parent is not eligible to receive TCA.<sup>86</sup>

Financial support from the TANF child-only program is limited to relatives and provides a lower monthly subsidy than the Relative Caregiver Program.<sup>87</sup>

### *Permanent Guardianship without Funding*

It is also possible for caregivers to become permanent guardians without any financial assistance. Section 39.6221, F.S., sets the criteria by which an individual may seek permanent guardianship of a

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<sup>80</sup> S. 39.5085(2), F.S.

<sup>81</sup> *Supra* note 28.

<sup>82</sup> Some children placed with a relative guardian are eligible for the TANF "child only" program. For more information, see Department of Children and Families, *Temporary Assistance to Needy Families State Plan Renewal: October 1, 2014 – September 31, 2017*. Available at <http://www.dcf.state.fl.us/programs/access/docs/TANF-Plan.pdf> (last accessed January 17, 2018).

<sup>83</sup> 65C-28.008, F.A.C.

<sup>84</sup> S. 39.5085(2)(c), F.S.

<sup>85</sup> Grandparents or other relatives receiving child-only payments are not subject to the TANF work requirement or the TANF time limit.

<sup>86</sup> Child-only families also include situations where a parent is receiving federal Supplemental Security Income (SSI) payments, is not a U.S. citizen and is ineligible to receive TCA due to his or her immigration status, or has been sanctioned for noncompliance with work requirements.

<sup>87</sup> *Supra* note 82.

child. In cases where reunification or adoption is not in the best interest of a child, permanent guardianship may be considered by the court.<sup>88</sup> For families and children who do not meet the criteria of the Relative Caregiver Program or the TANF child-only criteria, unsubsidized guardianship may be established. The following chart summarizes the guardianship options available at present.

	Relative Caregiver Program		TANF Child-Only	Unsubsidized Guardianship
	Relative Component	Non-Relative Component		
<b>Statutory Authority</b>	S. 39.5085, F.S.	S 39.5085, F.S.	S. 414.045, F.S. 45 CFR Part 233	S. 39.6221, F.S.
<b>Relationship to Child</b>	Relative <i>"within the fifth degree by blood or marriage"</i>	Non-relative	Relative	Relative or non-relative
<b>Fund Source</b>	State and federal	State only	State and federal	NA
<b>Benefit Amount (monthly)</b>	Age 0 - 5: \$242 Age 6 - 12: \$249 Age 13 - 18: \$298	Age 0 - 5: \$242 Age 6 - 12: \$249 Age 13 - 18: \$298	\$95 - \$180	NA

#### Title IV-E Guardianship Assistance Program

Congress approved the Fostering Connections and Increasing Adoptions Act in 2008.<sup>89</sup> 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 the children's legal guardians.<sup>90</sup> The GAP reflects a significant body of research establishing the importance of linking foster children with relatives and other close acquaintances.

The GAP provides support for children who meet traditional Title IV-E eligibility criteria, so the establishment of a state GAP is not contingent on the continuation of a Title IV-E waiver. However, if Florida's existing Title IV-E waiver cannot be renewed beyond 2019, establishment of a state GAP framework would allow the state to receive other Title IV-E funds to support guardianship, which could mitigate the aggregate loss of Title IV-E funds. Establishment of a state GAP would also allow DCF to provide caregivers who establish legal guardianship with an improved monthly stipend relative to existing state programs.

Provided that a child meets select Title IV-E eligibility standards, he or she may also be eligible for a GAP subsidy if:

- The child has been removed from his or her family's home pursuant to a voluntary placement agreement or as a result of a judicial determination that allowing the child to remain in the home would be contrary to the child's welfare;
- The child is eligible for federal foster care maintenance payments under Title IV-E of the Social Security Act for at least six consecutive months while residing in the home of the prospective relative guardian who is licensed or approved as meeting the licensure requirements as a foster family home;

<sup>88</sup> S. 39.6221, F.S.

<sup>89</sup> H.R. 6893 of 2008. P.L. 110-351.

<sup>90</sup> Mark F. Testa and Leslie Cohen. "Pursuing Permanence for Children in Foster Care: Issues and Options for Establishing a Federal Guardianship Assistance Program in New York State." School of Social Work, The University of North Carolina at Chapel Hill. June 2010. Available at <http://ocfs.ny.gov/main/reports/Pursuing%20Permanence%20for%20Children%20in%20Foster%20Care%20June%202010.pdf> (last accessed January 8, 2018).

- Return home or adoption are not appropriate permanency options for the child;
- The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child; and,
- The child has been consulted regarding the guardianship arrangement (applicable to children age 14 and older).<sup>91</sup>

Likewise, a prospective guardian must meet certain conditions to qualify for a GAP subsidy. He or she:

- Must be the eligible child's relative or close fictive kin<sup>92</sup>;
- Must have undergone fingerprint-based criminal record checks and child abuse and neglect registry checks;
- Must be a licensed foster parent and approved for guardianship assistance by the relevant state department;
- Must display a strong commitment to caring permanently for the child; and,
- Must have obtained legal guardianship of the child after the guardianship assistance agreement has been negotiated and finalized with the department.<sup>93</sup>

Federal guidance on GAP implementation recognizes that many relative caregivers may find the foster care licensure process burdensome. Accordingly, states are granted the authority to determine what constitutes a "non-safety" licensure standard and, on a case-by-case basis, offer waivers to those standards when appropriate.<sup>94</sup>

### *GAPs in Other States*

As of May 2017, 35 states, the District of Columbia, and 8 Native American tribes or tribal consortia had established federally-subsidized guardianship assistance programs.<sup>95</sup> The earliest federally-subsidized GAPs were implemented in 2009 in Maine, Missouri, and Oregon.<sup>96</sup>

California's Kinship Guardianship Assistance Payment (Kin-GAP) was originally established as a fully state-funded program in 2000. In many ways, the original program was similar to Florida's Relative Caregiver program. Kin-GAP initially provided relative guardians with a subsidy linked to a child's age that was equivalent to the state foster care rate. In 2011, the state also adopted a GAP meeting the federal Title IV-E standards and the programs now operate in tandem, with the state-funded guardianship assistance generally directed towards guardians and children not meeting the federal eligibility criteria.<sup>97</sup>

Michigan enacted state-funded guardianship legislation in 2008, prior to passage of the Fostering Connections to Success and Increasing Adoptions Act, and delayed implementation of its state program to provide linkage to the federal requirements for Title IV-E GAP. The program was ultimately

<sup>91</sup> 42 U.S.C. § 673(d)(3)(A).

<sup>92</sup> Federal guidance gives states the flexibility to use inclusive definitions of the term "relative". U.S. Department of Health and Human Services, Administration for Children and Families, Program Instruction ACYF-CB-PI-10-01, February 18, 2010.

<sup>93</sup> 42 U.S.C. § 671(a)(20)(D) and 673(d)(3)(A).

<sup>94</sup> U.S. Department of Health and Human Services, Agency for Children and Families, Program Instruction U.S. Department of Health and Human Services, Agency for Children and Families, Program Instruction ACYF-CB-PI-10-01, July 9, 2010.

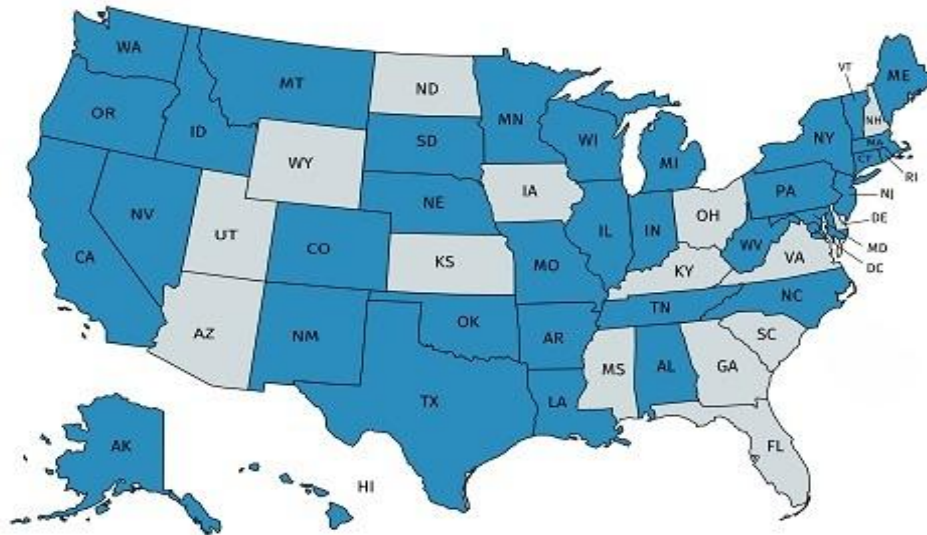
<sup>95</sup> Grandfamilies.org. "Subsidized Guardianship – Summary and Analysis." Available at <http://www.grandfamilies.org/Topics/Subsidized-Guardianship/Subsidized-Guardianship-Summary-Analysis> (last accessed January 16, 2008).

<sup>96</sup> Children's Defense Fund. *The Title IV-E Guardianship Assistance Program (GAP): An Update on Implementation and Moving GAP Forward*. September 2015. Available at <http://www.grandfamilies.org/Portals/0/Title%20IV-E%20GAP%20Update.pdf> (last accessed January 16, 2018).

<sup>97</sup> California Department of Social Services. *All County Letter No. 11-15: New Kinship Guardianship Assistance Payment (KIN-GAP) Program Requirements*. January 31, 2011. Available at [http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2011/11\\_15.pdf](http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2011/11_15.pdf) (last accessed January 16, 2018).

implemented in 2011. As of February 2015, 807 children (492 Title IV-E GAP and 315 state GAP) were receiving guardianship assistance with relatives, foster parents, or both.<sup>98</sup>

### States with GAPs – May 2017<sup>99</sup>



Note: States shaded in blue have established federally-subsidized GAP programs

### Adoption Assistance

DCF provides financial assistance to families who adopt children with special needs or who are otherwise difficult to place in an adoptive home.<sup>100</sup> This assistance is made available in several ways. DCF may grant a maintenance adoption subsidy to families, which is an annual payment intended to subsidize the costs of caring for an eligible child.<sup>101</sup> The department may also offer a subsidy to families for any medical costs associated with a child's specific needs.<sup>102</sup> Lastly, DCF is authorized to offer a nonrecurring reimbursement to an eligible family for costs associated with formalizing an adoption, which may include attorney's fees, court costs, travel expenses, and other related costs.<sup>103</sup> Adoption assistance, in these various forms, may be offered to families who adopt an eligible child until the 18<sup>th</sup> birthday of such a child.<sup>104</sup>

### Criminal History and Background Screenings

In 1995, the Legislature created standard procedures for criminal history background screening of prospective state employees; ch. 435, F.S., outlines the screening requirements. These uniform requirements apply to a wide range of professions and agencies, not just DCF. The screenings required under ch. 435, F.S., apply to certain employees of and individuals licensed by, or employed by licensees or contractors of, the Department of Health (DOH), the Agency for Health Care Administration, and the Department of Juvenile Justice, among others.<sup>105</sup> There are two levels of

<sup>98</sup> *Supra* note 96.

<sup>99</sup> *Supra* note 95.

<sup>100</sup> S. 409.166, F.S.

<sup>101</sup> S. 409.166(4), F.S.

<sup>102</sup> *Id.*

<sup>103</sup> S. 409.166(7), F.S.

<sup>104</sup> *Supra* note 101.

<sup>105</sup> S. 435.02(5), F.S.



background screening. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website.<sup>106</sup> A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI). Both levels may include local criminal records checks through local law enforcement agencies.<sup>107</sup>

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.<sup>108</sup> Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.<sup>109</sup>

For both level 1 and 2 screenings, the employer must submit the information necessary for background screening to FDLE within five working days after receiving it.<sup>110</sup> Additionally, for both levels of screening, FDLE must perform a criminal history record check of its records.<sup>111</sup> For a level 1 screening, this is the only information searched, and once complete, FDLE responds to the employer or agency, which must then inform the employee whether screening has revealed any disqualifying information.<sup>112</sup> For level 2 screening, FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.<sup>113</sup> As with a level 1 screening, FDLE responds to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information. The person whose background is being checked must supply any missing criminal or other necessary information upon request to the employer or agency within 30 days after receiving the request for the information.<sup>114</sup>

If the employer or agency finds that an individual has a history containing at least one disqualifying offense, it must disqualify that individual from employment. However, under certain circumstances, the agency may grant an exemption from disqualification as provided in s. 435.07, F.S. These circumstances include:

- Felonies committed more than three years prior to the date of disqualification;
- Misdemeanors prohibited under any of the Florida Statutes cited in the chapter or under similar statutes of other jurisdictions;
- Offenses that were felonies when committed but are now misdemeanors;
- Findings of delinquency; or
- Commissions of acts of domestic violence as defined in s. 741.30, F.S.

Under s. 435.07, F.S., employees bear the burden of proving, by clear and convincing evidence, they should not be disqualified,<sup>115</sup> and have administrative hearing rights under ch. 120, F.S., for denials. However, the DCF may not remove a disqualification for or grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to any felony covered by s. 435.03, F.S. or s. 435.04, F.S.<sup>116</sup> The felonies included in these sections are numerous, but are primarily violent offenses or offenses in which children are the primary victims.

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<sup>106</sup> The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited March 15, 2016).

<sup>107</sup> S. 435.04, F.S.

<sup>108</sup> S. 435.05(1)(a), F.S.

<sup>109</sup> Ss. 435.03(1) and 435.04(1)(a), F.S.

<sup>110</sup> S. 435.05(1)(b)-(c), F.S.

<sup>111</sup> Id.

<sup>112</sup> S. 435.05(1)(b), F.S.

<sup>113</sup> S. 435.05(1)(c), F.S.

<sup>114</sup> S. 435.05(1)(d), F.S.

<sup>115</sup> The employee must set forth sufficient evidence of rehabilitation, such as the circumstances surrounding the criminal incident, the time period that has elapsed since the incident, the nature of the harm to the victim, and the history of the employee since the incident.

<sup>116</sup> S. 435.07(4), F.S.

## *Background Screenings in the Child Welfare System*

When DCF considers placement of a child in the child welfare system, it must conduct a criminal background screening on all persons under consideration for child placement. In this context, “all persons” means not only the prospective caregiver but any other individuals living in the household or home – including certain children. The department must conduct a records check through the State Automated Child Welfare Information System (SACWIS)<sup>117</sup> and a local and statewide criminal history records check on all persons, including parents, being considered by the department for placement of a child under this chapter, including all nonrelative placement decisions, and all members of the household, 12 years of age and older, of the person being considered.<sup>118</sup> This records check also requires submission of fingerprints to the FDLE for processing and forwarding to the FBI for state and national criminal history screening.<sup>119</sup>

Current law prohibits DCF from considering out-of-home placements with persons who have been convicted of a felony that falls within any of the following categories:

- Child abuse, abandonment, or neglect;
- Domestic violence;
- Child pornography or other felony in which a child was a victim of the offense; or,
- Homicide, sexual battery, or other felony involving violence, other than felony assault or felony battery when an adult was the victim of the assault or battery.<sup>120</sup>

Moreover, DCF may not place a child with a person other than a parent if that person has been convicted of assault, battery, or a drug-related offense within the previous five years.<sup>121</sup> In addition to other parameters on criminal history, these requirements prevent the placement of children with individuals who have a history of violent behavior. Pursuant to s. 39.0138(7), F.S., a person seeking placement of a child who is denied that placement due to the results of a criminal background screening has the burden of setting forth evidence to demonstrate that he or she will not present a danger to the child in question.

Likewise, DCF must determine the good moral character of personnel of the child welfare system<sup>122</sup> through background screenings, as provided for in ch. 435, F.S.<sup>123</sup> “Personnel” includes all owners, operators, employees, and volunteers working in a child-placing agency, family foster home, or residential child-caring agency.<sup>124</sup> Current law also requires family members and persons between the ages of 12 and 18 residing with the owner or operator of a family foster home or agency to have a delinquency record check but does not require fingerprinting of these individuals.<sup>125</sup>

### Child Care Licensure

Pursuant to ch. 402, F.S., DCF is also charged with regulating child care facilities, family day care homes, and large family child care homes, including those that are also school readiness providers. Current law requires these providers’ personnel to have good moral character based upon screening.<sup>126</sup> Additionally, some entities caring for children are not subject to regulation by DCF’s child care program

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<sup>117</sup> Florida’s SACWIS system is the Florida Safe Families Network (FSFN).

<sup>118</sup> S. 39.0138, F.S.

<sup>119</sup> Id.

<sup>120</sup> S. 39.0138(2), F.S.

<sup>121</sup> S. 39.0138(3), F.S.

<sup>122</sup> S. 409.175(5)(a), F.S.

<sup>123</sup> S. 409.175(2)(k), F.S.

<sup>124</sup> S. 409.175(2)(i), F.S.

<sup>125</sup> Id.

<sup>126</sup> S. 402.305(2), F.S.

but their personnel are subject to background screening.<sup>127</sup> Screening must be conducted as provided in ch. 435, F.S., using level 2 standards.<sup>128</sup>

### *Child Care and Development Block Grant*

The Office of Child Care (OCC) of the United States Department of Health and Human Services supports low-income working families by providing access to affordable, high-quality child care. OCC works with state, territory and tribal governments to provide support for children and their families to promote family economic self-sufficiency and to help children succeed in school and life through affordable, high-quality early care and afterschool programs.<sup>129</sup>

Florida's Office of Early Learning (OEL)<sup>130</sup> provides state-level administration for the school readiness program. The school readiness program is a state-federal partnership between OEL and the Office of Child Care of the United States Department of Health and Human Services.<sup>131</sup> The school readiness program receives funding from a mix of state and federal sources, including the federal Child Care and Development Block Grant (CCDBG), the federal Temporary Assistance for Needy Families (TANF) block grant, general revenue and other state funds.<sup>132</sup> The school readiness program gives subsidies for child care services and early childhood education to low-income families and for children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.

The program uses a variety of providers, such as licensed and unlicensed child care providers and public and nonpublic schools.<sup>133</sup> The DCF Office of Child Care Regulation, as the agency responsible for the state's child care provider licensing program, regulates many, but not all, child care providers that provide early learning programs.<sup>134</sup>

On November 19, 2014, the Child Care and Development Block Grant Act of 2014 was signed into law. The new law prescribed health and safety requirements that apply to school readiness program providers and required better information to parents and the general public about available child care choices.<sup>135</sup>

Based on the new requirements of the CCDBG, to continue to receive federal funding, states must require that screening for child care staff include searches of the National Sex Offender Registry, as well as searches of state criminal records, sex offender registry, and child abuse and neglect registry of any state in which the child care personnel resided during the preceding 5 years.<sup>136</sup> Additionally, a state must make ineligible for employment by school readiness providers any person who is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry<sup>137</sup> or has been convicted of:

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<sup>127</sup> For example, a child care facility that is an integral part of a church or parochial school meeting certain requirements. S. 402.316, F.S.

<sup>128</sup> *Id.*

<sup>129</sup> Office of Child Care, *What We Do*, available at <http://www.acf.hhs.gov/programs/occ/about/what-we-do> (last visited Nov. 13, 2015).

<sup>130</sup> In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education (DOE). The office is administered by an executive director and is fully accountable to the Commissioner of Education but shall independently exercise all powers, duties, and functions prescribed by law, as well as adopt rules for the establishment and operation of the School Readiness program and the Voluntary Prekindergarten Education Program. Section 1, 2013-252, L.O.F., *codified as s. 1001.213*, F.S.

<sup>131</sup> Part VI, ch. 1002, F.S.; 42 U.S.C. ss. 618 & 9858-9858q.

<sup>132</sup> Specific Appropriation 88, s. 2, ch. 2014-51, L.O.F.

<sup>133</sup> S. 1002.88(1)(a), F.S.

<sup>134</sup> See ss. 402.301-319, F.S., and Part VI, ch. 1002, F.S.

<sup>135</sup> Office of Child Care, *CCDF Reauthorization*, available at <http://www.acf.hhs.gov/programs/occ/ccdf-reauthorization> (last visited Nov. 13, 2015).

<sup>136</sup> Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658H(b).

<sup>137</sup> 42 U.S.C. s. 9858f(c)(1)(C).

- Murder;
- Child abuse or neglect;
- A crime against children, including child pornography;
- Spousal abuse;
- A crime involving rape or sexual assault;
- Kidnapping;
- Arson;
- Physical assault or battery;
- A drug-related offense committed during the preceding 5 years; or
- A violent misdemeanor committed as an adult against a child, including child abuse, child endangerment, sexual assault, or a misdemeanor involving child pornography.<sup>138</sup>

In 2016, the Legislature aligned the state's child care personnel screening standards with the CCDBG Act of 2014 requirements, specifying new screening requirements in ch. 402, F.S., and including these limitations on granting disqualifications in ch. 435, F.S.<sup>139</sup>

### *Children Left in Vehicles*

Heatstroke is one of the leading causes of pediatric deaths.<sup>140</sup> Since 1998, 742 children in the United States have died due to pediatric vehicular heatstroke.<sup>141</sup> Parents or other caregivers may accidentally forget a child in the backseat of a car, especially if there is a sudden change in that parent's or caregiver's routine.<sup>142</sup> The temperature of a hot vehicle can rise 20 degrees in just 10 minutes.<sup>143</sup> At an outside temperature of 60 degrees, the temperature inside a car can reach 110 degrees.<sup>144</sup> This heat is especially deadly for children because their body temperatures rise five times faster than adults.<sup>145</sup> In Florida, 83 children have died due to being left in hot vehicles since 1998. Of these deaths, 55 resulted from one or both parents leaving their child in the car.<sup>146</sup>

The Child Care Facility Handbook developed by DCF provides transportation standards that must be met by child care facilities, family day care homes, and large family child care homes.<sup>147</sup> As a condition of licensure, these facilities must maintain detailed logs when transporting children. The standards do not explicitly address the dangers of heatstroke but are intended to prevent scenarios in which a child is left unattended in a facility-operated vehicle.<sup>148</sup> When children are transported to and from the facility by parents or guardians, the facility must maintain daily attendance records. If a child is absent without prior notification from a parent or guardian, the facility must communicate with that child's parent or guardian within one hour of the child's scheduled arrival. If child care personnel are unable to reach the child's parent/guardian, facility staff must then notify emergency contacts.<sup>149</sup>

<sup>138</sup> 42 U.S.C. s. 9858f(c)(1).

<sup>139</sup> Ch. 2106-238 amended s. 435.07, F.S.

<sup>140</sup> National Highway Safety Administration, *Child Safety - Heatstroke*, <https://www.nhtsa.gov/road-safety/child-safety> (last visited Feb. 14, 2018).

<sup>141</sup> As of January 2, 2018. No Heatstroke.com, <http://noheatstroke.org/> (last visited Feb. 14, 2018).

<sup>142</sup> *Supra* note 140.

<sup>143</sup> Florida Department of Children and Families, *Summer Safety Tips – High Temperatures and Hot Cars*, available at <http://www.myflfamilies.com/service-programs/child-welfare/high-temperatures> (last visited Feb. 14, 2018).

<sup>144</sup> National Highway Safety Administration, *Tips to Avoid Child Heatstroke*, available at <https://www.nhtsa.gov/child-safety/tips-avoid-child-heatstroke> (last visited Feb. 14, 2018).

<sup>145</sup> *Supra* note 143.

<sup>146</sup> Spreadsheet provided by Jan Null, CCM Department of Meteorology & Climate Science, San Jose State University (on file with the Children, Families & Seniors Subcommittee).

<sup>147</sup> Department of Children and Families, *Child Care Facility Handbook*, last updated October 2017. Available at <http://www.dcf.state.fl.us/programs/childcare/docs/handbook/Facility%20Handbook.pdf> (last accessed February 17, 2018).

<sup>148</sup> *Id.*, at 14-15.

<sup>149</sup> *Id.*, at 59.

## Private Adoptions

Section 63.092(3), F.S., requires prospective adoptive parents in private adoption proceedings to undergo a preliminary home study to determine their suitability as adoptive parents.<sup>150</sup> A DCF-licensed child-placing agency or child-caring agency generally conducts the preliminary home study, which includes, among other things, a records check of the prospective parents in DCF's central abuse registry and counseling and education of the intended adoptive parents on adoptive parenting.<sup>151</sup>

Currently, the statute does not require the results of DCF's record check to be given directly to the entity conducting the preliminary home study. This provision also does not specify what the counseling and education requirements are for prospective adoptive parents in private proceedings; however, DCF imposes the same training requirements it uses for licensing and training prospective foster care parents and emergency shelter parents pursuant to s. 407.175, F.S.<sup>152</sup> This training is designed to prepare prospective foster care parents and emergency shelter parents for the unique difficulties they will have to face when caring for children in dependency proceedings with a history of abuse, neglect, or prior placement disruptions.<sup>153</sup>

## Child Sexual Exploitation

### *Prevalence*

Commercial sexual exploitation (CSE) is a form of human trafficking; commercial sex acts through which individuals may be exploited include, but are not limited to, prostitution and pornography as a means for the perpetrator to make money.<sup>154</sup> The U.S. Department of Justice estimates that as many as 300,000 children in the United States are at risk for commercial sexual exploitation.<sup>155</sup>

Section 409.016, F.S., defines "commercial sexual exploitation" as the use of any person under the age of 18 for sexual purposes in exchange for, or promise of, money, goods, or services; this term has the same meaning in ch. 39, F.S.

It is difficult to obtain an accurate count of CSE children because these victims are not readily identifiable.<sup>156</sup> CSE survivors often do not see themselves as victims, and 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.<sup>157</sup>

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<sup>150</sup> S. 63.092(3), F.S.

<sup>151</sup> S. 63.092(3), F.S.

<sup>152</sup> Rules 65C-15.028, 65C-16.005(4), and 65C-13.024, F.A.C.; and s. 409.175(14), F.S.

<sup>153</sup> S. 409.175(14), F.S. One of the training requirements for these parents is 21 hours of preservice training to orient them; explain their role as a treatment team member; prepare them for issues involved in the transition of a child into and out of foster care and emergency shelter care; teach them to manage difficult child behavior intensified by placement, prior abuse or neglect, or prior placement disruptions; prevent placement disruptions; teach them how to care for children at various developmental levels; and educate them on the effects of foster parenting on their families.

<sup>154</sup> The federal Trafficking Victims Protection Act defines "commercial sex act" as any sex act on account of which anything of value is given to or received by any person. 22 U.S.C. s. 7102(4).

<sup>155</sup> U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (Dec. 2011), [http://ojp.gov/newsroom/factsheets/ojpfs\\_humantrafficking.html](http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html) (last visited March 5, 2018).

<sup>156</sup> The Florida Legislature Office of Program Policy Analysis & Government Accountability, *Placement Challenges Persist for Child Victims of Commercial Sexual Exploitation; Questions Regarding Effective Interventions and Outcomes Remain*, Report No. 16-04, (Jul. 2016), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1604rpt.pdf> (last visited January 28, 2018).

<sup>157</sup> Id.

The Florida Abuse Hotline serves as the central reporting center for allegations of abuse, neglect, and exploitation for all children in Florida, including allegations of human trafficking. In calendar year (CY) 2015, DCF verified 264 child victims of CSE from 1,279 reports alleging CSE made to the hotline.<sup>158</sup> In CY 2016, DCF received more allegations of CSE to the hotline and identified a higher number of child victims of CSE than in CY 2015. The number of reports to the DCF hotline alleging CSE increased 57 percent from CY 2015 to CY 2016, with 2,013 reports made in CY 2016.<sup>159</sup> Additionally, the verified cases of CSE increased to 356 in CY 2016.<sup>160</sup> At the time of the DCF investigation, 86 verified CSE children were in out-of-home care, and over a quarter were on runaway status.<sup>161</sup>

### *Services for CSE Victims*

DCF is responsible for the child welfare needs of human trafficking victims.<sup>162</sup> To work toward ensuring that services needed by CSE victims are available in each community, each DCF region and each community-based care lead agency must jointly assess local service capacity to meet the specialized service needs of sexually exploited children and establish a plan to develop the necessary capacity.<sup>163</sup>

In cases in which a child is alleged, suspected, or known to have been sexually exploited, DCF and community-based care lead agencies conduct multidisciplinary staffings in order to begin the process of providing services.<sup>164</sup> The staffing includes local experts in child protection, child welfare, medical professionals, and law enforcement to assess the needs of the child and determine whether the child needs to be placed and served in a specialized residential program, such as a safe house or a safe foster home.<sup>165</sup>

For children in the child welfare system, including CSE victims, DCF must develop a case plan with input from all parties to the dependency case that details the problems being addressed as well as the goals, tasks, services, and responsibilities required to ameliorate the concerns of the state.<sup>166</sup> This case plan required by s. 39.6011, F.S. may meet the requirement for a service plan, but must be amended to incorporate the results of the multidisciplinary staffing.<sup>167</sup>

For CSE victims who are not part of the child welfare system, DCF or the sheriff's office providing child protective investigative services must provide a service plan to the victim's family or legal guardian.<sup>168</sup> Compliance with the service plan is voluntary for CSE victims who have not been adjudicated dependent and are not part of the child welfare system.

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<sup>158</sup> Id. To estimate the number of allegations and subsequently verified CSE cases, we relied on DCF's Florida Safe Families Network data on hotline intakes and child protective investigations during CY 2015.

<sup>159</sup> The Florida Legislature Office of Program Policy Analysis & Government Accountability, *DCF and Its Lead Agencies Have Not Resolved Issues Related to Serving Commercially Sexually Exploited Children*, Report NO. 17-09, (Jul. 2017), p. 3, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1709rpt.pdf> (last visited January 28, 2018). Counties with the highest number of CSE reports in CY 2016 included Miami-Dade (248), Broward (232), Orange (150), and Hillsborough (144).

<sup>160</sup> Id.

<sup>161</sup> Id. at p. 4.

<sup>162</sup> S. 409.996, F.S.

<sup>163</sup> Each region of the Department and each community-based care lead agency must establish local protocols and procedures for working with sexually exploited children that are responsive to the individual circumstances of each child. The protocols and procedures shall take into account the varying types and levels of trauma endured; whether the sexual exploitation is actively occurring, occurred in the past, or is inactive but likely to recur; and the differing community resources and degrees of familial support that are available. Child protective investigators and case managers must use these protocols and procedures when working with a sexually exploited child. S. 409.1754(2), F.S.

<sup>164</sup> S. 409.1754(2), F.S.

<sup>165</sup> S. 39.524, F.S.

<sup>166</sup> Ss. 39.6011 and 39.6012, F.S.

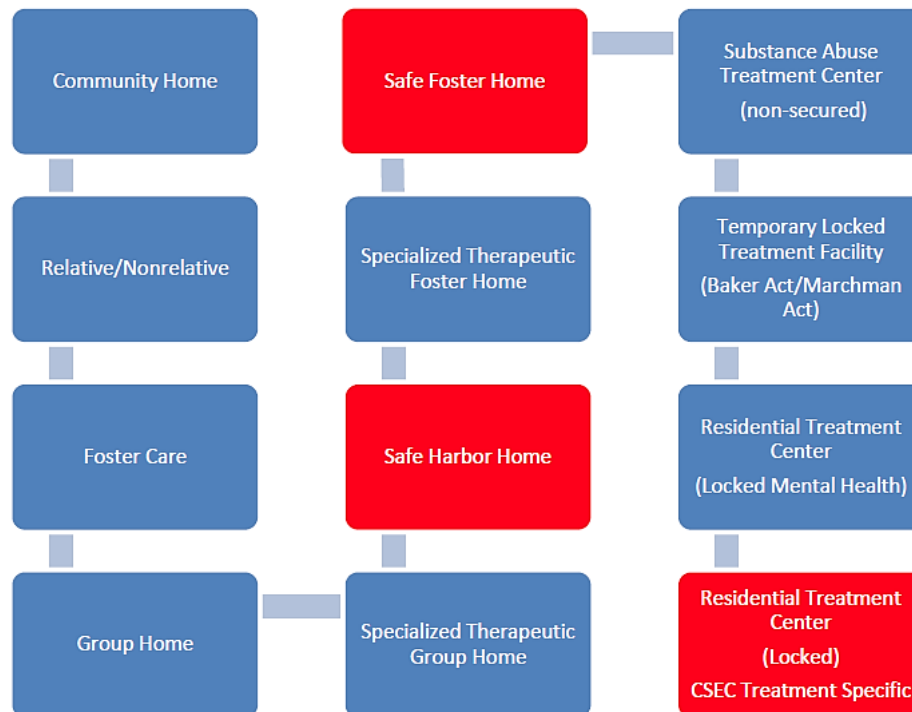
<sup>167</sup> S. 409.1754(2)(b), F.S.

<sup>168</sup> S. 409.1754(2)(c), F.S.

## Placements for CSE Victims

The graphic below illustrates the full continuum of care for children who are CSE victims. They have the ability to move up and down from least restrictive to most restrictive, depending on their needs.<sup>169</sup> Placements in red reflect specialized CSE placements.<sup>170</sup>

### Florida's Placement Continuum of Care for CSE Children<sup>171</sup>



### Safe Houses and Safe Foster Homes

Section 39.524(1), F.S., requires that a dependent child six years of age or older who has been found to be a CSE victim must be assessed for placement in a safe house or safe foster home. If placement in a safe house or safe foster home is determined to be appropriate for the child, the child may be placed in a safe house or safe foster home if one is available. However, the child may be placed in another setting, if the other setting is more appropriate to the child's needs or if a safe house or safe foster home is unavailable, as long as the child's behaviors are managed so they do not endanger other children served in that setting.

A safe house is a group residential placement certified by DCF to care for sexually exploited children,<sup>172</sup> while a safe foster home is a foster home that has been certified by DCF to care for sexually exploited children.<sup>173</sup> Statute outlines a certification process to ensure that these specialized homes provide the

<sup>169</sup> Florida Department of Children and Families, *Annual Human Trafficking Report 2016-2017 State Fiscal Year*, (Oct. 2017), at p. 7, available at, <http://www.dcf.state.fl.us/programs/childwelfare/docs/2017LMRs/Human%20Trafficking%20Annual%20Report.pdf> (last visited January 28, 2018).

<sup>170</sup> Id.

<sup>171</sup> Id.

<sup>172</sup> S. 409.1678(1)(b), F.S.

<sup>173</sup> S. 409.1678(1)(a), F.S.

environment and services most conducive to a victim's recovery. To be certified, a safe home or safe foster home must provide certain services, including:<sup>174</sup>

- Victim-witness counseling;
- Family counseling;
- Behavioral health care;
- Treatment and intervention for sexual assault;
- Education tailored to the child's individual needs, including remedial education if necessary;
- Life skills training;
- Mentoring by a survivor of sexual exploitation, if available and appropriate for the child;
- Substance abuse screening and, when necessary, access to treatment;
- Planning services for the successful transition of each child back to the community; and
- Activities structured in a manner that provides child victims of sexual exploitation with a full schedule.

### *Residential Treatment Centers*

Residential treatment centers (RTCs) licensed under s. 394.875, F.S., and hospitals licensed under ch. 395, F.S., that provide residential mental health treatment, must provide specialized treatment for CSE victims who are in DCF custody and who are placed there.<sup>175</sup> These hospitals and RTCs must meet specific statutory requirements to serve child CSE victims. Specifically, they must:<sup>176</sup>

- Use strength-based and trauma-informed approaches to care, to the extent possible and appropriate.
- Group sexually exploited children by age or maturity level.
- Care for CSE children in a manner that separates those children from children with other needs.
- 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, which may include, but are not limited to, personnel qualifications, staffing ratios, and types of services offered.
- Serve children in single-sex groups.
- Ensure that staff are adequately trained in the effects of trauma and sexual exploitation, the needs of child CSE victims, and how to address those needs using strength-based and trauma-informed approaches.

Additionally, hospitals and RTCs must provide services tailored to the needs of sexually exploited children and to conduct a comprehensive assessment of the service needs of each resident.<sup>177</sup> Hospitals and RTCs arrange for or coordinate for CSE survivors the same services as certified safe houses and certified safe foster homes.

The Services and Resources Committee of the Statewide Council on Human Trafficking<sup>178</sup> noted in its 2016 report that CSE providers, CBCs, and community advocates have raised concerns that there are unnecessary barriers to accessing RTCs for children who are CSE victims.<sup>179</sup> Specifically, the report

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<sup>174</sup> S. 409.1678(2), F.S.

<sup>175</sup> S. 409.1678(3), F.S.

<sup>176</sup> Id.

<sup>177</sup> Id.

<sup>178</sup> The council is a legislatively created body, housed within the Department of Legal Affairs (the Office of the Attorney General) for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight CSE as a form of human trafficking and to support victims. See, s. 16.617(1), F.S.

<sup>179</sup> Services and Resources Committee, Statewide Council on Human Trafficking, *2016 Report to the Council*, p. 46, available at [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AF9P43/\\$file/2016HumanTraffickingAnnualReportSupplemt.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AF9P43/$file/2016HumanTraffickingAnnualReportSupplemt.pdf) (last visited January 28, 2018).



notes that an unintended consequence of the requirement that children who are CSE survivors have to be separated from other youth reduces the availability of housing for them because isolation results in providers needing twice the resources.<sup>180</sup> Additionally, isolation can be counter to the child's therapeutic needs.

DCF has also acknowledged that the financial and staffing impacts of this isolation requirement has decreased the number of beds available for CSE children who were in need of deeper-end mental health services.<sup>181</sup> From July 1, 2016, to June 30, 2017, DCF reports that CBCs evaluated 141 CSE children for placement in a safe house or safe foster home.<sup>182</sup> For 25 of the children referred for CSE placement, such placement was unavailable; CBCs cited one of several reasons to be program refusal due to children's mental health issues.<sup>183</sup> Safe homes frequently refuse to accept CSE children who have complex unmet needs, including non-compliant mental health treatment;<sup>184</sup> these children be best suited for a placement in a hospital or RTC, but may not be able to be placed there due to a lack of capacity resulting from the isolation requirement.

### Keys to Independence Program

The Florida Legislature enacted the Keys to Independence Act in 2014 (Act),<sup>185</sup> which created a 3-year pilot program to help children in licensed foster care overcome barriers to getting a driver license, such as the costs of education, licensure, and insurance, by providing reimbursement.<sup>186</sup> The Act required DCF to contract with a not-for-profit entity whose mission is to support youth aging out of foster care to develop procedures for operating and administering the pilot program, to include:<sup>187</sup>

- Determining eligibility, including responsibilities for the child and caregivers;
- Developing application and payment forms;
- Notifying eligible children, caregivers, group homes, and residential programs of the pilot program; and,
- Providing technical assistance to lead agencies, providers, group homes, and residential programs to support removing obstacles that prevent children in foster care from driving.

The pilot program ended on June 30, 2017, but the program was made permanent through legislation enacted in 2017.<sup>188</sup>

Among the primary obstacles to foster children being able to drive is the potential liability of the foster parents when the children drive vehicles owned by the foster parents and the attendant cost of insurance to protect foster parents from this liability.

Section 322.09(2), F.S., provides that any negligence or willful misconduct of the child operating a motor vehicle will be imputed to the adult who signed the application. That adult is jointly and severally liable with the child for any damages caused by the negligent or willful misconduct.

In 2001, s. 322.09, F.S., was amended to relieve foster parents or authorized representatives of a residential group home who sign for a foster child's license of liability for any damages or misconduct of

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<sup>180</sup> Id.

<sup>181</sup> Information from Department of Children and Families (on file with the Children, Families & Seniors Subcommittee).

<sup>182</sup> *Supra* note 169 at p. 8.

<sup>183</sup> Id. at p. 9

<sup>184</sup> Id.

<sup>185</sup> S. 409.1454, F.S.

<sup>186</sup> Keys to Independence, Legislative Report, June 2016, available at

<https://www.dcf.state.fl.us/programs/childwelfare/docs/2016LMRs/Keys%20to%20Independence%20Annual%20Report.pdf> (last accessed March 10, 2017).

<sup>187</sup> S. 409.1454(5), F.S.

<sup>188</sup> Chapter 2017-8, L.O.F.

the child.<sup>189</sup> While this provision addresses liability resulting directly from the signature on the driver license application, it does not address any vicarious liability that the foster parent may have because of the foster parent's ownership of the vehicle that the child drives.<sup>190</sup> This liability arises whenever an insured individual allows another to operate his or her motor vehicle and is independent of the provisions of s. 322.09, F.S. Thus, the foster parent who owns the motor vehicle continues to be subject to vicarious liability for the actions of the child while operating the foster parent's vehicle, in the same way the foster parent would be vicariously liable for the actions of any other person operating that vehicle. This vicarious liability is one of the risks for which insurance coverage is purchased.

Also in 2001, s. 627.746, F.S., was created to prohibit a motor vehicle insurance company from charging an additional premium on a motor vehicle owned by a foster parent for coverage of a child operating the vehicle while the child is holding a learner license.<sup>191</sup> This prohibition is only applicable until the child obtains a regular driver license.

### Substance-Exposed Newborns

Use of opioids or other addictive drugs during pregnancy can result in adverse health effects to newborns termed Neonatal Abstinence Syndrome (NAS).<sup>192</sup> Newborns with NAS suffer from withdrawal symptoms such as tremors, abdominal pain, weight loss, sweating, incessant crying, rapid breathing, sleep disturbance and seizures.<sup>193</sup> The incidence of NAS has increased substantially in the past decade.<sup>194</sup>

The dependency court has discretion as to what case plan tasks and services a parent may be ordered to participate in based on the particular case and facts.<sup>195</sup> However, the court must order any parent whose substance abuse has caused harm to a child, such as its being born substance-exposed, to submit to a substance abuse disorder evaluation or assessment and participate and comply with treatment services identified by the assessment or evaluation. Section 39.01(30)(g), F.S., defines harm from a child's exposure to controlled substances or alcohol in two ways. Either:

- The newborn infant tests positive for a controlled substance or alcohol at birth, or
- There is evidence of extensive, abusive and chronic use by a parent of a controlled substance(s) or alcohol and the child is demonstrably adversely affected by such usage.<sup>196</sup>

While pregnant mothers with severe substance use disorders are more likely to give birth to infants testing positive for controlled substances or alcohol, women with mild or moderate substance use disorders may refrain from using long enough to prevent the infant from testing positive or having symptoms at birth. Although NAS usually manifests quickly after birth in severe cases of maternal drug use, withdrawal symptoms may take days or even weeks to surface in infants whose mother's pre-natal drug use was less severe.<sup>197</sup>

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<sup>189</sup> Chapter 2001-83, L.O.F.

<sup>190</sup> See *Hertz Corp. vs. Jackson*, 617 So.2d 105 (Fla. 1993).

<sup>191</sup> *Supra* note 189.

<sup>192</sup> McQueen, K. and Murphy-Oikonen, J, *Neonatal Abstinence Syndrome*, The New England Journal of Medicine, Review Article, December 22, 2016, available at: <http://www.nejm.org/doi/pdf/10.1056/NEJMra1600879> (last accessed January 20, 2018).

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> See s. 39.521, F.S.

<sup>196</sup> S. 39.01(30)(g), F.S.

<sup>197</sup> *Supra* note 70.

## Child Protection Teams

A child protection team (CPT) is a medically-directed, multidisciplinary team that supplements the child protective investigation efforts of DCF and local sheriffs' offices in cases of child abuse and neglect.<sup>198</sup> CPTs are independent community-based programs that provide expertise in evaluating alleged child abuse and neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment when possible.<sup>199</sup> The DOH Children's Medical Services program contracts for CPT services with local community-based programs.<sup>200</sup> CPTs across the state are divided into 15 districts and provide services to all 67 counties by using satellite offices and telemedicine sites.<sup>201</sup>

## **Effect of Proposed Changes**

CS/CS/HB 1079 makes numerous changes to statutes addressing the welfare of children.

### Community Based Care Equity Allocation Model

The bill makes changes to DCF's equity allocation model for CBCs, as described in s. 409.991, F.S. It directs DCF to allocate new core services funds that may become available in the future using the following formula:

- Proportion of the child population, weighted as 5 percent of the total (consistent with the current formula);
- Proportion of child abuse hotline workload, weighted as 35 percent of the total rather than 15 percent; and
- Proportion of children in care, weighted as 60 percent of the total, rather than 80 percent. The proportion of children in care is calculated based on 55 percent weight for children in out-of-home care (instead of 60 percent), 30 percent weight for children in in-home care (instead of 40 percent), and 15 percent weight based on children in family support services (a new element).

Once these calculations are used to determine core services allocations, DCF must then distribute any additional core services funding that may become available to CBCs based on the following equity allocation model:

- 70 percent of any new funding is allocated among all CBCs; and,
- 30 percent of any new funding is allocated to CBCs that are currently funded below their equitable share. Funds are weighted based on each CBC's proportion of the total amount of funding below the equitable share.

Recurring core services funding to the CBCs is not changed under the bill. However, should additional funds be made available in the future, the revised equity allocation formula would dictate the distribution of those funds, unless directed otherwise in the General Appropriations Act. Some CBCs would receive a greater share of new funds under the revised formula, whereas others would receive less.

### Dependency Process

The bill specifies that the birth of a child into a family that is currently involved in an open dependency case in which a parent or guardian has been determined unfit to care for another child constitutes

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<sup>198</sup> Florida Department of Health, Children's Medical Services. *Child Protection Teams*. Available at [http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child\\_protection\\_safety/child\\_protection\\_teams.html](http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html) (last visited March 10, 2015).

<sup>199</sup> Id.

<sup>200</sup> S. 39.303, F.S.

<sup>201</sup> Children's Medical Services, *Child Protection Teams: CPT Statewide Directory*, available at <http://www.floridahealth.gov/alternatesites/cms-kids/home/contact/cpt.pdf> (last accessed March 5, 2018).

“abuse” for the purpose of child welfare proceedings. This change would give DCF the authority to intervene with these families to protect the newborn child.

The bill modifies the responsibilities of parents regarding engagement with case managers. Parents must provide accurate contact information to DCF or the case manager and update that information as appropriate. In addition, parents must proactively contact DCF or the case manager at least once every 14 days to provide a status update on relevant case plan tasks. The bill also requires the court to consider the engagement level of parents throughout the dependency process prior to making determinations on the permanency of a child. The court must consider the level of case plan compliance demonstrated by a parent or guardian, as well as his or her level of engagement. This new requirement applies to both the permanency hearing and follow-up judicial hearings when the court makes determinations on the appropriateness of a child’s permanent placement.

### Guardianship Assistance Program

The bill makes numerous statutory changes to establish a federally-subsidized GAP in Florida, such as new and revised definitions, initial program parameters, and revised licensure standards. The establishment of a GAP represents a significant step towards mitigating the loss of federal revenues to the state from the expiration of Florida’s Title IV-E waiver. The program will provide the state with an alternative vehicle for earning federal revenues under Title IV-E while also offering enhanced cash benefits to certain permanent guardians and the children in their care.

#### *GAP Eligibility Framework*

Included in the bill is a statutory framework for a GAP in Florida. The bill creates new sections in ch. 39, F.S., which set eligibility requirements and payment parameters generally reflecting federal requirements as outlined in sections 471 through 475 of the federal Social Security Act. The program will take effect on July 1, 2019, to allow DCF adequate time to establish necessary operational protocols.

The bill defines “guardianship assistance program” as a program that provides benefits to a child’s guardian on behalf of the child. Benefits may be in the form of a monthly guardianship assistance payment, a guardianship nonrecurring payment, or Medicaid coverage.<sup>202</sup>

Federal law dictates that a prospective guardian must be a relative of the child to be placed, or at least have a familial relationship with the child, in order to be GAP-eligible. Federal guidance allows states the flexibility to adopt definitions of “relatives” that extend beyond traditional family ties.<sup>203</sup> The bill uses this federal authorization by allowing “fictive kin” guardians to participate in GAP, and defines “fictive kin” as a person unrelated by birth, marriage, or adoption who has an emotionally significant relationship, which possesses the characteristics of a family relationship, to a child. This new definition will allow for greater participation in the GAP than more traditional definitions of “relatives”, since it does not limit participation strictly to blood relations.

In keeping with federal requirements, for a guardian to qualify to receive benefits on behalf of a child, the bill requires that:

- The child’s placement with a prospective guardian has been approved by the court;
- The court has granted legal custody to the guardian;
- The guardian has been licensed as a provider of foster care under s. 409.175, F.S.; and,

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<sup>202</sup> 42 U.S.C. § 673(b)(3)(c).

<sup>203</sup> *Supra* note 92.

- The child 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.

DCF must redetermine eligibility annually for GAP participants. DCF will terminate benefits for participants found ineligible or if the child is absent from the home of the guardian for more than 60 consecutive days, subject to a limited set of exceptions.

The bill sets initial payment parameters for the GAP, which also align with federal requirements. DCF will provide GAP participants assistance payments of \$4,000 annually, or another amount specified in a written agreement, paid on a monthly basis. Participants are also eligible for a one-time payment of up to \$2,000 for expenses associated with obtaining legal guardianship of a child.

Regardless of a child's age, the bill requires DCF to document how GAP participation supports a child's permanency goal. For GAP participants, the stated permanency goal will generally be permanent guardianship, and the following information must be documented in each participant's case plan:

- The manner in which the child meets program eligibility requirements;
- The manner in which the agency determined that reunification or adoption is not appropriate;
- Efforts to discuss adoption with the child's permanent guardian;
- Efforts to discuss guardianship assistance with the child's parent or the reasons why efforts were not made;
- The reasons why a permanent placement with the prospective guardian is in the best interest of the child;
- The reasons why the child is separated from his or her siblings during placement, if applicable; and,
- Efforts to consult the child, if the child is 14 years of age or older, regarding the permanent guardianship arrangement.

Here again, the requirements included in the bill correspond to federal requirements outlined in sections 471 through 475 of the federal Social Security Act.

GAP eligibility typically ends when a child reaches 18 years of age, though under federal law payments can be extended to age 21 under certain conditions. The bill sets out the conditions which will allow DCF to obtain additional federal revenues in support of young adults currently served by the extended foster care program.

The GAP will operate concurrently with the existing RCP. DCF is directed to develop a comprehensive communications strategy designed to provide relevant caregivers with information on the range of financial supports available under the child welfare system. Those caregivers will then apply to and participate in the program most suitable to their individual needs and preferences. For example, a caregiver who is not able to obtain licensure as a foster care provider would be eligible for the RCP, but not GAP. Alternatively, a caregiver who obtains licensure as a foster care provider and chooses to participate in GAP will receive a greater monthly subsidy than is available under RCP.

### Extended Foster Care

The bill sets eligibility criteria for federally-subsidized extended foster care equivalent to the existing state requirements for continuing care of young adults.<sup>204</sup> A young adult, aged 18-21 years who aged out of foster care at age 18 may be eligible for Title IV-E reimbursement if he or she is:

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

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<sup>204</sup> S. 39.6251, F.S.

- 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 for at least 80 hours per month; or,
- Unable to participate in programs or activities listed above full time due to a physical, intellectual, emotional, or psychiatric condition that limits participation.

The bill makes conforming changes to s. 39.6251, F.S., which sets parameters for participation in extended foster care. These changes allow certain young adults to qualify for GAP participation and allow DCF to obtain additional federal Title IV-E revenues to finance that participation. Absent the changes, the state will not meet federal requirements for earning Title IV-E funds for extended foster care. DCF indicates that approximately 800 young adults currently participate in extended foster care, and the bill will allow the state to earn additional federal funds as appropriate.<sup>205</sup>

### Foster Home Licensure

The federally-subsidized GAP requires guardians to be licensed as foster care providers to qualify for benefits. This represents a meaningful departure from the existing relative caregiver program, which does not require participating guardians to obtain licensure. As licensure standards may prevent otherwise qualified caregivers from participating in a GAP, the federal government allows states to waive non-safety licensure requirements on a case-by-case basis. The bill revises the existing foster care licensure model in anticipation of GAP implementation and the potential for limited exemptions from non-safety standards.<sup>206</sup>

The bill establishes a 5-tier foster home licensing structure which assigns requirements to all foster care settings based on the characteristics of the child or children who would be placed in the home. The bill establishes the following levels of licensure:

- Level I - Child-Specific Foster Homes;
- Level II – Non-Child-Specific Foster Homes;
- Level III - Safe Foster Homes for Human Trafficking;
- Level IV - Therapeutic Foster Homes; and,
- Level V - Medical Foster Homes.

Level I licensure is aimed at the prospective GAP population and would give DCF flexibility to waive non-safety licensure requirements for relative caregivers and fictive kin on a case-by-case basis. Individuals licensed as Level I foster care providers would be required to complete 4 hours of in-service training annually, in addition to meeting all other licensure standards. The bill requires the other levels of licensure to adhere to all current licensure standards, as detailed in s. 409.175, F.S., and any additional certification requirements applicable to each level of license. Individuals licensed as Levels II through V foster care providers would be required to complete 8 hours of in-service training in addition to all other licensure standards.

The bill defines “licensing home study” as a documented assessment to determine the safety and appropriateness of any 24-hour living arrangement for a child who is unattended by a parent or legal guardian. A primary caregiver issued a license for a specific child (Level I) may apply for a waiver of the non-safety-related and non-health-related elements of a licensing home study under the GAP.

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<sup>205</sup> Id.

<sup>206</sup> DCF has begun to identify licensure standards that may be waived on a case specific basis. Many of the standards relate to the physical layout of a guardian’s home. For example, existing licensure standards include requirements on the size and location of the child’s bedroom. Another standard requires that the home have an operational land-line telephone. These and other non-safety standards may be waived in certain circumstances.

The bill also amends s. 409.145(4), F.S., establishing a new monthly foster parent room and board rate for Level I foster parents at \$333.00, effective July 1, 2019. This is the rate that would generally be paid to GAP participants. Foster care room and board rates for Level II foster parents are modified, effective July 1, 2018, to be:

- Age 0 through age 5 - \$457.95 per month;
- Age 6 through age 12 - \$469.68 per month; and,
- Age 13 through age 18 - \$549.74 per month.

These rates reflect cost-of-living increases to the statutory provisions originally set in 2014.<sup>207</sup> The bill indicates that future cost of living increases and supplemental room and board rate for independent living skills are only for Level II through Level V foster parents.

The bill also eliminates references to “emergency shelter parents”. According to DCF, the department no longer designates individuals as “emergency shelter parents”, making the term obsolete where it appears in statute.

#### Recoupment of Non-Relative Caregiver Overpayments

The bill also gives DCF the authority to recoup certain overpayments made to non-relatives under the Relative Caregiver Program. In this context, overpayments refer to any funds distributed to a caregiver in error or due to fraud on the part of a caregiver. DCF already has such authority when federal TANF disbursements are made but cannot recoup overpayments when a caregiver is subsidized exclusively with state funds. Between January 2017 and November 2017, DCF could have recouped \$129,770 in funds paid to nonrelative caregivers if such authority had existed.<sup>208</sup>

#### Adoption Assistance

The bill authorizes DCF to provide maintenance adoption assistance and payments for young adults, ages 18 to 21, in compliance with Title IV-E requirements. The change is effective January 1, 2019, and applies only to young adults whose adoptive parents entered into an initial adoption assistance agreement after the child reached 16 years of age but before the child reached 18 years of age. Just as with the extended foster care benefits, a young adult and his or her adoptive family may be eligible for adoption assistance benefits if the young adult is:

- 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 for at least 80 hours per month; or,
- Unable to participate in programs or activities listed above full-time due to a physical, intellectual, emotional, or psychiatric condition that limits participation.

The extension of the maintenance adoption subsidy to age 21 for those children who were adopted at age 16 or 17 will allow the state to earn additional federal revenues under Title IV-E. At present, the maintenance adoption subsidy payments expire when a child reaches the age of 18. Without these changes, as well, the state would not meet federal requirements for earning Title IV-E funds associated with GAP.

The bill also requires that all prospective adoptive homes complete an adoptive home study to qualify for a maintenance adoption subsidy.

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<sup>207</sup> S. 409.145(4), F.S.

<sup>208</sup> *Supra* note 70.

## Background Screenings

### *Child Care Personnel*

The bill adds drug abuse or drug trafficking offenses to the existing list of offenses that disqualify an individual from working as child care personnel, but only for five years after an offense is committed. This elects the option available under federal law for states to make such offenses disqualifying for a period of five years after an offense is committed, as opposed to permanently. The bill also details background screening requirements for child care personnel that are currently captured in the definition of “screening” in s. 402.302(15), F.S., more fully in s. 402.305, F.S. For example, these requirements include searches of criminal history records and sexual offender registries of any state in which a current or prospective child care personnel resided during the past five years.

### *Child Welfare Placements*

The bill establishes an explicit exemption from the criminal history records requirements set forth in s. 39.0138, F.S., for a household member with physical, developmental, and cognitive disabilities which prevent him or her from being fingerprinted. This exemption does not apply to the prospective caregiver or guardian but rather to another member of the prospective household in which a child would be placed. This would include any other permanent residents in the prospective home, 12 years of age or older, and would apply to both relative and non-relative placements. In cases where DCF determines that this exemption is implicated, it must assess whether and how the exemption affects the safety and well-being of the child or children to be placed in the home. On a practical level, this exemption will apply to a very limited number of situations. Since, without fingerprints, DCF cannot conduct a full level 2 background screening, DCF must instead conduct a level 1 screening of these individuals. Level 1 screening still involves a thorough review of criminal history and relevant records, though it provides a more limited amount of information than would a fingerprint-based search.

The bill also modifies felony offense restrictions applicable to prospective child placements, as outlined in s. 39.0138, F.S. The bill changes “resisting arrest with violence” from an offense that permanently precludes an individual from consideration as a child placement to one that precludes DCF from considering an individual as a prospective placement for a period of five years following conviction.

The bill also revises corresponding criminal history requirements included in s. 409.175(2), F.S., for foster home licensure. The bill would give DCF limited ability to waive a fingerprinting requirement for an adult household member with a “severe disability” that precludes the fingerprinting process. The bill defines a “severe disability” as a physical, developmental, or cognitive limitation affecting an individual's ability to safely submit fingerprints.

### Child Care Facilities

The bill amends transportation safety responsibilities of child care facilities, family day care homes, and large family child care homes. Under the bill, these facilities must provide parents of supervised children with information on the dangers of leaving children unattended in vehicles. This information must be provided biannually in April and September of each year, at a minimum. The bill requires DCF to develop a flyer or brochure containing information on the dangers of leaving children in vehicles, including suggestions intended to prevent such events. This document must be posted to the DCF website, and facilities may choose to reproduce the information to meet their responsibilities to parents of supervised children.

The bill also specifies that DCF require facilities to use procedures to ensure that children are not left in vehicles when being transported using facility-owned or operated vehicles as a condition of licensure.



The bill also specifies that facilities are not responsible for children who are transported by a parent or guardian. Accordingly, facilities would no longer be responsible for proactively communicating with a parent or guardian, or emergency contacts, in cases of absence or late arrivals.

#### Private Adoptions

The bill requires DCF to give the results of record checks of its central abuse registry of intended adoptive parents directly to the entity conducting the preliminary home study in private adoption proceedings to ensure the integrity of the reports.

The bill allows the entity conducting the preliminary home study in private adoption proceedings to determine the counseling and education requirements for the intended adoptive parents. The bill exempts adoptive parents in private adoption proceedings from the training requirements of s. 409.175(14), F.S., involving adoptive parents in dependency proceedings.

#### Child Sexual Exploitation

The bill removes the requirements that RTCs care for CSE children in a manner that separates those children from children with other needs. By removing the isolation requirement, RTCs will be able to serve CSE children without the financial and staffing strains, which should allow more beds to be made available to CSE children. The bill also allows an RTC or a hospital to prioritize among the required services it must provide to CSE children to meet the specific needs of the child.

#### Keys to Independence Program

Under current law, a foster parent who signs a learner's driver's license application on behalf of a foster child is not liable for any negligence or willful misconduct by that child. The bill extends this exemption from liability to all out-of-home caregivers in the child welfare system – including relative and nonrelative caregivers who have not formally adopted a child.

The bill also specifies that providers of automobile insurance may not charge these caregivers an additional premium for coverage of a child in out-of-home care under an insurance policy on a private passenger vehicle during the time that child holds a learner's driver's license.

#### Substance-Exposed Newborns

The bill modifies the definition of "harm" associated with exposure to a controlled substance or alcohol included in s. 39.01(30)(g). The existing standard for harm requires DCF to demonstrate that a child is "demonstrably adversely affected" by the substance abuse of a parent. The bill changes this standard to one in which DCF must instead show that substance abuse has or will severely compromise the ability of a parent to provide adequate supervision and care for a child, allowing DCF to prospectively intervene before a child has experienced inadequate supervision and care. This change also gives DCF greater authority to intervene in cases where an infant does not immediately present with symptoms of NAS.

#### Child Protection Teams

The bill also directs the Legislative Division of Law Revision and Information to work with appropriate committees of the House of Representatives and the Senate in the development of a reviser's bill for the 2019 legislative session that would capitalize each word of the term "child protection team" wherever that term occurs in the Florida Statutes.

The bill provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT<sup>209</sup>:

#### 1. Revenues:

##### *Title IV-E*

Due to Florida's anticipated loss of the Title IV-E waiver, the state will participate in the Title IV-E program without the flexibility of the waiver provisions. This change will require modifications in how child welfare services are reimbursed with state and federal funds. It is estimated that Florida will lose approximately \$67.1 million in federal Title IV-E funding in Fiscal Year 2020-21 and this will grow to \$89.5 million by Fiscal Year 2021-22.

##### *GAP and Extended Foster Care*

To expand the population that is eligible for Title IV-E funding, HB 1079 authorizes implementation of the federal GAP and federal Extended Foster Care (EFC) programs, along with the extension of the maintenance adoption subsidy to age 21 for those children who were adopted at age 16 or 17. DCF will be able to access additional federal funds for these programs through Title IV-E of the Social Security Act over and above the current capped waiver allocation. This includes increased federal claiming due to foster care providers being licensed as a GAP providers as well as federal match claimed for staffing to license GAP providers.

The Relative Caregiver Program (RCP) will remain in effect concurrently with the implementation of GAP. There are no specific historical data that can be used to support projections; however, 50 percent of the relatives enrolled in the RCP currently receive caregiver payments while 80 percent of the non-relatives in the RCP receive caregiver payments. The following revenue estimates assume that 50 percent of the current relative caregivers and 80 percent of the non-relative caregivers receiving payments would stay in the RCP, with the other current caregivers receiving payments transitioning into GAP. Future caregivers will also have the option of choosing between GAP and RCP participation, and the revenue estimates also are based these percentages.

<b>Revenue GAP Program</b>			
	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>Federal Funds from GAP Licensure Staff</b>	\$ 1,027,831	\$ 4,035,348	\$ 4,035,348
<b>Increased Title IV-E Foster Care Earnings-Relative Care Giver Conversion</b>		\$ 6,525,764	\$ 8,701,019
<b>Increased Title IV-E Foster Care Earnings-Non Relative Care Giver Conversion</b>		\$ 1,053,094	\$ 1,404,125
	<b>\$1,027,831</b>	<b>\$11,614,206</b>	<b>\$14,140,492</b>

Since the passage of the Foster Care Independence Act of 1999, states have been encouraged to create programs to support a continuum of services to youth aging out of foster care. Florida currently offers three different components of the Independent Living Program which includes EFC, Postsecondary Education Services and Support, and Aftercare Services. The current program,

<sup>209</sup> The fiscal comments included here do not include any impacts that may result from the enactment of the Bipartisan Budget Act of 2018 by Congress on February 9, 2018, which included the substance of the Family First Prevention Services Act (FFPSA). It is conceivable that Florida will be eligible for additional federal Title IV-E funds under the Act.

implemented in January 2014, closely mirrors the requirements of the federal extended foster care program for which federal financial participation is allowed, but to date, Florida has funded the program only with state funds. Through the bill's expansion of these programs, Florida can earn additional federal funds to assist in mitigating the loss of federal funds due to the end of the Title IV-E waiver.

	<u>FY 2018-19</u>	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>
<b>Enhanced Federal earnings due to programatic changes</b>	\$ 3,642,850	\$ 8,893,254	\$ 9,678,614	\$ 10,180,005

2. Expenditures:

*GAP*

CBC lead agencies will need additional licensing staff and eligibility staff to license and complete the review of initial applications for nonrelative and relative caregivers who are seeking or receiving Guardianship Assistance payments. Prior to completing or approving a DCF licensing packet, staff must be certified as trainers in their agencies' parent preparation pre-service curriculum, and they must be certified as a Child Welfare Licensing Specialist, which takes an average of 2 months to complete. The licensure staff will be hired during April 2019 so they are trained and certified by July 1, 2019, when the GAP legislation is implemented.

DCF estimates that CBCs will need 89 contract staff for licensure of relative caregiver homes and 23 contract staff would be needed for licensure of nonrelative caregiver homes for a total of 112 licensure staff. In addition, CBCs will need 11 contract staff to determine eligibility for relative caregivers and 3 contract staff would be needed to determine eligibility for nonrelative caregivers, for a total of 14 staff. Licensure staff of 112 plus 14 eligibility staff equals 126 staff. The staff are funded at \$90,070.79 per position (salary and benefits) for a total of \$11,348,919 per year.

DCF also requires two state FTE effective July 1, 2018, for the planning and implementation of the program and then for the ongoing oversight of the program on a statewide level. The Office of Child Welfare responsibilities will include, but not be limited to, coordination with the federal Children's Bureau concerning GAP; amending or developing rules and operating procedures to support GAP implementation; developing trainings for child welfare professionals and community stakeholders; providing technical assistance and training to child welfare professionals and community stakeholders on GAP; overseeing state and federal audits; creating and maintaining a Title IV-E plan for GAP; drafting, piloting and implementing an eligibility process; and serving as content experts for GAP functionality in the Florida Safe Families Network (FSFN).

	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>2 State FTE</b>	\$ 189,500	\$ 180,642	\$ 180,642
<b>Licensure Staff for Relative Caregiver Home Conversion-89 CBC Contract Staff</b>	\$ 2,004,075	\$ 8,016,300	\$ 8,016,300
<b>Licensure Staff for Nonrelative Caregiver Home Conversion-23 CBC Contract Staff</b>	\$ 427,836	\$ 2,071,628	\$ 2,071,628
<b>Relative Caregiver Eligibility Determination-11 CBC Contract Staff</b>	\$ 247,695	\$ 990,779	\$ 990,779
<b>Non Relative Caregiver Eligibility Determination-3 CBC Contract Staff</b>	\$ 67,553	\$ 270,212	\$ 270,212
	\$ 2,936,659	\$ 11,529,561	\$ 11,529,561
<b>Federal Match</b>	\$ 1,027,831	\$ 4,035,348	\$ 4,035,348
<b>State General Revenue</b>	\$ 1,908,828	\$ 7,494,214	\$ 7,494,214

*Extended Foster Care, Independent Living, and Maintenance Adoption Subsidies*

Through the expansion of these programs, Florida can earn additional federal funds to assist in mitigating the loss of federal funds due to the expiration of the Title IV-E waiver. Nonrecurring funding for FY 2018-19 has been appropriated, and no additional state funds are needed for FY 2019-20 due to full implementation and increased federal earnings.

	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>Total Cost</b>	\$ 37,091,978	\$ 38,348,813	\$ 39,009,485	\$ 39,890,381
<b>Less New and Existing Federal Funds</b>	\$ (11,433,314)	\$ (16,683,718)	\$ (17,469,078)	\$ (17,970,469)
<b>Less Existing GR</b>	\$ (21,661,257)	\$ (21,661,257)	\$ (21,661,257)	\$ (21,661,257)
<b>Total Program Need</b>	\$ 3,997,407	\$ 3,838	\$ (120,850)	\$ 258,656
<b>State General Revenue</b>	\$ 3,997,407	\$ 3,838	\$ (120,850)	\$ 258,656

*Information Technology*

DCF and its contract providers have also estimated a need of between 9,400 and 12,000 hours to modify the FLORIDA system to support the implementation of GAP at \$117/hour. Changes will also be required for the FSFN system. The system enhancement cost was calculated using level of effort estimates for eligibility, EFC, and GAP. These estimates were provided by contract vendors, and they utilized an hourly rate of \$110/hour.

<b>Technology Costs</b>	
	<b>FY 2018-19</b>
<b>Guardianship Assistance Program</b>	<b>\$ 1,276,147</b>
<b>Extended Foster Care Program &amp; Eligibility Determination Modifications</b>	<b>\$ 4,555,114</b>
	<b>\$5,831,261</b>
<b>NR State General Revenue</b>	<b>\$1,276,147</b>
<b>State Trust Funds</b>	<b>\$3,869,380</b>
<b>Federal Trust Funds</b>	<b>\$ 685,734</b>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Individuals who become permanent guardians will experience indeterminate fiscal impacts. Under the bill, a current participant in the RCP has the opportunity to become licensed and participate in GAP, which would increase his or her monthly subsidy. Alternatively, he or she could continue participation in the RCP without any financial impact. A future participant will have the opportunity to choose between GAP participation and RCP participation, and that choice is associated with fiscal consequences: GAP participants will receive a monthly subsidy of \$333, whereas RCP participants will receive \$242 - \$298 per month.

As noted above, the CBCs will need additional eligibility and licensure staff, which are funded in the GAA beginning April 1, 2019. The bill will also have an indeterminate impact on the CBCs due to the modification of the equity allocation formula. If new funding is made available, some CBCs may receive a greater proportion of the additional funding and others will receive less. The individual impacts will be affected by the total amount of new funding and the values of the weighted factors prescribed by the equity allocation formula.

D. FISCAL COMMENTS:

HB 5001, the General Appropriations Act for Fiscal Year 2018-19, contains the appropriations to implement the provisions of the bill as shown below.

	<u>Rec GR</u>	<u>NR GR</u>	<u>Trust Funds</u>	<u>Total</u>
<b>Title IV-E GAP Implementation (2.0 FTE &amp; 100,384 in Rate)</b>	\$ 1,903,070	\$ 5,758	\$ 1,027,831	\$ 2,936,659
<b>Extended Foster Care, Maintenance Adoption Subsidy to 21, and Independent Living</b>	\$ 1,352,742	\$ 2,644,665	\$ 3,642,850	\$ 7,640,257
<b>Guardianship Assistance Technology Changes</b>		\$ 1,276,147		\$ 1,276,147
<b>Extended Foster Care Program Technology Modifications</b>			\$ 4,555,114	\$ 4,555,114
<b><u>Total</u></b>	<b>\$3,255,812</b>	<b>\$3,926,570</b>	<b>\$9,225,795</b>	<b>\$16,408,177</b>