

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HSAS 11-02 Health and Human Services

SPONSOR(S): Health & Human Services Access Subcommittee; Harrell

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Access Subcommittee	14 Y, 0 N	Prater	Schoolfield

SUMMARY ANALYSIS

The bill amends sections of Chapter 393 and Chapter 916, F.S., relating to the Agency for Persons with Disabilities (APD). The bill:

- Requires that APD's monitoring regulations do not require facilities that serve APD clients to make pornographic materials available to residents at such facilities.
- Requires that an individual who is subject to an involuntary admission order to an APD residential facility be released by the court to APD. APD will then make arrangements for the appropriate residential facility, rather than a court directly placing an individual in a specific facility.
- Requires APD to notify the court and counsel of transfers between residential facilities.
- Requires APD to ensure that there are sufficient facilities that provide community-based training for defendants charged with sex offenses.
- Creates a taskforce to set guidelines and procedures for residential facilities, in relation to sexual activity.

The bill appears to have no fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Agency for Persons with Disabilities (APD) is responsible for providing services to persons with developmental disabilities.¹ A developmental disability is defined in chapter 393, Florida Statutes, as “a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome that manifests before the age of 18, and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”² Children who are at “high risk³” of having a developmental disability and are between the ages of 3 and 5 are also eligible for services.

Involuntary Commitment

The circuit court after a hearing and in accordance with the procedures in s. 393.11, F.S., may involuntarily admit a person with a diagnosis of mental retardation or autism to an APD residential facility for care and treatment.⁴ A petition must be filed in circuit court and allege that the person lacks sufficient capacity to give express and informed consent to a voluntary application for services and lacks the basic survival and self-care skills to provide for the person’s well-being or is likely to physically injure others if allowed to remain at liberty.⁵

After APD receives the court order, and within 45 days upon receipt, must provide the court with the person’s family or individual support plan and copies of all examinations and evaluations, outlining the treatment and rehabilitative programs.⁶ In addition, the agency shall document that the person has been placed in the most appropriate, least restrictive and cost-beneficial residential setting.⁷ The court which issues the initial order for involuntary admission to residential services has continuing jurisdiction to ensure that the person is receiving adequate care. Upon request, the court may transfer the jurisdiction to the court where a client resides if it is different from where the original involuntary admission order was issued.⁸

A defendant who is charged with a felony and been found incompetent to proceed due to mental retardation or autism may be involuntarily committed for training upon a finding by the court.⁹ The court may order the individual into a forensic facility operated by APD. If the felony charges are dropped for the defendant, the court must consider a petition for involuntary admission to residential services provided by APD which may include a secure placement.¹⁰

Monitoring

Through its licensing authority and by rule, APD is required to provide the following regulations for foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs that serve agency clients:

¹ S. 20.197(3), F.S.

² S. 393.063(9), F.S.

³ S. 393.063(19), F.S., defines “high-risk child” as a child from 3 to 5 years of age with one or more of the following characteristics: a developmental delay in cognition, language, or physical development; a child surviving a catastrophic infectious or traumatic illness known to be associated with developmental delay, when funds are specifically appropriated; a child with a parent or guardian with developmental disabilities who requires assistance in meeting the child’s developmental needs; or a child who has a physical or genetic anomaly associated with developmental disability.

⁴ S. 393.11, (8)(b)1, F.S.

⁵ S.393.11(2), F.S.

⁶ S. 393.11(8)(e), F.S.

⁷ *Id.*

⁸ S. 393.11(11), F.S.

⁹ S.916.302, F.S.

¹⁰ S.916.3025(3), F.S.

- license application procedures;
- provider qualifications;
- facility and client care standards;
- requirements for client records;
- requirements for staff qualifications and training; and
- requirements for monitoring.¹¹

In addition, the Agency for Health Care Administration contracts with the Delmarva Foundation, a nonprofit organization, to conduct quality assurance monitoring activities that includes licensed residential facilities who receive Medicaid waiver funding.¹²

There are approximately 1,600 APD licensed residential facilities in the state, covering a broad range of needs. There is no provision in APD procedures for residential providers that regulates sexual activity among residents of its facilities.¹³

In December 2010, the St. Petersburg Times reported that the Human Development Center (HDC) in Seffner, FL, a facility that provides services to APD clients, promoted the use of pornography and sexual activity among male residents as a part of their treatment plan.¹⁴ The parent of an involuntarily committed resident to HDC alleged that this policy was included in his treatment plan over their objections.¹⁵ Because the individual was accused of committing a sexual offense prior to commitment, transfer to an alternative facility was difficult to achieve.¹⁶

Effects of Proposed Changes

The bill provides that monitoring requirements for foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs, which are licensed by APD, may not mandate the availability of pornography in residential facilities licensed by APD.

The bill provides that an individual who is subject to an involuntary admission to an APD residential facility be released to the agency, and then placed in an appropriate facility. The bill prevents the court from ordering a person directly to a facility. APD may transfer an involuntarily committed individual under civil commitment from one facility to another, and must notify the court and counsel within 30 days after the transfer is completed.

The bill requires APD to ensure that there are sufficient facilities that provide community-based training for defendants charged with sex offenses so that alternative placements are available. Where there are two or fewer, APD must immediately procure additional facilities.

The bill provides that the Legislature recognizes the rights of individuals with developmental disabilities and the obligation of the state to protect vulnerable individuals from sexual abuse. In order to protect these individuals, the bill establishes a task force to provide input to APD to set guidelines and procedures for residential facilities, in relation to sexual activity.

The task force is composed of the following members:

- The director of the Agency for Persons with Disabilities or his or her designee.
- The director of Adult Protective Services in the Department of Children and Family Services.
- The executive director of The Arc of Florida.
- An Arc of Florida family board member appointed by the executive director of The Arc of Florida.
- The chair of the Family Care Council Florida.

¹¹ S. 393.067(1), F.S.

¹² See: <http://www.dfmc-florida.org/> (last viewed April 2, 2011).

¹³ APD Bill Analysis SB 2062, on file with Health and Human Services Access Subcommittee Staff, March 31, 2011.

¹⁴ See: *Group Home's Unorthodox Sex Policy Disquiets Mother*, St. Petersburg Times, December 27, 2010.

¹⁵ *Id.*

¹⁶ *Id.*

- A parent representative from the Family Care Council Florida appointed by the chair of the Family Care Council Florida.
- A representative from the Developmental Disabilities Council, Inc.
- A representative from Disability Rights Florida.
- A representative from the Florida courts.
- A representative from the Florida Prosecuting Attorneys Association.
- A representative from the Florida Public Defender Association.
- A staff member of the University Center for Excellence in Developmental Disabilities at the University of South Florida/Center for Inclusive Communities.
- A self-advocate.
- A representative from an intensive behavior residential habilitation provider.

The members of the task force must hear from self-advocates, family members, experts at universities and colleges, and other entities with expertise pertinent to this issue. Members of the task force serve without compensation. APD is to provide administrative support for the task force, and the task force must report its findings to the President of the Senate and the Speaker of the House of Representatives by November 1, 2011.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 393.067, F.S., relating to facility licensure.
- Section 2:** Amends s. 393.11, F.S. relating to involuntary admission to residential services.
- Section 3:** Amends s. 916.1093, F.S. relating to operation and administration; rules.
- Section 4:** Amends s. 916.3025, F.S. relating to jurisdiction of committing court.
- Section 5:** Creates an unnumbered section of law creating a taskforce.
- Section 6:** Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 5, 2011, the Health and Human Services Access Subcommittee adopted one amendment to PCB 11-02.

The amendment removed the provision in the bill allowing members of the taskforce to receive per diem travel as provided in s. 112.061, F.S.

The bill was reported favorable as a Committee Substitute. The analysis reflects the Committee Substitute.