

1 A bill to be entitled
2 An act relating to vulnerable children and adults;
3 amending 382.002, F.S.; providing a definition; amending
4 s. 382.025, F.S.; authorizing a certified homeless youth
5 or a minor who has had the disabilities of nonage removed
6 to obtain a birth certificate; amending s. 393.067, F.S.;
7 prohibiting monitoring requirements that mandate
8 pornographic materials be available in residential
9 facilities that serve clients of the Agency for Persons
10 with Disabilities; amending s. 393.11, F.S.; requiring the
11 court to order a person involuntarily admitted to
12 residential services to be released to the agency for
13 appropriate residential services; prohibiting the court
14 from ordering that such person be released directly to a
15 residential service provider; authorizing the agency to
16 transfer a person from one residential setting to another;
17 requiring the agency to notify the committing court and
18 the person's counsel of the transfer within a specified
19 time; amendming s. 393.125, F.S.; authorizing the Agency
20 for Persons with Disabilities to issue a final order;
21 amending s. 409.1671, F.S.; decreasing the limits of
22 liability and requisite insurance coverage for lead
23 community-based providers and subcontractors; providing
24 immunity from liability for the Department of Children and
25 Family Services for acts or omissions of a community-based
26 provider or subcontractor, or the officers, agents, or
27 employees thereof; amending s. 916.1093, F.S.; requiring a
28 sufficient number of civil facilities to provide
29 community-based training for defendants charged with sex

30 offenses; amending s. 916.3025, F.S.; requiring that the
 31 court order a person involuntarily admitted to residential
 32 services after criminal charges have been dismissed to be
 33 released to the agency for appropriate residential
 34 services; creating a task force to develop input for the
 35 creation of certain guidelines and procedures for
 36 providers of residential services; providing for
 37 membership of the task force; requiring the task force to
 38 seek input from certain pertinent entities; requiring the
 39 agency to provide administrative support to the task
 40 force; requiring the task force to submit its findings to
 41 the Legislature; providing an effective date.

42

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

44

45 Section 1. Subsections (3)-(16) of section 382.002, Florida
 46 Statutes, are renumbered as subsections (4)-(17), respectively,
 47 and a new subsection (3) is added to that section, to read:

48 382.002 Definitions.—As used in this chapter, the term:

49 (3) "Certified homeless youth" means a minor who is a
 50 homeless child or youth, including an unaccompanied youth, as
 51 those terms are defined in 42 U.S.C. s 11434a and has been
 52 certified as homeless or unaccompanied by:

53 (a) A school district homeless liaison;

54 (b) The director of an emergency shelter program funded by
 55 the United States Department of Housing and Urban Development,
 56 or the director's designee; or

57 (c) The director of a runaway or homeless youth basic
 58 center or transitional living program funded by the United

59 States Department of Health and Human Services, or the
 60 director's designee.

61 Section 2. Paragraph (a) of subsection (1) of section
 62 382.025, Florida Statutes, is amended to read:

63 382.025 Certified copies of vital records; confidentiality;
 64 research.—

65 (1) BIRTH RECORDS.—Except for birth records over 100 years
 66 old which are not under seal pursuant to court order, all birth
 67 records of this state shall be confidential and are exempt from
 68 the provisions of s. 119.07(1).

69 (a) Certified copies of the original birth certificate or
 70 a new or amended certificate, or affidavits thereof, are
 71 confidential and exempt from the provisions of s. 119.07(1) and,
 72 upon receipt of a request and payment of the fee prescribed in
 73 s. 382.0255, shall be issued only as authorized by the
 74 department and in the form prescribed by the department, and
 75 only:

76 1. To the registrant, if of legal age, or if the registrant
 77 is a certified homeless youth or a minor who has had the
 78 disabilities of nonage removed under s. 743.01 or s. 743.015;

79 2. To the registrant's parent or guardian or other legal
 80 representative;

81 3. Upon receipt of the registrant's death certificate, to
 82 the registrant's spouse or to the registrant's child,
 83 grandchild, or sibling, if of legal age, or to the legal
 84 representative of any of such persons;

85 4. To any person if the birth record is over 100 years old
 86 and not under seal pursuant to court order;

87 5. To a law enforcement agency for official purposes;

88 6. To any agency of the state or the United States for
 89 official purposes upon approval of the department; or

90 7. Upon order of any court of competent jurisdiction.

91 Section 3. Subsection (1) of section 393.067, Florida
 92 Statutes, is amended to read:

93 393.067 Facility licensure.—

94 (1) The agency shall provide through its licensing
 95 authority and by rule license application procedures, provider
 96 qualifications, facility and client care standards, requirements
 97 for client records, requirements for staff qualifications and
 98 training, and requirements for monitoring foster care
 99 facilities, group home facilities, residential habilitation
 100 centers, and comprehensive transitional education programs that
 101 serve agency clients. However, monitoring requirements for
 102 foster care facilities, group home facilities, residential
 103 habilitation centers, and comprehensive transitional education
 104 programs may not mandate that pornographic materials be
 105 available in residential facilities that serve the clients of
 106 the agency.

107 Section 4. Present paragraph (e) of subsection (8) of
 108 section 393.11, Florida Statutes, is redesignated as paragraph
 109 (f) and amended, and a new paragraph (e) is added to that
 110 subsection, to read:

111 393.11 Involuntary admission to residential services.—

112 (8) ORDER.—

113 (e) If an order of involuntary admission to residential
 114 services provided by the agency is entered by the court, the
 115 court shall order that the person be released to the agency for
 116 receipt of appropriate residential services and may not order

117 | the person to be released directly to a residential service
 118 | provider.

119 | ~~(f)(e)~~ Upon receiving the order, the agency shall, within
 120 | 45 days, provide the court with a copy of the person's family or
 121 | individual support plan and copies of all examinations and
 122 | evaluations, outlining the treatment and rehabilitative
 123 | programs. The agency shall document that the person has been
 124 | placed in the most appropriate, least restrictive and cost-
 125 | beneficial residential setting. A copy of the family or
 126 | individual support plan and other examinations and evaluations
 127 | shall be served upon the person and the person's counsel at the
 128 | same time the documents are filed with the court. The agency may
 129 | transfer a person from one residential setting to another
 130 | residential setting and must notify the court and the person's
 131 | counsel of the transfer within 30 days after the transfer is
 132 | completed.

133 | Section 5. Paragraph (a) of subsection (1) of section 17
 134 | 393.125, Florida Statutes, is amended to read: 18

135 | 393.125 Hearing rights.—

136 | (1) REVIEW OF AGENCY DECISIONS.—

137 | (a) For Medicaid programs administered by the agency, any
 138 | developmental services applicant or client, or his or her
 139 | parent, guardian advocate, or authorized representative, may
 140 | request a hearing in accordance with federal law and rules
 141 | applicable to Medicaid cases and have the right to request an
 142 | administrative hearing pursuant to ss. 120.569 and 120.57. These
 143 | hearings shall be provided by the Department of Children and
 144 | Family Services pursuant to s. 409.285 and shall follow
 145 | procedures consistent with federal law and rules applicable to

146 Medicaid cases. At the conclusion of the hearing, the department
 147 shall submit its recommended order to the agency as provided in
 148 s. 120.57(1) (k) and the agency shall issue the final order as
 149 provided in s. 120.57(1) (l).

150 Section 6. Paragraphs (f), (h), (j), and (l) of subsection
 151 (1) and paragraph (a) of subsection (2) of section 409.1671,
 152 Florida Statutes, are amended to read:

153 409.1671 Foster care and related services; outsourcing.—
 154 (1)

155 (f)1. The Legislature finds that the state has
 156 traditionally provided foster care services to children who have
 157 been the responsibility of the state. As such, foster children
 158 have not had the right to recover for injuries beyond the
 159 limitations specified in s. 768.28. The Legislature has
 160 determined that foster care and related services need to be
 161 outsourced pursuant to this section and that the provision of
 162 such services is of paramount importance to the state. The
 163 purpose for such outsourcing is to increase the level of safety,
 164 security, and stability of children who are or become the
 165 responsibility of the state. One of the components necessary to
 166 secure a safe and stable environment for such children is that
 167 private providers maintain liability insurance. As such,
 168 insurance needs to be available and remain available to
 169 nongovernmental foster care and related services providers
 170 without the resources of such providers being significantly
 171 reduced by the cost of maintaining such insurance. To ensure
 172 that these resources are not significantly reduced, specified
 173 limits of liability are necessary for eligible lead community-
 174 based providers and subcontractors engaged in the provision of

175 services previously performed by the Department of Children and
 176 Family Services.

177 2. The Legislature further finds that, by requiring the
 178 following minimum levels of insurance, children in outsourced
 179 foster care and related services will gain increased protection
 180 ~~and rights of recovery in the event of injury than provided for~~
 181 ~~in s. 768.28.~~

182 (h) Other than an entity to which s. 768.28 applies, any
 183 eligible lead community-based provider, as defined in paragraph
 184 (e), or its employees or officers, except as otherwise provided
 185 in paragraph (i), must, as a part of its contract, obtain
 186 general liability coverage for a minimum of \$500,000 ~~\$1 million~~
 187 per occurrence or claim with a policy limit aggregate of ~~/\$2~~ \$3
 188 ~~million per incident~~ in general liability insurance coverage.
 189 The eligible lead community-based provider must also require
 190 that staff who transport client children and families in their
 191 personal automobiles in order to carry out their job
 192 responsibilities obtain minimum bodily injury liability
 193 insurance in the amount of \$100,000 per ~~claim~~ person, \$300,000
 194 per ~~incident~~ accident, on their personal automobiles. In lieu of
 195 personal motor vehicle insurance, the lead community-based
 196 provider's casualty, liability, or motor vehicle insurance
 197 carrier may provide nonowned automobile liability coverage. This
 198 insurance provides liability insurance for automobiles that the
 199 provider uses in connection with the provider's business but
 200 does not own, lease, rent, or borrow. This coverage includes
 201 automobiles owned by the employees of the provider or a member
 202 of the employee's household but only while the automobiles are
 203 used in connection with the provider's business. The nonowned

204 automobile coverage for the provider applies as excess coverage
 205 over any other collectible insurance. The personal automobile
 206 policy for the employee of the provider shall be primary
 207 insurance, and the nonowned automobile coverage of the provider
 208 acts as excess insurance to the primary insurance. The provider
 209 shall provide a minimum limit of \$1 million per occurrence and
 210 \$2 million in the aggregate for ~~in~~ nonowned automobile coverage.
 211 In any tort action brought against such an eligible lead
 212 community-based provider or employee, net economic damages shall
 213 be limited to \$500,000 ~~\$1 million~~ per liability claim occurrence
 214 and \$1 million in the aggregate, and \$100,000 per automobile
 215 claim, including, but not limited to, past and future medical
 216 expenses, wage loss, and loss of earning capacity, offset by any
 217 collateral source payment paid or payable. In any tort action
 218 for economic damages, the total amount recoverable by all
 219 claimants shall be limited to no more than \$2 million against
 220 the department, lead agencies, and all subcontractors involved
 221 in the same incident or occurrence, when totaled together. In
 222 any tort action brought against such an eligible lead community-
 223 based provider, noneconomic damages shall be limited to \$200,000
 224 per ~~claim~~ occurrence and \$500,000 in the aggregate. In any tort
 225 action for noneconomic damages, the total amount recoverable by
 226 all claimants shall be limited to no more than \$1 million
 227 against the department, lead agencies, and all subcontractors
 228 involved in the same incident or occurrence, when totaled
 229 together. A claims bill may be brought on behalf of a claimant
 230 pursuant to s. 768.28 for any amount exceeding the limits
 231 specified in this paragraph. Any offset of collateral source
 232 payments made as of the date of the settlement or judgment shall

233 be in accordance with s. 768.76. The lead community-based
234 provider is ~~shall~~ not be liable in tort for the acts or
235 omissions of its subcontractors or the officers, agents, or
236 employees of its subcontractors.

237 (j) Any subcontractor of an eligible lead community-based
238 provider, as defined in paragraph (e), which is a direct
239 provider of foster care and related services to children and
240 families, and its employees or officers, except as otherwise
241 provided in paragraph (i), must, as a part of its contract,
242 obtain general liability insurance coverage for a minimum of
243 \$500,000 ~~\$1 million~~ per occurrence or claim with a policy limit
244 aggregate of ~~+\$2~~ \$3 million per incident in general liability
245 insurance coverage. The subcontractor of an eligible lead
246 community-based provider must also require that staff who
247 transport client children and families in their personal
248 automobiles in order to carry out their job responsibilities
249 obtain minimum bodily injury liability insurance in the amount
250 of \$100,000 ~~per claim person,~~ \$300,000 per incident accident, on
251 their personal automobiles. In lieu of personal motor vehicle
252 insurance, the subcontractor's casualty, liability, or motor
253 vehicle insurance carrier may provide nonowned automobile
254 liability coverage. This insurance provides liability insurance
255 for automobiles that the subcontractor uses in connection with
256 the subcontractor's business but does not own, lease, rent, or
257 borrow. This coverage includes automobiles owned by the
258 employees of the subcontractor or a member of the employee's
259 household but only while the automobiles are used in connection
260 with the subcontractor's business. The nonowned automobile
261 coverage for the subcontractor applies as excess coverage over

262 any other collectible insurance. The personal automobile policy
 263 for the employee of the subcontractor shall be primary
 264 insurance, and the nonowned automobile coverage of the
 265 subcontractor acts as excess insurance to the primary insurance.
 266 The subcontractor shall provide a minimum limit of \$1 million
 267 per occurrence and \$2 million in the aggregate in nonowned
 268 automobile coverage. In any tort action brought against such
 269 subcontractor or employee, net economic damages shall be limited
 270 to \$500,000 ~~\$1 million per liability claim~~ occurrence, \$1
 271 million in the aggregate, and \$100,000 per automobile claim,
 272 including, but not limited to, past and future medical expenses,
 273 wage loss, and loss of earning capacity, offset by any
 274 collateral source payment paid or payable. In any tort action
 275 for economic damages, the total amount recoverable by all
 276 claimants shall be limited to no more than \$2 million against
 277 the department, all subcontractors, and lead agencies involved
 278 in the same incident or occurrence, when totaled together. In
 279 any tort action brought against such subcontractor, noneconomic
 280 damages shall be limited to \$200,000 per claim and \$500,000 per
 281 incident. In any tort action for noneconomic damages, the total
 282 amount recoverable by all claimants shall be limited to no more
 283 than \$1 million against the department, all subcontractors, and
 284 lead agencies involved in the same incident or occurrence, when
 285 totaled together. A claims bill may be brought on behalf of a
 286 claimant pursuant to s. 768.28 for any amount exceeding the
 287 limits specified in this paragraph. Any offset of collateral
 288 source payments made as of the date of the settlement or
 289 judgment shall be in accordance with s. 768.76.

290 ~~(1) The Legislature is cognizant of the increasing costs~~
 291 ~~of goods and services each year and recognizes that fixing a set~~
 292 ~~amount of compensation actually has the effect of a reduction in~~
 293 ~~compensation each year. Accordingly, the conditional limitations~~
 294 ~~on damages in this section shall be increased at the rate of 5~~
 295 ~~percent each year, prorated from the effective date of this~~
 296 ~~paragraph to the date at which damages subject to such~~
 297 ~~limitations are awarded by final judgment or settlement.~~

298 (2) (a) The department may contract for the delivery,
 299 administration, or management of protective services, the
 300 services specified in subsection (1) relating to foster care,
 301 and other related services or programs, as appropriate. The
 302 department shall use diligent efforts to ensure that ~~retain~~
 303 ~~responsibility for the quality of~~ contracted services and
 304 programs and shall ensure that services are of high quality and
 305 delivered in accordance with applicable federal and state
 306 statutes and regulations. However, the department is not liable
 307 in tort for the acts or omissions of an eligible lead community-
 308 based provider or the officers, agents, or employees of the
 309 provider, nor is the department liable in tort for the acts or
 310 omissions of the subcontractors of eligible lead community-based
 311 providers or the officers, agents, or employees of its
 312 subcontractors. The department may not require an eligible lead
 313 community-based provider or its subcontractors to indemnify the
 314 department for the department's own acts or omissions, nor may
 315 the department require an eligible lead community-based provider
 316 or its subcontractors to include the department as an additional
 317 insured on any insurance policy. A lead community-based provider
 318 shall not require its subcontractors to add the lead community-

319 based provider as an additional insured on any liability policy.
 320 The department must adopt written policies and procedures for
 321 monitoring the contract for delivery of services by lead
 322 community-based providers. These policies and procedures must,
 323 at a minimum, address the evaluation of fiscal accountability
 324 and program operations, including provider achievement of
 325 performance standards, provider monitoring of subcontractors,
 326 and timely follow-up of corrective actions for significant
 327 monitoring findings related to providers and subcontractors.
 328 These policies and procedures must also include provisions for
 329 reducing the duplication of the department's program monitoring
 330 activities both internally and with other agencies, to the
 331 extent possible. The department's written procedures must ensure
 332 that the written findings, conclusions, and recommendations from
 333 monitoring the contract for services of lead community-based
 334 providers are communicated to the director of the provider
 335 agency as expeditiously as possible.

336 Section 7. Present subsection (2) of section 916.1093,
 337 Florida Statutes, is renumbered as subsection (3), and a new
 338 subsection (2) is added to that section to read:

339 916.1093 Operation and administration; rules.—

340 (2) The agency shall ensure that there is a sufficient
 341 number of civil facilities to provide community-based training
 342 for defendants charged with sex offenses so that alternative
 343 placement options are available. If the agency determines that
 344 there are two or fewer facilities available to provide
 345 community-based training for defendants charged with sex
 346 offenses, the agency shall immediately procure additional
 347 facilities.

348 Section 8. Subsection (3) of section 916.3025, Florida
 349 Statutes, is amended to read:

350 916.3025 Jurisdiction of committing court.—

351 (3) The committing court shall consider a petition to
 352 involuntarily admit a defendant whose charges have been
 353 dismissed to residential services provided by the agency and,
 354 when applicable, to continue secure placement of such person as
 355 provided in s. 916.303. If a defendant whose criminal charges
 356 have been dismissed is involuntarily committed to residential
 357 services provided by the agency, the committing court shall
 358 order that the defendant be released to the agency for receipt
 359 of appropriate residential services and may not order that the
 360 defendant be released directly to a residential service
 361 provider. The committing court shall retain jurisdiction over
 362 such person so long as he or she remains in secure placement or
 363 is on conditional release as provided in s. 916.304. However,
 364 upon request, the court may transfer continuing jurisdiction to
 365 the court in the circuit where the defendant resides. The
 366 defendant may not be released from an order for secure placement
 367 except by order of the court.

368 Section 9. Task force for the protection of persons with
 369 developmental disabilities.—The Legislature recognizes the
 370 rights of individuals who are developmentally disabled to lead
 371 full and rewarding lives. The Legislature also recognizes the
 372 state's obligation to protect vulnerable adults from sexual
 373 abuse.

374 (1) In recognition of the social, legal, and environmental
 375 complexities associated with this issue, the Agency for Persons
 376 with Disabilities shall establish a task force to gather input

377 for the creation of guidelines and procedures for providers of
 378 residential services relating to sexual activity among the
 379 residents of its facilities.

380 (2) The task force shall be composed of the following
 381 members:

382 (a) The director of the Agency for Persons with
 383 Disabilities or his or her designee.

384 (b) The director of the adult protective services program
 385 within the Department of Children and Family Services.

386 (c) The executive director of The Arc of Florida.

387 (d) A family board member of The Arc of Florida appointed
 388 by the executive director of The Arc of Florida.

389 (e) The chair of the Family Care Council Florida.

390 (f) A parent representative from the Family Care Council
 391 Florida appointed by the chair of the Family Care Council
 392 Florida.

393 (g) A representative from the Developmental Disabilities
 394 Council.

395 (h) A representative from Disability Rights Florida.

396 (i) A representative from the Florida courts.

397 (j) A representative from the Florida Prosecuting
 398 Attorneys Association.

399 (k) A representative from the Florida Public Defender
 400 Association.

401 (l) A staff member of the University Centers for
 402 Excellence in Developmental Disabilities at the University of
 403 South Florida, the Florida Center for Inclusive Communities.

404 (m) A self-advocate.

405 (n) A representative from an intensive behavior

406 residential habilitation provider.

407 (3) The task force shall seek input from self-advocates,
408 family members, universities and colleges, and other pertinent
409 entities.

410 (4) The agency shall provide administrative support to the
411 task force.

412 (5) Members of the task force shall serve without
413 compensation.

414 (6) The task force shall submit a report of its findings
415 to the President of the Senate and the Speaker of the House of
416 Representatives by November 1, 2011.

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