Health Care Appropriations Subcommittee

Tuesday, April 4, 2017
8:00 AM – 10:30 AM
Sumner Hall (404 HOB)

Meeting Packet

Richard Corcoran
Speaker

Jason Brodeur
Chair

The Florida House of Representatives

Appropriations Committee
Health Care Appropriations Subcommittee

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April 4, 2017
AGENDA
8:00 a.m. – 10:30 a.m.
Sumner Hall (404)

I. Call to Order/Roll Call

II. Opening Remarks

III. Consideration of the following bills(s)

- CS/HB 963 Newborn Screenings by Health Quality Subcommittee, Fitzenhagen
- HB 1051 Forensic Hospital Diversion Pilot Program by Ponder
- CS/HB 1117 Temporary Assistance For Needy Families Applicant Drug Screening by Children, Families & Seniors Subcommittee, Latvala
- CS/HB 1307 Physician Assistants by Health Quality Subcommittee, Plasencia

- CS/HB 6501 Relief/J.D.S./Agency for Persons with Disabilities by Civil Justice & Claims Subcommittee, Plakon, Antone

- CS/HB 6511 Relief/L.T./Department of Children and Families by Civil Justice & Claims Subcommittee, Miller, M.

- CS/HB 6523 Relief/"Survivor" & Estate of "Victim"/DCF by Civil Justice & Claims Subcommittee, Diaz, J., Edwards

- CS/HB 6525 Relief/C.M.H./Department of Children and Families by Civil Justice & Claims Subcommittee, Grant, J.

- CS/HB 6535 Relief/Vonshelle Brothers/Department of Health by Civil Justice & Claims Subcommittee, Jenne

- CS/HB 6539 Relief/Eddie Weekley and Charlotte Williams/Agency for Persons with Disabilities by Civil Justice & Claims Subcommittee, Byrd

- CS/HB 6553 Relief/Cristina Alvarez and George Patnode/Department of Health by Civil Justice & Claims Subcommittee, Toledo

IV. Closing Remarks/Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 963 Newborn Screenings
SPONSOR(S): Health Quality Subcommittee, Fitzenhagen
TIED BILLS: **IDEN./SIM. BILLS:** SB 1124

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	15 Y, 0 N, As CS	Tuszynski	McElroy
2) Health Care Appropriations Subcommittee		Mielke	Pridgeon
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Newborn screening is a preventive public health program that is provided in every state in the United States to identify, diagnose, and manage newborns at risk for selected disorders that, without detection and treatment, can lead to permanent developmental and physical damage or death. The United States Department of Health and Human Services (HHS) Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC) advises HHS on the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and standards. ACHDNC establishes the heritable disorders listed on the federal Recommended Uniform Screening Panel (RUSP).

In Florida, the Department of Health (DOH) is responsible for administering the statewide Newborn Screening Program (NSP), which conducts screenings for 53 hereditary and congenital disorders. Once a disorder is added to the RUSP, it is reviewed by DOH's Genetic and Newborn Screening Advisory Council (GNSAC) to determine whether to recommend the disorder be added to the NSP panel.

The most recent disorders added to the state's panel were Severe Combined Immunodefiency (SCID) and Critical Congenital Heart Defect (CCHD). SCID was added 1 year and 10 months after recommendation by the GNSAC and CCHD was added 2 years and 6 months after the recommendation by the GNSAC.

CS/HB 963 amends s. 383.14, F.S., to require DOH to adopt rules requiring every newborn in the state, at the appropriate age, to be tested for any condition listed on the federal RUSP that the GNSAC advises should be included in the NSP panel. DOH must adopt the rules to include any condition the GNSAC recommends within 18 months if a FDA-approved test (or a suitable alternative) is available. If no such test exists within the 18-month period, DOH must begin testing as soon as such test becomes available.

The bill also requires DOH to adopt rules requiring the GNSAC to consider addition of a condition in the NSP panel within 1 year of the condition being added to the federal RUSP.

The bill will have a significant indeterminate negative fiscal impact on DOH, and has no impact on local governments.

The bill provides for an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Recommendations for Newborn Screening

Newborn screening is a preventive public health program that is provided in every state in the United States to identify, diagnose, and manage newborns at risk for selected disorders that, without detection and treatment, can lead to permanent developmental and physical damage or death.

The United States Department of Health and Human Services (HHS) Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC), under the Public Health Service Act,[1] is established to reduce morbidity and mortality in newborns and children who have, or are at risk for, heritable disorders.[2] To that end, the ACHDNC advises the Secretary of HHS on the most appropriate application of universal newborn and child screening tests and technical information for the development of policies and priorities that will enhance the ability of state and local health agencies to provide for screening, counseling, and health care services for newborns and children having, or at risk for, heritable disorders.[3] As part of this process, ACHDNC establishes the list of heritable disorders on the federal Recommended Uniform Screening Panel (RUSP).

The RUSP currently recommends screening for 32 core conditions and 26 secondary conditions.[4]

Florida Newborn Screening Program

Section 383.14(5), F.S., establishes the Florida Genetics and Newborn Screening Advisory Council (GNSAC) to advise the Department of Health (DOH) about which disorders should be added to the Newborn Screening Program (NSP) panel of screened disorders and the procedures for collecting and transmitting specimens.[5] Florida's NSP currently screens for 50 of the 58 disorders recommended by the RUSP, including 31 core conditions and 28 secondary conditions.[6]

The intent of the NSP is to screen all newborns for hearing impairment and to identify, diagnose, and manage newborns at risk for selected disorders that, without detection and treatment, can lead to permanent developmental and physical damage or death.[7] The NSP involves coordination among several entities, including the Bureau of Public Health Laboratories Newborn Screening Laboratory in Jacksonville (State Laboratory), DOH Children's Medical Services (CMS) Newborn Screening Follow-up Program in Tallahassee, and referral centers, birthing centers, and physicians throughout the state.[8]

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[1] 42 U.S.C. s. 300b-10; 42 U.S.C. s. 217a: Advisory councils or committees (2016).
[2] U.S. Department of Health and Human Services, *Advisory Committee on Heritable Disorders in Newborns and Children*, http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/index.html (last accessed March 11, 2017).
[3] Secretary of Health and Human Services, *Charter Discretionary Advisory Committee on Heritable Disorders in Newborns and Children*, April 24, 2013, available at: http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/about/charterdachdnc.pdf (last accessed March 11, 2017).
[4] Advisory Committee on Heritable Disorders in Newborns and Children, *Recommended Uniform Screening Panel (as of November 2016), available at*: http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendedpanel/uniformscreeningpanel.pdf (last visited March 11, 2017).
[5] S. 383.14(5), F.S.
[6] Florida Department of Health, *Disorder List*, available at: http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/_documents/newborn-screening-disorders.pdf (last accessed March 11, 2017); this list is also maintained by DOH in Rule Rule 64C-7.002, F.A.C.
[7] Florida Department of Health, Florida Newborn Screening Guidelines, 2012, available at: https://www.peds.ufl.edu/divisions/genetics/programs/newborn_screening/2012%20newborn%20screening%20guidelines%20FL.pdf (last accessed March 11, 217).
[8] Infra, FN 15.

to administer the NSP, DOH is authorized to charge and collect a fee not to exceed $15 per live birth occurring in a hospital or birth center.[9] DOH must calculate the annual assessment for each hospital and birth center, and then quarterly generate and mail each hospital and birth center a statement of the amount due.[10] Statute authorizes DOH to bill third-party payers for the NSP tests, DOH bills these insurers directly for the cost of the screening.[11] DOH does not bill families that do not have insurance coverage.[12]

The screening process involves collecting a few drops of blood from the newborn's heel.[13] Parents and guardians may decline the screening in writing, which must be placed in the medical record.[14] After a specimen is collected, the specimen card is sent to the State Laboratory in Jacksonville for testing.[15] The State Laboratory receives about 1,000 specimens per day from births in Florida.[16] In the event that a newborn screen has an abnormal result, the CMS program provides follow-up services for the child and his or her family.[17]

Adding Conditions to the NSP Panel

Before a disorder is added to the NSP panel, the GNSAC considers the recommendations of the ACHDNC and evaluates whether:[18]

- The disorder is known to result in significant impairment in health, intellect, or functional ability, if not treated before clinical signs appear.
- The disorder can be detected using screening methods which are accepted by current medical practice.
- The disorder can be detected prior to the infant's becoming two weeks of age, or at the appropriate age as accepted medical practice indicates.
- After screening for the disorder, reasonable cost benefits can be anticipated through a comparison of tangible program costs with those medical, institutional, and special educational costs likely to be incurred by an undetected population.

If the GNSAC recommends the inclusion of a disorder to the NSP panel, DOH assesses the availability of funding, staff, the availability of a federally approved test, and treatment options required to add the disorder to the NSP panel.[19] To prepare for the addition of a disorder to the NSP panel, DOH must:[20]

- Obtain budget authority for expenditures for reagents, equipment, data system modifications, staffing, second tier testing, and contracting with referral centers for diagnostic services; testing and validation of the screening test;
- Develop follow-up policies;
- Establish referral center contracts;
- Ensure the availability of the appropriate pediatric specialists and developing standard procedures for diagnostic services for infants with critical values; and
- Develop disorder specific educational materials for physicians and birthing facilities to include the interpretation of lab results, appropriate actions by physicians and facilities upon diagnosis, and information for families.

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[9] S. 383.14(3)(g)1., F.S.
[10] Id.
[11] S. 383.14(3)(h), F.S.
[12] Florida Department of Health, Bureau of Public Health Laboratories Newborn Screening, http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/BPHL/index.html (last accessed March 15, 2017).
[13] Florida Department of Health, Newborn Screening, http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/ (last accessed March 11, 2017).
[14] S. 383.14(4), F.S.; Rule 64C-7.008, F.A.C.
[15] Supra, FN 13.
[16] Id.
[17] Id.
[18] Rule 64C-7.007, F.A.C. (2014) (repealed in 2015).
[19] Florida Department of Health, *Agency Analysis of 2017 House Bill 963*, February 22, 2017 (on file with Health Quality Subcommittee).
[20] Supra, FN 19 at pg. 3.

The most recent disorders added to the NSP panel were Severe Combined Immunodeficiency in 2012 (1 year and 10 months after recommendation by the GNSAC) and Critical Congenital Heart Defect in 2013 (2 years and 6 months after the recommendation by the GNSAC).[21]

Currently, three disorders on the RUSP are not on the NSP panel:[22]

- X-linked ALD (ALD)[23]
- Glycogen Storage Disease Type II (Pompe)[24]
- Mucupolysacharidosis Type I (MPS I)[25]

The GNSAC recommended the addition of ALD to the NSP panel on February 19, 2016. DOH has requested a $1.3 million recurring appropriation in the department's FY 2017-18 Legislative Budget Request to implement screening for ALD.[26] The RUSP added Pompe and MPS I in March 2, 2015 and February 15, 2016, respectively.[27] The GNASC has not recommended either for addition to the NSP panel.

Effect Of Proposed Changes

CS/HB 963 amends s. 383.14, F.S., to require DOH to adopt rules requiring every newborn in the state, at the appropriate age, to be tested for any condition listed on the federal RUSP which the GNSAC advises should be included in the state's screening program. The bill also requires DOH to adopt rules that expand the statewide screening of newborns to include any condition the GNSAC recommends within 18 months if a FDA-approved or a suitable alternative vendor test is available. If no such test exists within the 18-month period, DOH must begin testing as soon as such test becomes available.

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[21] Florida Department of Health, Bureau of Public Health Laboratories Newborn Screening, *Conditions Newborn Screening Detects*, available at: http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/BPHL/_documents/nbs-screened-disorders.pdf (last accessed March 11, 2017).; Supra, FN 19 at pg. 2.

[22] *See* United States Department of Health and Human Services, Advisory Committee on Heritable Disorders in Newborns and Children, *Recommended Uniform Screening Panel*, available at: https://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendedpanel/index.html (last accessed March 11, 2017); Florida Department of Health, Bureau of Public Health Laboratories Newborn Screening, *Conditions Newborn Screening Detects*, available at: http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/BPHL/_documents/nbs-screened-disorders.pdf (last accessed March 11, 2017).

[23] X-Linked ALD is a genetic disorder that occurs primarily in males with an incidence rate of approximately 1 in 20,000-50,000. It mainly affects the nervous system and the adrenal glands, which are small glands located on top of each kidney. In this disorder, the fatty covering (myelin) that insulates nerves in the brain and spinal cord is prone to deterioration (demyelination), which reduces the ability of the nerves to relay information to the brain. In addition, damage to the outer layer of the adrenal glands (adrenal cortex) causes a shortage of certain hormones (adrenocortical insufficiency). Adrenocortical insufficiency may cause weakness, weight loss, skin changes, vomiting, and coma. There are three distinct types of X-linked adrenoleukodystrophy: a childhood cerebral form, an adrenomyeloneuropathy type, and a form called Addison disease only; https://ghr.nlm.nih.gov/condition/x-linked-adrenoleukodystrophy (last accessed March 13, 2017).

[24] Pompe is an inherited disorder with an incidence rate of approximately 1 in 40,000. It is caused by the buildup of a complex sugar called glycogen in the body's cells. The accumulation of glycogen in certain organs and tissues, especially muscles, impairs their ability to function normally; https://ghr.nlm.nih.gov/condition/pompe-disease (last accessed March 13, 2017)>

[25] MPS I is a genetic disorder with two presentations. Severe MPS 1 has an incidence rate of approximately 1 in 100,000 and Attenuated MPS 1 – approximately 1 in 500,000. The disorder causes molecules to build up inside lysomes, which causes tissue and organ enlargement as well as interference with the function of proteins inside the lysomes; https://ghr.nlm.nih.gov/condition/mucopolysaccharidosis-type-i# (last accessed March 13, 2017).

[26] Florida Department of Health, Legislative Budget Request for FY 2017-2018, *D-3A Expenditures by Issue and Appropriation Category*, 2017, pg. 88, available at: http://floridafiscalportal.state.fl.us/Document.aspx?ID=14707&DocType=PDF (last accessed March 11, 2017).

[27] United States Department of Health and Human Services, Secretary's Final Response RE: Committee's Recommendation to add Pompe Disease to the RUSP, March 2, 2015, available at: https://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendations/correspondence/secretaryfinalresponse.pdf (last accessed March 11, 2017); United States Department of Health and Human Services, Secretary's Final Response regarding Committee's Recommendation to add MPS I to the RUSP, February 16, 2016, available at: https://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendations/secretary-final-mpsi-rusp.pdf (last accessed March 11, 2017).

The bill also requires DOH to adopt rules requiring the GNSAC to consider whether to include a condition in the state's screening program within 1 year of the condition being added to the federal RUSP.

The effective date of the bill is July 1, 2017.

B. SECTION DIRECTORY:

Section 1: Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.

Section 2: Provides for an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill will have an indeterminate negative fiscal impact on the Department of Health. It is unknown what or how many disorders may be added by the RUSP and recommended by the GNSAC in the future. As a comparison, the most recent added test for ALD requires a recurring appropriation of $1,331,492 (with an FDA-approved test) and two FTEs, which is provided in the House's proposed General Appropriations Act for Fiscal Year 2017-2018. Without an FDA-approved test the cost would be nearly $3,000,000.[28]

   The two most recent disorders added to the state's panel, Severe Combined Immunodeficiency and Critical Congenital Heart Defect, required appropriations of $1,961,450 and $204,922, respectively. The Critical Congenital Heart Defect screen does not require a laboratory component.[29]

   Laboratory fiscal impact can range from $850,000 to $3,000,000 depending on multiple factors, including whether there is an FDA-approved test kit, whether the test will be run on existing platforms, whether the test requires additional instrumentation, and how many additional FTEs will be required.[30]

   According to the Agency for Health Care Administration, Florida Medicaid covers required screenings. AHCA will need to monitor the implementation of the bill as well as any recommendations by the GNSAC to add conditions to the NSP panel to determine the fiscal impact. Prior AHCA projections indicate there will be 131,669 newborns in the Medicaid program for Fiscal Year 2016-2017 and 133,275 newborns in in Fiscal Year 2016-2017.[31]

[28] Supra, FN 19 at pg. 5.
[29] Id.
[30] Id.
[31] Florida Agency for Health Care Administration, *Agency Analysis for 2015 House Bill 403*, January 22, 2015 (on file with Health Quality Subcommittee).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is an indeterminate negative fiscal impact to insurance carriers that cover newborn screening, depending on which screenings are added.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to effect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Health Quality Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment required DOH to begin testing for any new condition recommended by the GNSAC within 18 months if a FDA-approved or a suitable alternative vendor test is available. If no such test exists within the 18-month period, DOH must begin testing as soon as such test becomes available. The analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

A bill to be entitled

An act relating to newborn screenings; amending s. 383.14, F.S.; requiring the Department of Health, upon the advice of the Genetics and Newborn Screening Advisory Council, to expand within a specified period the statewide screening of newborns to include any condition on the federal Recommended Uniform Screening Panel, contingent upon the availability of certain approved screening tests; requiring the council to determine whether a condition should be included in the state's screening program within a specified period after its addition to the federal panel; providing an effective date.

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

Section 1. Subsection (2) and paragraph (a) of subsection (5) of section 383.14, Florida Statutes, are amended to read:

383.14 Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.—

(2) RULES.—

(a) After consultation with the Genetics and Newborn Screening Advisory Council, the department shall adopt and enforce rules requiring that every newborn in this state shall:

1. Before~~, prior to~~ becoming 1 week of age, be subjected

to a test for phenylketonuria;

2. Be tested for any condition included on the federal Recommended Uniform Screening Panel which the council advises the department should be included under the state's screening program. The department shall expand statewide screening of newborns to include screening for such conditions within 18 months after the council renders such advice, if a test approved by the United States Food and Drug Administration or a test offered by an alternative vendor which is compatible with the clinical standards established under part I of chapter 483 is available. If such a test is not available within 18 months after the council makes its recommendation, the department shall implement such screening as soon as a test offered by the United States Food and Drug Administration or by an alternative vendor is approved; and~~,~~

3. At the appropriate age, be tested for such other metabolic diseases and hereditary or congenital disorders as the department may deem necessary from time to time.

(b) After consultation with the Office of Early Learning, the department shall ~~also~~ adopt and enforce rules requiring every newborn in this state to be screened for environmental risk factors that place children and their families at risk for increased morbidity, mortality, and other negative outcomes.

(c) The department shall adopt such additional rules as are found necessary for the administration of this section and

s. 383.145, including rules providing definitions of terms, rules relating to the methods used and time or times for testing as accepted medical practice indicates, rules relating to charging and collecting fees for the administration of the newborn screening program authorized by this section, rules for processing requests and releasing test and screening results, and rules requiring mandatory reporting of the results of tests and screenings for these conditions to the department.

(5) ADVISORY COUNCIL.—There is established a Genetics and Newborn Screening Advisory Council made up of 15 members appointed by the State Surgeon General. The council shall be composed of two consumer members, three practicing pediatricians, at least one of whom must be a pediatric hematologist, one representative from each of the four medical schools in the state, the State Surgeon General or his or her designee, one representative from the Department of Health representing Children's Medical Services, one representative from the Florida Hospital Association, one individual with experience in newborn screening programs, one individual representing audiologists, and one representative from the Agency for Persons with Disabilities. All appointments shall be for a term of 4 years. The chairperson of the council shall be elected from the membership of the council and shall serve for a period of 2 years. The council shall meet at least semiannually or upon the call of the chairperson. The council may establish

ad hoc or temporary technical advisory groups to assist the council with specific topics which come before the council. Council members shall serve without pay. Pursuant to the provisions of s. 112.061, the council members are entitled to be reimbursed for per diem and travel expenses. It is the purpose of the council to advise the department about:

(a) Conditions for which testing should be included under the screening program and the genetics program. Within 1 year after a condition is added to the federal Recommended Uniform Screening Panel, the council shall consider whether the condition should be included under the state's screening program.

Section 2. This act shall take effect July 1, 2017.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health Care Appropriations Subcommittee

Representative Fitzenhagen offered the following:

Amendment (with title amendment)

Remove line 30 and insert:

program. After the council recommends a condition be included, the department shall submit a legislative budget request to seek an appropriation to add testing of the condition to the newborn screening program. The department shall expand statewide screening of

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

Remove line 9 and insert:

approved screening tests and an appropriation; requiring the council to

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1051 Forensic Hospital Diversion Pilot Program
SPONSOR(S): Ponder
TIED BILLS: **IDEN./SIM. BILLS:** SB 1094

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 0 N	Roth	Brazzell
2) Health Care Appropriations Subcommittee		Fontaine	Pridgeon
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Florida's forensic system is a network of state facilities and community services for individuals who have a mental illness, are a defendant in a criminal case, and are found incompetent to stand trial or are adjudicated not guilty by reason of insanity. Forensic services may be provided in jail, the community, a community-based residential setting, or a state treatment facility. The setting depends on the stage of the court proceeding, the nature of the individual's mental illness, and the type and degree of charge he or she faces. More serious charges, especially those involving violence, lead to service provision in more restrictive settings.

The Miami-Dade Forensic Alternative Center (MDFAC) is a community-based forensic commitment program. Section 916.185, F.S., establishes the Forensic Hospital Diversion Pilot Program (FHDPP), which is modeled after the MDFAC. DCF may implement the pilot program in Duval, Broward, and Miami-Dade counties. If the pilot program is implemented, DCF must include a comprehensive continuum of care and services that use evidence-based practices and best practices to treat offenders who have mental health and co-occurring substance abuse disorders. DCF and the judicial circuits including the county sites may implement the pilot if recurring resources are available. DCF is authorized to request budget amendments to realign funds between mental health services and community substance abuse and mental health services in order to implement the pilot.

Currently, DCF has not established any forensic alternative treatment centers modeled after the MDFAC program and has no plans to do so as it does not currently have existing resources available on a recurring basis that can be realigned without negatively impacting other services and programs.

HB 1051 amends s. 916.185, F.S., to add Okaloosa County to the list of counties where DCF may implement a Forensic Hospital Diversion Pilot Program modeled after the MDFAC. This allows but does not require DCF to create a Forensic Hospital Diversion Pilot Program in Okaloosa County.

The bill has no fiscal impact on state or local government. See Fiscal Analysis.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Mental Illness and Substance Abuse of Offenders in the Criminal Justice System

An estimated 17,000 prison inmates, 15,000 jail detainees, and 40,000 individuals under correctional supervision are experiencing serious mental illness each day in Florida.[1] Annually, up to125,000 adults with a mental illness or substance use disorder requiring immediate treatment are arrested and booked into Florida jails.[2]

Between 2002 and 2010, the population of inmates with mental illness or substance use disorder in Florida increased from 8,000 to 17,000 inmates.[3] By 2020, the number of inmates with these types of disorders is expected to reach at least 35,000.[4]

Most individuals with serious mental illness or substance use disorder who become involved with the criminal justice system are charged with minor misdemeanor and low-level felony offenses that are often a direct result of their untreated condition.[5] These individuals are often poor, uninsured, and homeless.[6]

Mental Illness and Substance Abuse

Mental health and mental illness are not synonymous. Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community.[7] The primary indicators used to evaluate an individual's mental health are:[8]

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

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[9] Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being.

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[1] The Florida Senate, *Forensic Hospital Diversion Pilot Program, Interim Report 2011-106*, (Oct. 2010), p. 1, available at https://www.flsenate.gov/UserContent/Session/2011/Publications/InterimReports/pdf/2011-106cf.pdf (last viewed on March 24, 2017).
[2] *Id.*
[3] *Supra,* note 1 at 1.
[4] *Id.*
[5] *Id.* at 2.
[6] *Id.*
[7] *Mental Health Basics*, Centers for Disease Control and Prevention. http://www.cdc.gov/mentalhealth/basics.htm (last viewed on March 24, 2017).
[8] *Id.*
[9] *Id.*

Mental illness affects millions of people in the United States each year. Only about 17% of adults in the United States are considered to be in a state of optimal mental health.[10] This leaves the majority of the population with less than optimal mental health: [11]

- One in five adults (43.8 million people) experiences mental illness in a given year;
- Approximately 6.9 percent (16 million people) had at least one major depressive episode in the past year; and
- Approximately 18.1 percent of adults live with anxiety disorders, such as obsessive-compulsive disorder (OCD), posttraumatic stress disorder (PTSD), and specific phobias.

Many people are diagnosed with more than one mental illness. For example, people who suffer from a depressive illness (major depression, bipolar disorder, or dysthymia) often have a co-occurring mental illness such as anxiety.[12]

Substance abuse also affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[13] Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[14] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[15] Brain imaging studies of persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[16]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[17] The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[18]

Opioids are commonly abused, with an estimated 15 million people worldwide suffering from opioid dependence.[19] Drug overdose is now the leading cause of injury-related death in the United States.[20] In 2015, Florida ranked fourth in the nation with 3,228 deaths from drug overdoses,[21] and at least one opioid caused 2,530 of those deaths.[22] Statewide, in 2015, heroin caused 733 deaths, fentanyl caused

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[10] *Id.* Mental illness can range in severity from no or mild impairment to significantly disabling impairment. Serious mental illness is a mental disorder that has resulted in a functional impairment which substantially interferes with or limits one or more major life activities. *Any Mental Illness (AMI) Among Adults*, National Institute of Mental Health, available at http://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-adults.shtml (last viewed on March 24, 2017).

[11] *Mental Health by the Numbers,* National Alliance on Mental Illness, available at http://www.nami.org/Learn-More/Mental-Health-By-the-Numbers (last viewed March 24, 2017).

[12] *Mental Health Disorder Statistics,* John Hopkins Medicine, available at http://www.hopkinsmedicine.org/healthlibrary/conditions/mental_health_disorders/mental_health_disorder_statistics_85,P00753/ (last viewed on March 24, 2017).

[13] WORLD HEALTH ORGANIZATION. *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last viewed on March 23, 2017).

[14] SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *Substance Use Disorders,* available at: http://www.samhsa.gov/disorders/substance-use (last viewed on March 23, 2017).

[15] NATIONAL INSTITUTE ON DRUG ABUSE, *Drugs, Brains, and Behavior: The Science of Addiction*, available at: https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last viewed on March 23, 2017).

[16] *Id.*

[17] *Supra*, note 14.

[18] *Id.*

[19] WORLD HEALTH ORGANIZATION, *Information Sheet on Opioid Overdose*, November 2014. http://www.who.int/substance_abuse/information-sheet/en/ (last viewed on March 23, 2107).

[20] TRUST FOR AMERICA'S HEALTH, *The Facts Hurt: A State-by-State Injury Prevention Policy Report 2015,* available at: http://healthyamericans.org/reports/injuryprevention15/ (last viewed on March 23, 2017).

[21] CENTERS FOR DISEASE CONTROL AND PREVENTION, *Drug Overdose Death Data*, available at: https://www.cdc.gov/drugoverdose/data/statedeaths.html (last viewed on March 23, 2017).

[22] FLORIDA DEPARTMENT OF LAW ENFORCEMENT. *Drugs Identified in Deceased Persons by Florida Medical Examiners-2015 Annual Report,* available at: https://www.fdle.state.fl.us/cms/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2015-Annual-Drug-Report.aspx (last viewed on March 23, 2017).

705, oxycodone caused 565, and hydrocodone caused 236; deaths caused by heroin and fentanyl increased more than 75% statewide when compared with 2014.[23]

Drug overdose deaths doubled in Florida from 1999 to 2012.[24] Over the same time period, drug overdose deaths occurred at a rate of 13.2 deaths per 100,000 persons.[25] The crackdown on "pill mills" dispensing prescription opioid drugs, such as oxycodone and hydrocodone, reduced the rate of death attributable to prescription drugs[26] but may have generated a shift to heroin use, contributing to the rise in heroin addiction.[27]

In 2013, an estimated 21.6 million persons aged 12 or older were classified with having substance dependence or abuse issues.[28] Of these, 2.6 million were classified with dependence or abuse of both alcohol and illicit drugs, 4.3 million had dependence or abuse of illicit drugs but not alcohol, and 14.7 million had dependence or abuse of alcohol but not illicit drugs.[29]

Cost of Mental Illness and Substance Abuse

Significant social and economic costs are associated with mental illness. Persons diagnosed with a serious mental illness experience significantly higher rates of unemployment compared with the general population.[30] This results in substantial loss of earnings each year[31] and can lead to homelessness. Homelessness is especially high for people with untreated serious mental illness, who comprise approximately one-third of the total homeless population.[32] Both adults and youth with mental illness frequently interact with the criminal justice system, which can lead to incarceration. For example, seventy percent of youth in juvenile justice systems have at least one mental health condition and at least twenty percent live with a severe mental illness.[33]

Substance abuse likewise has substantial economic and societal costs. As of 2015, the total estimated cost of drug abuse and addiction due to use of tobacco, alcohol, and illegal drugs in the United States was estimated at more than $700 billion a year related to crime, lost work productivity, and health care.[34] This consists of $204 billion/year related to illegal drugs, $249 billion/year related to alcohol, and $425 billion/year related to tobacco use.[35] Mental illness and substance abuse commonly co-occur. Approximately 8.9 million adults have co-occurring disorders.[36] In fact, more than half of all adults with

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[23] *Id.* at pg. 3.
[24] FLORIDA DEPARTMENT OF HEALTH, *Special Emphasis Report: Drug Poisoning (Overdose) Deaths, 1999-2012*, available at: http://www.floridahealth.gov/statistics-and-data/florida-injury-surveillance-system/_documents/CDC-Special-Emphasis-Drug-poisoning-overdose-1999-2012-B-Poston-FINAL.pdf (last viewed on March 23, 2017).
[25] *Id.*
[26] *Supra*, note 22.
[27] *Supra*, note 13.
[28] Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings, United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality. http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.samhsa.gov%2Fdata%2Fsites%2Fdefault%2Ffiles%2FNSDUHresultsPDFWHTML2013%2FWeb%2FNSDUHresults2013.pdf&ei=L74lVZydKO2SsQStroDQCg&usg=AFQjCNE8sNFxhZQfOgdkJvOgZR3fP5I0Uw (last viewed on March 24, 2017).
[29] *Id.*
[30] *Accounting for Unemployment Among People with Mental Illness*, Baron RC, Salzer MS, Behav. Sci. Law., 2002;20(6):585-99. http://www.ncbi.nlm.nih.gov/pubmed/12465129 (last viewed on March 24, 2017).
[31] *Supra,* note 11.
[32] *How Many Individuals with A Serious Mental Illness are Homeless?* Treatment Advocacy Center, available at: http://www.treatmentadvocacycenter.org/fixing-the-system/features-and-news/2596-how-many-people-with-serious-mental-illness-are-homeless (last viewed on March 24, 2017).
[33] *Supra,* note 11.
[34] Drug Abuse Costs The United States Economy Hundreds of Billions of Dollars in Increased Health Care Costs, Crime and Lost Productivity, National Institute on Drug Abuse, July 2008. http://www.drugabuse.gov/publications/addiction-science-molecules-to-managed-care/introduction/drug-abuse-costs-united-states-economy-hundreds-billions-dollars-in-increased-health (last viewed on March 24, 2017).
[35] *Id.*
[36] *About Co-Occurring*, Substance Abuse and Mental Health Services Administration. http://media.samhsa.gov/co-occurring/default.aspx (last viewed on March 24, 2017).

severe mental illness are further impaired by substance use disorders.[37] Drug abuse can cause individuals to experience one or more symptoms of another mental illness.[38] Additionally, individuals with mental illness may abuse drugs as a form of self-medication.[39] Examples of co-occurring disorders include the combinations of major depression with cocaine addiction, alcohol addiction with panic disorder, alcoholism and drug addiction with schizophrenia, and borderline personality disorder with episodic drug abuse.[40]

Florida's Substance Abuse and Mental Health Program

The Florida Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. It serves children and adults who are otherwise unable to obtain these services (such as individuals who are not covered under Medicaid or private insurance and do not have the financial ability to pay for the services themselves). SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.[41] DCF also administers the state's forensic services, described below.

State Forensic System -- Mental Health Treatment for Criminal Defendants

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues and are involved with the criminal justice system. The forensic system serves defendants who are determined incompetent to proceed or not guilty by reason of insanity.

The Due Process Clause of the 14th Amendment prohibits the states from trying and convicting defendants who are incompetent to stand trial.[42] The states must have procedures in place that adequately protect the defendant's right to a fair trial, which includes his or her participation in all material stages of the process.[43] Defendants must be able to appreciate the range and nature of the charges and penalties that may be imposed, understand the adversarial nature of the legal process, and disclose to counsel facts pertinent to the proceedings. Defendants also must manifest appropriate courtroom behavior and be able to testify relevantly.[44] A defendant is determined incompetent to proceed if he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against him or her.[45]

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.[46] If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's

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[37] *Co-Occurring Disorders*, Psychology Today. https://www.psychologytoday.com/conditions/co-occurring-disorders (last viewed on March 24, 2017).

[38] *Comorbidity: Addiction and Other Mental Illnesses*, U.S. Department of Health and Human Services, National Institutes of Health, National Institute on Drug Abuse, NIH Publication Number 10-5771, September 2010. http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCMQFjAA&url=http%3A%2F%2Fwww.drugabuse.gov%2Fsites%2Fdefault%2Ffiles%2Frrcomorbidity.pdf&ei=6q8NVf-iMsibNo7gg4AO&usg=AFQjCNFujSP7SHxxqB3FI7961yGQNQ56YA&bvm=bv.88528373,d.eXY (last viewed on March 24, 2017).

[39] *Id.*

[40] *Supra,* note 36.

[41] These priority populations include, among others, persons diagnosed with co-occurring substance abuse and mental health disorders, persons who are experiencing an acute mental or emotional crisis, children who have or are at risk of having an emotional disturbance and children at risk for initiating drug use.

[42] See Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed. 815 (1966); Bishop v. U.S., 350 U.S.961, 76 S.Ct. 440, 100 L.Ed. 835 (1956); Jones v. State, 740 So.2d 520 (Fla. 1999).

[43] *Id.* See also Rule 3.210(a)(1), Fla.R.Crim.P.

[44] *Id.* See also s. 916.12, 916.3012, and 985.19, F.S.

[45] S. 916.12(1), F.S.

[46] Rule 3.210, Fla.R.Crim.P.

competency is then determined by the judge in a subsequent hearing.[47] If the defendant is found to be competent, the criminal proceeding resumes.[48] If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.[49] Competency restoration services help defendants learn about legal process, their charges, the court dispositions they might face, and their legal rights so as to prepare them to participate meaningfully in their own defense.[50]

Defendants may be adjudicated not guilty by reason of insanity pursuant to s. 916.15, F.S. DCF must admit a defendant adjudicated not guilty by reason of insanity who is committed to the department[51] to an appropriate facility or program for treatment and must retain and treat the defendant.[52]

Forensic services may be provided in jail, the community, a community-based residential setting, or a state treatment facility. Section 916.105, F.S., provides Legislative intent for forensic services to individuals with mental illness to be provided in community-based settings or civil facilities whenever feasible. The setting depends on stage of the court proceeding, the nature of the defendant's mental illness, and the type and degree of charge he or she faces. More serious charges, especially those involving violence, lead to commitments in more restrictive settings.

Offenders who are charged with a felony and adjudicated incompetent to proceed and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil[53] and forensic[54] treatment facilities by the circuit court,[55, 56] or in lieu of such commitment, may be released on conditional release by the circuit court if the person is not serving a prison sentence.[57]

State Treatment Facilities

State treatment facilities are the most restrictive settings for forensic services. DCF oversees two state-operated forensic facilities, Florida State Hospital and North Florida Evaluation and Treatment Center, and two privately-operated, maximum security forensic treatment facilities, South Florida Evaluation and Treatment Center and Treasure Coast Treatment Center.

Florida State Hospital has capacity for 959 individuals, of which 469 may receive forensic services. Up to an additional 245 individuals with forensic commitments (but do not require the security of a forensic setting) may occupy the hospital's civil beds.[58] The North Florida Evaluation and Treatment Center has 193 beds.[59] South Florida Evaluation and Treatment Center has a capacity to serve 238 individuals, and Treasure Coast Treatment Center has a contracted capacity of 208 beds.[60]

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[47] *Id.*
[48] Rule 3.212, Fla.R.Crim.P.
[49] *Id.*
[50] OPPAGA, *Juvenile and Adult Incomptent to Proceed Cases and Costs*, Report. No. 13-04, Feb. 2013, p. 1.
[51] The court may also order outpatient treatment at any other appropriate facility or service or discharge the defendant. Rule 3.217, Fla.R.Crim.P.,
[52] S. 916.15(3), F.S.
[53] A "civil facility" is a mental health facility established within the Department of Children and Families (DCF) or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting designated by the Agency for Persons with Disabilities (APD) to serve defendants who do not require the security provided in a forensic facility. S. 916.106(4), F.S.
[54] A "forensic facility" is a separate and secure facility established within DCF or APD to service forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents. S. 916.106(10), F.S.
[55] "Court" is defined to mean the circuit court. s. 916.106(5), F.S.
[56] SS. 916.13, 916.15, and 916.302, F.S.
[57] S. 916.17(1), F.S.
[58] Florida Department of Children and Families, *Forensic Facilities*, 2014, available at http://www.myflfamilies.com/service-programs/mental-health/forensic-facilities (last viewed March 24, 2017).
[59] *Id.*
[60] *Id.*

The forensic facilities provide assessment, evaluation, and treatment to the individuals who have mental health issues and who are involved with the criminal justice system.[61] In addition to general psychiatric treatment approaches and environment, specialized services include:

- Psychosocial rehabilitation,
- Education,
- Treatment modules such as competency, anger management, mental health awareness, medication and relapse prevention,
- Sexually transmitted disease education and prevention,
- Substance abuse awareness and prevention,
- Vocational training,
- Occupational therapies, and
- Full range of medical and dental services.[62]

DCF must admit defendants committed to its care for forensic involuntary hospitalization within 15 days of commitment.[63] However, the high number of forensic commitments in FY 2014-2015 (1,573) and FY 2015-2016 (1,587) has made it challenging for DCF to admit individuals within the statutory time frame. In FY 2015-2016, it took an average of 12 days to admit forensic individuals into state mental health treatment facilities.[64]

Community-Based Services

Before an individual is admitted into a state facility, community services are provided as a first level of treatment and assessment aimed at stabilization and reducing the need for admission into a state facility. Community services are also available to individuals released from state mental health treatment facilities.

Community-based services may be provided to an individual on conditional release. Conditional release is release into the community accompanied by outpatient care and treatment.[65] The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.[66]

Jail-Based Services

Services are provided in local county jails to individuals awaiting state facility admission, to individuals returning from state facilities, and to individuals who are able to proceed with disposition of their criminal charges without requiring facility admission.[67]

Miami-Dade Forensic Alternative Center

The Miami-Dade Forensic Alternative Center (MDFAC) opened in 2009 as a community-based forensic commitment program. The program provides services under a contract with the South Florida Behavioral Health Network, which is the managing entity administering DCF-funded safety net behavioral health services in Miami-Dade County. The MDFAC is a short-term residential treatment program serving offenders who have mental illnesses or co-occurring mental illnesses and substance

[61] Florida Department of Children and Families, *About Adult Forensic Mental Health (AFMH)*, 2014, available at http://www.myflfamilies.com/service-programs/mental-health/about-adult-forensic-mental-health (last viewed March 24, 2017).
[62] *Id.*
[63] S. 916.107(1)(a), F.S.
[64] DCF, *Exhibit D-3A, Expenditures by Issue and Appropriation Category, Budget Period 2017-2018*, p. 354.
[65] *Id.*
[66] S. 916.16(1), F.S.
[67] *Id.*

use disorders and who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities.[68] The MDFAC serves adults:

- Age 18 years or older;
- Who have been found by a court to be incompetent to proceed due to serious mental illness or not guilty by reason of insanity for a second or third degree felony; and
- Who do not have a significant history of violence.[69]

The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community through a 16-bed facility.[70] From FY 2011-2012 through FY 2015-16, MDFAC has admitted 158 forensic individuals.[71]

Forensic Hospital Diversion Pilot Program

Section 916.185, F.S., establishes the Forensic Hospital Diversion Pilot Program (FHDPP), which is modeled after the MDFAC. The intent of the pilot program is to serve offenders who have mental illnesses or co-occurring mental illnesses and substance use disorders and who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities.[72] However, s. 916.185(4)(f), F.S., allows a pilot facility to serve only individuals who would otherwise have been committed to a state mental health treatment facility.

DCF may implement the pilot program in Duval, Broward, and Miami-Dade counties.[73] If the pilot program is implemented, DCF must include a comprehensive continuum of care and services that use evidence-based practices and best practices to treat offenders who have mental health and co-occurring substance abuse disorders.[74] [75] DCF and the circuits may implement the pilot if recurring resources are available. DCF is authorized to request budget amendments to realign funds between mental health services and community substance abuse and mental health services in order to implement the pilot program.[76]

Participation in the program is limited to persons who:

- Are 18 years of age and older;
- Are charged with a second or third degree felony;
- Do not have a significant history of violent criminal offenses;
- Have been adjudicated either incompetent to proceed to trial or not guilty by reason of insanity;
- Meet safety and treatment criteria established by DCF for placement in the community; and
- Would otherwise be admitted to a state mental health treatment facility.[77]

DCF has not established any forensic alternative treatment centers modeled after the MDFAC program and currently has no plans to do so as the department lacks existing resources available on a recurring basis that can be realigned without negatively impacting other services and programs.[78]

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[68] S. 916.185(1), F.S.
[69] S. 916.185(4), F.S.
[70] Florida Department of Children and Families, *Agency Analysis of 2015 House Bill 7113*, p. 2 & 4 (Mar. 19, 2015).
[71] Florida Department of Children and Families, *Agency Analysis of 2017 House Bill 1051*, p. 2 (Mar. 24, 2017).
[72] S. 916.185(1), F.S.
[73] S. 916.185(3)(a), F.S.
[74] S. 916.185(3)(b), F.S.
[75] "Best practices," "community forensic system," and "evidence-based practices" are defined in s. 916.185(2)(a)-(c), F.S., respectively.
[76] S. 916.185(3)(c), F.S.
[77] S. 916.185(4)(a)-(f), F.S.
[78] Email from Lindsey Zander, Department of Children and Families, Legislative Specialist, RE: Forensic Alternative Treatment Centers, (March 15, 2017), on file with the Children, Families, and Seniors Subcommittee staff.

Effect of the Proposed Changes

HB 1051 amends s. 916.185, F.S., to add Okaloosa County, in conjunction with the First Judicial Circuit Court, to the list of counties where DCF may implement a Forensic Hospital Diversion Pilot Program modeled after the MDFAC. This gives DCF the option of creating a Forensic Hospital Diversion Pilot Program in Okaloosa County but does not require DCF to do so.

B. SECTION DIRECTORY:

Section 1: Amends s. 916.185, F.S., relating to forensic hospital diversion pilot program.

Section 2: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill authorizes one additional pilot program in Okaloosa County. However, the bill does not specify the number of individuals to be served or the number of residential beds to be maintained by the pilot program.[79]

South Florida Behavioral Health Network (SFBHN) currently funds the MDFAC at approximately $1.6 million annually. The program has 16 short-term residential beds, and DCF funds purchase 14.87 beds at the rate of $284.81 per day. Annual program costs also include approximately $35,000 in case management services and $15,000 in incidental funds. These services assist individuals restored to competency in integrating back to the community.[80]

By comparison, the average cost of serving an individual in a state mental health treatment facility is $316 per day.[81] However, individuals considered for alternative placement at MDFAC have lesser

[79] *Supra*, at note 71 p. 4.
[80] *Id.*
[81] *Supra*, at note 64 at 355.

felony offenses.[82] Therefore, the MDFAC serves a different population than do the state mental health treatment facilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[82] *Supra*, at note 71 at 2.

A bill to be entitled

An act relating to the Forensic Hospital Diversion Pilot Program; amending s. 916.185, F.S.; authorizing the Department of Children and Families to implement a Forensic Hospital Diversion Pilot Program in Okaloosa County in conjunction with the First Judicial Circuit in Okaloosa County; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 916.185, Florida Statutes, is amended to read:

916.185 Forensic Hospital Diversion Pilot Program.—

(3) CREATION.—There is authorized a Forensic Hospital Diversion Pilot Program to provide competency-restoration and community-reintegration services in either a locked residential treatment facility when appropriate or a community-based facility based on considerations of public safety, the needs of the individual, and available resources.

(a) The department may implement a Forensic Hospital Diversion Pilot Program modeled after the Miami-Dade Forensic Alternative Center, taking into account local needs and resources <u>in Okaloosa County, in conjunction with the First Judicial Circuit in Okaloosa County;</u> in Duval County, in conjunction with the Fourth Judicial Circuit in Duval County; in

Broward County, in conjunction with the Seventeenth Judicial Circuit in Broward County; and in Miami-Dade County, in conjunction with the Eleventh Judicial Circuit in Miami-Dade County.

Section 2. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1117 Temporary Assistance For Needy Families Applicant Drug Screening
SPONSOR(S): Children, Families & Seniors Subcommittee, Latvala
TIED BILLS: **IDEN./SIM. BILLS:** SB 1392

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	8 Y, 2 N, As CS	Langston	Brazzell
2) Health Care Appropriations Subcommittee		Fontaine	Pridgeon
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Temporary Assistance for Needy Families (TANF) program is a block grant that provides states, territories, and tribes 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 that meet eligibility requirements.

Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those recipients who test positive. Fifteen states, including Florida, have laws imposing drug testing or screening for TANF applicants or recipients. Some laws apply to all applicants; other laws limit testing to those instances where there is a reason to believe the applicant or recipient is engaging in illegal drug activity or has a substance use disorder; and other laws require a specific screening process.

In 2011, Florida enacted s. 414.0652, F.S., which required all TANF applicants to submit to a drug test as a condition of eligibility to receive TCA benefits. However, the United States District Court for the Middle Court of Florida declared s. 414.0652, F.S., facially unconstitutional and permanently prohibited the state from reinstating and enforcing the law. Additionally, the United States Court of Appeals for the Eleventh Circuit held that this statute violated the Fourth Amendment for its unreasonable search of applicants without evidence of "a more prevalent, unique, or different drug problem among TANF applicants than in the general population." This law is not currently being implemented.

CS/HB 1117 amends s. 414.0652, F.S., to limit drug testing of TANF applicants who:

- Have a previous drug-related felony conviction within the last ten years; and
- The Department of Children and Families (DCF) has a reasonable suspicion to believe are engaging in the illegal use of a controlled substance.

The bill will have a negative fiscal impact on DCF for technology system modifications. The bill will also have a negative fiscal impact due to the reimbursement of drug screening costs; however, this impact may be mitigated by savings in cash assistance disbursements for those individuals no longer eligible for having tested positive on a drug screening.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Temporary Assistance for Needy Families (TANF)

Under the federal welfare reform legislation of 1996, the Temporary Assistance for Needy Families (TANF) program replaced the welfare programs known as Aid to Families with Dependent Children, the Job Opportunities and Basic Skills Training program, and the Emergency Assistance program. The law ended federal entitlement to assistance and instead created TANF as a block grant that provides states, territories, and tribes federal funds each year. These funds cover benefits, administrative expenses, and services targeted to needy families. TANF became effective July 1, 1997, and was reauthorized in 2006 by the Deficit Reduction Act of 2005. States receive block grants to operate their individual programs and to accomplish the goals of the TANF program.

Florida's Temporary Cash Assistance Program

The Temporary Cash Assistance (TCA) Program provides cash assistance to families with children under the age of 18 or under age 19[1] if full time secondary school students, that meet the technical, income, and asset requirements. The purpose of the TCA Program is to help families become self-supporting while allowing children to remain in their own homes. In November 2016, 12,517 adults and 65,855 children received TCA.[2]

Categories of TCA

Florida law specifies two categories of families who are eligible for TCA: those families that are work-eligible and may receive TCA for the full-family, and those families who are eligible to receive child-only TCA. Within the full-family cases, the parent or parents are required to comply with work requirements to receive TCA for the parent(s) and child(ren). Additionally, there are two types of child-only TCA:

- Where the child has not been adjudicated dependent, but is living with a relative,[3] or still resides with his or her custodial parent, but that parent is not eligible to receive TCA;[4] and
- The Relative Caregiver Program, where the child has been adjudicated dependent and has been placed with relatives by the court. These relatives are eligible for a payment that is higher than the typical child-only TCA.

The majority of cash assistance benefits are provided to child-only cases, through the Relative Caregiver Program or to work-eligible cases where the adult is ineligible due to sanction for failure to meet TCA work requirements. In November 2016, 35,350 of the 47,204 families receiving TCA were child-only cases.[5] In November 2016, there were 11,854 families receiving TCA through full-family cases containing an adult, 520 of which were two-parent families; these are the families who are subject to work requirements.[6]

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[1] Parents, children and minor siblings who live together must apply together. Additionally, pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy.
[2] Department of Children and Families, Monthly Flash Report Caseload Data: November 2016, http://eww.dcf.state.fl.us/ess/reports/docs/flash2005.xls (last visited January 30, 2017).
[3] Grandparents or other relatives receiving child-only payments are not subject to the TANF work requirement or the TANF time limit.
[4] Child-only families also include situations where a parent is receiving federal Supplemental Security Income (SSI) payments, situations where the parent is not a U.S. citizen and is ineligible to receive TCA due to his or her immigration status, and situations where the parent has been sanctioned for noncompliance with work requirements.
[5] *Supra*, note 2.
[6] Id.

Administration

Various state agencies and entities work together through a series of contracts or memorandums of understanding to administer the TCA Program.

- The Department of Children and Families (DCF) is the recipient of the federal TANF block grant. DCF monitors eligibility and disperses benefits.
- CareerSource Florida, Inc. is the state's workforce policy and investment board. CareerSource Florida has planning and oversight responsibilities for all workforce-related programs.
- The Department of Economic Opportunity (DEO) implements the policy created by CareerSource.[7] DEO submits financial and performance reports ensuring compliance with federal and state measures and provides training and technical assistance to Regional Workforce Boards.
- Regional Workforce Boards (RWBs) provide a coordinated and comprehensive delivery of local workforce services. The RWBs focus on strategic planning, policy development and oversight of the local workforce investment system within their respective areas, and contracting with one-stop career centers. The contracts with the RWBs are performance- and incentive- based.

Eligibility Determination

An applicant must meet all eligibility requirements to receive TCA benefits. The initial application for TANF is processed by DCF. DCF determines an applicant's eligibility. Additionally, to be eligible for full-family TCA, applicants must participate in work activities unless they qualify for an exemption.[8] If no exemptions from work requirements apply, DCF refers the applicant to DEO.[9] Upon referral, the participant must complete an in-take application and undergo assessment by RWB staff. Once the assessment is complete, the staff member and participant create the Individual Responsibility Plan (IRP). DCF does not disperse any benefits to the participant until DEO or the RWB confirms that the participant has registered and attended orientation.

Work Requirement

Individuals receiving TCA who are not otherwise exempt from work activity requirements must participate in work activities[10] for the maximum number of hours allowable under federal law.[11] The number of required work or activities hours is determined by calculating the value of the cash benefits and then dividing that number by the hourly minimum wage amount.

Protective Payee

In the event that a TANF recipient is noncompliant with the work activity requirements, DCF has authority to terminate TCA.[12] In the event TCA is terminated for the noncompliant adult, but not the children, DCF establishes a protective payee that will receive the funds on behalf of any children in the home who are under the age of 16.[13] The protective payee shall be designated by DCF and must agree in writing to use the assistance in the best interest of the child or children. Protective payees may include:

- A relative or other individual who is interested in or concerned with the welfare of the child or children;

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[7] S. 445.007(13), F.S.
[8] S. 414.105, F.S.
[9] This is an electronic referral through a system interface between DCF's computer system and DEO's computer system. Once the referral has been entered into the DEO system the information may be accessed by any of the RWBs or One-Stop Career Centers.
[10] 45 C.F.R. § 261.30
[11] S. 445.024, F.S.
[12] S. 414.065, F.S.
[13] Id.

- A member of the community affiliated with a religious, community, neighborhood, or charitable organization; or
- A volunteer or member of an organization who agrees in writing to fulfill the role of protective payee.[14]

Drug Testing

Section 414.0652, F.S., requires DCF to drug test each individual applying for temporary cash assistance as a condition of eligibility for those benefits; however this law was declared unconstitutional and is currently not being implemented.

Section 414.0652, F.S., applied to all individuals included within the cash assistance group covered by the TANF application, with the exception of children under the age of 18. It disqualified an individual from receiving TANF benefits for one year if that person tested positive for controlled substances.[15] If a parent tested positive, DCF could appoint a protective payee who would receive funds on behalf of the child, or the parent could designate an immediate family member, or an individual approved by DCF, to receive TANF benefits on behalf of the child.[16]

The initial disqualification of one year could be reduced to six months upon proof of competition of a substance abuse treatment program.[17] A subsequent positive test disqualified the individual from receiving TANF benefits for three years from the date of that positive test.[18]

The tested individuals were responsible for the cost of the drug test; however, applicants whose tests were negative for drugs were reimbursed by DCF in the form of an increase in the TANF benefit to the applicant for the cost of the drug screen.[19]

Substance Abuse

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[20] Substance use disorders occur when the chronic use of alcohol and/or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[21] It is often mistakenly assumed that individuals with substance use disorders lack moral principles or willpower and that they could stop using drugs simply by choosing to change their behavior.[22] In reality, drug addiction is a complex disease, and quitting takes more than good intentions or a strong will. In fact, because drugs change the brain in ways that foster compulsive drug abuse, quitting is difficult, even for those who are ready to do so.[23]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[24] The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[25]

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[14] Id.
[15] S. 414.0652(1)(b), F.S.
[16] S. 414.0652(2)-(3), F.S.
[17] S. 414.0652(2)(j), F.S.
[18] S. 414.0652(2)(h), F.S.
[19] S. 414.0652(1), (2)(a), F.S.
[20] WORLD HEALTH ORGANIZATION. *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited March 4, 2017).
[21] SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited March 4, 2017).
[22] NATIONAL INSTITUTE ON DRUG ABUSE, *Understanding Drug Use and Addiction*, http://www.drugabuse.gov/publications/drugfacts/understanding-drug-abuse-addiction (last visited March 1, 2017).
[23] Id.
[24] *Supra*, note 21.
[25] Id.

As DCF does not drug-test TCA recipients, the number of TCA recipients in Florida who are substance users is unknown.

Drug Testing of TANF Recipients

Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those testing positive. [26]

Drug Testing TANF Recipients in Other States

Several other states require drug testing or screening for TANF applicants or recipients. Some laws limit testing to those instances where there is a reason to believe the applicant or recipient is engaging in illegal drug activity or has a substance use disorder, and other laws require a specific screening process. For example:

Alabama requires its Department of Human Resources to administer a drug screening program for any adult applying for TCA who is otherwise eligible, upon reasonable suspicion that the adult uses or is under the influence of a drug.[27] Reasonable suspicion exists if an applicant has a conviction for the use or distribution of a drug within five years prior to the date of the application for TCA or tested positive without a valid prescription as a result of the required drug screening.[28] Maine permits its Department of Health and Human Services to administer a drug test to a TANF recipient who, at the time of application, has been convicted of a drug-related felony within the last 20 years.[29]

Arkansas uses an empirically validated screening tool to screen TANF applicants and recipients; if the result of the drug screening tool gives the Department of Workforce Services a reasonable suspicion to believe that the applicant or recipient has engaged in the use of drugs, then the applicant or recipient must be drug tested.[30] Recipients must be screened annually.[31] Similarly, Georgia requires its Department of Human Services (DHS) to screen TCA applicants or recipients if reasonable suspicion exists that such applicant or recipient is using an illegal drug.[32] DHS may use any information it has obtained to determine whether such reasonable suspicion exists, including, but not limited to:

- An applicant's or recipient's demeanor;
- Missed appointments and arrest or other police records;
- Previous employment or application for employment in an occupation or industry that regularly conducts drug screening; and
- Termination from previous employment due to unlawful use of a controlled substance or controlled substance analog or prior drug screening records of the applicant or recipient indicating unlawful use of a controlled substance or controlled substance analog.[33]

Kansas applies the same standard as Georgia for screening and drug testing its TCA applicants and recipients.[34] Mississippi and Utah require all applicants for TANF to complete a written questionnaire to determine the likelihood of a substance abuse problem.[35] If the results indicate a likelihood the person has a substance abuse problem, the applicant must submit to a drug test.[36] The Oklahoma Department of Human Services screens all TANF applicants to determine if they are engaged in the illegal use of a

[26] Pub. L. 104-193, s. 902; 21 U.S.C. 862(b).
[27] Ala. Code § 38-1-7(b).
[28] Id.
[29] Me. Rev. Stat. tit. 22, § 3762.
[30] Ark. Code Ann. § 20-76-705(1).
[31] Id.
[32] Ga. Code Ann. § 49-4-193(c).
[33] Id.
[34] Kan. Stat. Ann. § 39-709.
[35] Miss. Code. Ann. § 43-17-6; Utah Code Ann. § 35A-3-304.5.
[36] Id.

controlled substance using a Substance Abuse Subtle Screening Inventory (SASSI) or other similar screening methods.[37]

From 2012 to 2014, Tennessee phased in suspicion-based drug testing for TANF applicants.[38] Tennessee's Department of Human Services was directed to develop appropriate screening techniques and processes that would establish reasonable cause that an applicant for TANF is using a drug and was also directed to identify and select a screening tool such as SASSI or another similar technique to be employed for this program.[39]

After a previous pilot program that drug tested all TANF recipients was declared unconstitutional, Michigan created a pilot program in 2015 implementing suspicion-based drug screening and testing program in three counties.[40] The participating counties screen applicants and recipients using a valid substance abuse screening tool; if the screening tool gives the department reason to believe the person has a substance abuse problem, the person will be drug tested.[41] West Virginia also implemented a three-year pilot program in 2016 to screen TANF applicants for substance abuse issues if there is reasonable suspicion.[42] Reasonable suspicion exists if, based upon the result of the drug screen, the applicant demonstrates qualities indicative of substance abuse based upon the indicators of the drug screen, or has been convicted of a drug-related offense within the three years immediately prior to an application for TANF.[43]

Additionally, Missouri and North Carolina also drug tests all applicants and recipients of TANF for whom they have reasonable cause to believe based on an initial screening that they are engaged in illegal use.[44] Neither state specifies the type of screening which may give rise to a reasonable suspicion in statute.

Constitutional Challenges for Suspicionless Drug Testing in Other States

The U.S. Supreme Court has held one suspicion-less drug test unconstitutional. In Chandler v. Zell, the state of Georgia required all candidates for designated state offices to certify that they had taken a drug test and the result was negative in order to run for state office.[45] In ruling the drug testing unconstitutional, the court held that,

> Where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable'...But where, as in this case, public safety is not genuinely in jeopardy, the Fourth Amendment precludes the suspicionless search.[46]

In 1999, the State of Michigan enacted a pilot program for suspicion-less drug testing of all family assistance recipients with the intent for the program eventually to become effective statewide.[47] Welfare recipients challenged the new law authorizing suspicion-less drug testing in federal court. The federal district court found that the law was an unconstitutional violation of an individual's right to privacy under the Fourth Amendment. The court specifically ruled that drug testing was unconstitutional when applied universally or randomly without reasonable suspicion of drug use.[48]

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[37] 56 Okl. St. § 230.52.
[38] Tenn. Code Ann. § 71-3-1202.
[39] Id.
[40] Mich. Comp. Laws Ann. § 400.57z.
[41] Id.
[42] W. Va. Code Ann. § 9-3-6.
[43] Id.
[44] Mo. Ann. Stat. § 208.027.; N.C. Gen. Stat. Ann. § 108A-29.1.
[45] Chandler v. Miller, 520 U.S. 305 (1997).
[46] Id. at 323.
[47] P.A. 1999, No. 17, codified as s. 400.57l, Michigan Compiled Statutes Annotated.
[48] Marchwinski v. Howard, 113 F. Supp. 2d 1134 (E. D. Mich. 2000). On appeal a panel of the Sixth Circuit first reversed the District Court, finding the required testing did not violate the Fourth Amendment to the U.S. Constitution. Marchwinski v. Howard, 309 F. 3d 330 (6th Cir. 2002). That decision was vacated for the entire court to consider the case. Marchwinski, vacated 319 F. 3d 258. The appellate

Constitutional Challenge to s. 414.0652, F.S.: Lebron v. Wilkens

In 2011, the Florida Legislature passed HB 353,[49] which created s. 414.0652, F.S., requiring DCF to drug test each individual applying for temporary cash assistance as a condition of eligibility for those benefits.

Under s. 414.0652, F.S., all individuals included within the cash assistance group covered by the TANF application were required to submit to testing with the exception of children under the age of 18. The bill requires all parents to be tested including minor parents who are not required to live with a parent, legal guardian, or other adult caretaker. It also disqualifies individuals from receiving TANF benefits if they tested positive for controlled substances. The initial disqualification is for one year from the date of the positive test; however, upon showing proof of completing the program, the individual may exercise a one-time option reapply for TANF benefits within six months from the date of the positive test. Upon a subsequent positive test, the individual is disqualified from receiving TANF benefits for three years from the date of that positive test.

Section 414.0652, F.S., was challenged in a class action lawsuit by TANF recipients and was declared unconstitutional by the United States District Court for the Middle District of Florida and the United States Court of Appeals for the Eleventh Circuit

On December 31, 2013, the Middle District Court issued summary judgement for the plaintiff on the grounds that the State had failed to establish a special need to drug test all TANF applicants. The Court declared the statute facially unconstitutional and permanently prohibited the State from reinstating and enforcing the law.[50] The Middle District was highly critical of any suspicionless drug test. The legal question before the Middle District was whether s. 414.0652, F.S., which required all applicants for TANF benefits to submit to suspicionless drug testing, was constitutional under the Fourth and Fourteenth Amendments.[51] A drug test is a search under the Fourth Amendment, as applicable to the states through the Fourteenth Amendment.[52] The Fourth and Fourteenth Amendments do not prohibit all searches; only unreasonable searches; for a search to be reasonable, it ordinarily must be based on individualized suspicion of wrongdoing.[53] Because there was no suspicion of wrongdoing as the basis for the search, the state was required to prove that there was a substantial special need to drug test all TANF recipients.[54] The state argued that the following interests qualify as special needs sufficiently substantial to permit an exception to the Fourth Amendment in this case:

- Ensuring TANF participants' job readiness;
- Ensuring the TANF program meets its child-welfare and family-stability goals; and
- Ensuring that public funds are used for their intended purposes and not to undermine public health.[55]

The Middle District found these goals and objectives laudable, but "insufficient to place the entire Florida TANF population into that 'closely guarded category' of citizens for whom the Supreme Court has sanctioned suspicionless, mandatory drug testing."[56] Additionally, the Middle District found that the state had not shown that suspicionless and warrantless drug testing was necessary to address alleged concerns.[57] On December 3, 2014, the U.S. Eleventh Circuit Court of Appeals affirmed the ruling of the Middle District, and held that s. 414.0652, F.S., the state did not "meet its burden of establishing a

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court deadlocked 6-6 to reverse so the lower court decision stood affirmed. Marchwinski, affirmed after rehearing *en banc*, 60 Fed. Appx. 601, 2003 WL 1870916 (6th Cir. 2003).

[49] Ch. 81-2011, Laws of Fla.

[50] Lebron v. Wilkins, 990 F. Supp. 2d 1280, 1299 (M.D. Fla. 2013).

[51] Id. at 1287.

[52] Id. at 1288.

[53] Id.

[54] Id.

[55] Id. at 1291.

[56] Id.

[57] Id.

substantial special need to drug test all TANF applicants without any suspicion" and violated the Fourth Amendment for its unreasonable search of applicants without evidence of "a more prevalent, unique, or different drug problem among TANF applicants than in the general population."[58]

Effect of Proposed Changes

CS/HB 1117 amends s. 414.0652, F.S., to limit drug testing of TANF applicants who:

- Have a previous drug-related felony conviction within the last ten years; and
- The Department of Children and Families (DCF) has a reasonable suspicion to believe are engaging in the illegal use of a controlled substance.

DCF currently averages 26,213 TANF applications per month which include an adult household member.[59] Based on limited data from the Department of Corrections, DCF estimates that 1.56% of current adult TANF recipients have a drug conviction.[60] DCF currently receives an average of 26,213 TANF applications per month that have an adult in the household.[61] By applying the current population percentage to the applications received, DCF estimates an average 408 individuals per month requiring a drug test under the bill.[62]

B. SECTION DIRECTORY:

Section 1: Amends s. 414.0652, F.S., relating to drug screening applicants for Temporary Assistance for Needy Families.
Section 2: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   This bill has a total negative impact of $620,410 for the first year of implementation (ongoing testing costs and nonrecurring system modifications), and $195,840 annually thereafter for monthly drug screenings.

   DCF will be responsible for reimbursing individuals for drug screening costs should the result be positive for a controlled substance. Based upon department estimates of 408 new applicants per month who test positive for controlled substances, and a single test costing $40, the recurring annual cost for this provision of the bill is $195,840.[63] However, this impact may be reduced, or negated, by those individuals testing positive for which drug testing costs are not reimbursed by DCF. This impact is indeterminate, but not likely significant. Moreover, the department may realize a cost savings in Temporary Cash Assistance payments in those instances when the recipient's benefits are suspended after a positive drug screening.

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[58] Lebron v. Sec'y of the Fla. DCF, 772 F.3d 1352, 1355 (11th Cir. 2014)
[59] Department of Children and Families, Agency Analysis of 2017 House Bill 1117. (on file with Children Families and Seniors Subcommittee staff).
[60] Id.
[61] Email from Lindsey Perkins Zander, Legislative Specialist, Department of Children and Families, RE; HB 1117 Bill Analysis (Mar. 13, 2017) (email on file with Children Families and Seniors Subcommittee staff).
[62] Id.
[63] *Supra*, note 59.

DCF also estimates a nonrecurring cost of $377,396 to $471,744 (average of $424,570) to modify the ACCESS Management System and FLORIDA system to identify the disqualified individuals.[64]

DCF will incur minimal costs to mail notices to individuals and protective payees for each drug test, which can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

TCA applicants will need to pay for the initial drug test. This is estimated to cost between $28.50 and $40.00. As TCA is a program for individuals with very low incomes, this could present a financial hardship for some applicants.

Individuals testing positive for drugs will not be reimbursed for the drug test. They also will be unable to receive TCA for two or three years, depending upon when they test positive.

The protective payee who may be designated to receive TANF benefits on behalf of the disqualified individual's children must also be drug tested before being approved to receive the benefits, though the bill does not authorize the protective payee to be reimbursed for the cost of the test if he or she tests negative.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:
Federal law regarding the use of TANF funds allows states to test welfare recipients for use of controlled substances and sanction those testing positive. However, the state's current law (s. 414.0652, F.S.) was determined in 2014 by the U.S. Eleventh Circuit Court of Appeals to violate the Fourth Amendment for its unreasonable search of applicants without evidence of "a more prevalent, unique, or different drug problem among TANF applicants than in the general population."

Due to this ruling, the state's suspicionless TANF drug testing program in s. 414.0652, F.S, is not being implemented by DCF. Other states have successfully implemented "suspicion based" TANF drug testing programs, which predicate drug testing on a previous conviction for a drug-related felony or a reasonable suspicion that an applicant or recipient has a substance abuse problem.

[64] Id. FLORIDA programming will need to create new sanction coding and notices, identification of a secure electronic method for communication of drug testing results, and data extracts for reporting purposes. The high-level estimate range is 3,226 to 4,032 hours.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DCF will need to establish a process to identify individuals subject to drug testing. To do so, DCF suggests granting it additional legislative authority to access criminal justice information and criminal justice information systems as defined in s. 943.045, F.S., to include screening for past drug infractions.[65]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2017, the Children, Families, and Seniors Subcommittee adopted an amendment that, instead of creating new statute, amended the existing statute relating to drug testing of TANF applicants. The amendment limits the instances when a TANF applicant must be drug screened to applicants:

- With a previous drug-related felony conviction within the last 10 years, and
- For whom DCF has a reasonable suspicion are engaging in the illegal use of a controlled substance.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

[65] Id.

A bill to be entitled

An act relating to Temporary Assistance for Needy Families applicant drug screening; amending s. 414.0652, F.S.; requiring the Department of Children and Families to perform a drug test on an applicant for TANF benefits with a prior drug-related felony conviction or who the department reasonably suspects is engaging in the illegal use of a controlled substance; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 414.0652, Florida Statutes, are amended to read:

414.0652 Drug screening for applicants for Temporary Assistance for Needy Families.—

(1)(a) The department shall require a drug test consistent with s. 112.0455 to screen each individual who applies for Temporary Assistance for Needy Families (TANF) who:

1. Has been convicted of committing or attempting to commit a drug-related felony under chapter 893 within the last 10 years.

2. The department has a reasonable suspicion is engaging in the illegal use of a controlled substance.

(b) The cost of drug testing is the responsibility of the

individual tested.

~~(a) An individual subject to the requirements of this section includes any parent or caretaker relative who is included in the cash assistance group, including an individual who may be exempt from work activity requirements due to the age of the youngest child or who may be exempt from work activity requirements under s. 414.065(4).~~

(c) ~~(b)~~ An individual who tests positive for controlled substances as a result of a drug test required under this section is ineligible to receive TANF benefits for 1 year after the date of the positive drug test unless the individual meets the requirements of paragraph (2)(h) ~~(2)(j)~~.

(2) The department shall:

(a) Provide notice of drug testing to each individual at the time of application. The notice must advise the individual that drug testing will be conducted as a condition for receiving TANF benefits and that the individual must bear the cost of testing. If the individual tests negative for controlled substances, the department shall increase the amount of the initial TANF benefit by the amount paid by the individual for the drug testing. The individual shall be advised that the required drug testing may be avoided if the individual does not apply for TANF benefits. Dependent children under the age of 18 are exempt from the drug-testing requirement.

~~(b) Require that for two-parent families, both parents~~

~~must comply with the drug-testing requirement.~~

~~(c) Require that any teen parent who is not required to live with a parent, legal guardian, or other adult caretaker relative in accordance with s. 414.095(14)(c) must comply with the drug-testing requirement.~~

(b) ~~(d)~~ Advise each individual to be tested, before the test is conducted, that he or she may, but is not required to, advise the agent administering the test of any prescription or over-the-counter medication he or she is taking.

(c) ~~(e)~~ Require each individual to be tested to sign a written acknowledgment that he or she has received and understood the notice and advice provided under paragraphs (a) and (b) ~~(d)~~.

(d) ~~(f)~~ Assure each individual being tested a reasonable degree of dignity while producing and submitting a sample for drug testing, consistent with the state's need to ensure the reliability of the sample.

(e) ~~(g)~~ Specify circumstances under which an individual who fails a drug test has the right to take one or more additional tests.

(f) ~~(h)~~ Inform an individual who tests positive for a controlled substance and is deemed ineligible for TANF benefits that the individual may reapply for those benefits 1 year after the date of the positive drug test unless the individual meets the requirements of paragraph (h) ~~(j)~~. If the individual tests

positive again, he or she is ineligible to receive TANF benefits for 3 years after the date of the second positive drug test unless the individual meets the requirements of paragraph (h) ~~(j)~~.

(g) ~~(i)~~ Provide any individual who tests positive with a list of licensed substance abuse treatment providers available in the area in which he or she resides that meet the requirements of s. 397.401 and are licensed by the department. Neither the department nor the state is responsible for providing or paying for substance abuse treatment as part of the screening conducted under this section.

(h) ~~(j)~~ An individual who tests positive under this section and is denied TANF benefits as a result may reapply for those benefits after 6 months if the individual can document the successful completion of a substance abuse treatment program offered by a provider that meets the requirements of s. 397.401 and is licensed by the department. An individual who has met the requirements of this paragraph and reapplies for TANF benefits must also pass an initial drug test and meet the requirements of subsection (1). Any drug test conducted while the individual is undergoing substance abuse treatment must meet the requirements of subsection (1). The cost of any drug testing and substance abuse treatment provided under this section shall be the responsibility of the individual being tested and receiving treatment. An individual who fails the drug test required under

subsection (1) may reapply for benefits under this paragraph only once.

Section 2. This act shall take effect July 1, 2017.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health Care Appropriations Subcommittee

Representative Latvala offered the following:

Amendment (with title amendment)

Between lines 102 and 103, insert:

Section 2. For Fiscal Year 2017-2018, the sum of $424,570 in nonrecurring funds from the Federal Grants Trust Fund is provided to the Department of Children and Families to perform technology modifications necessary to implement the provisions of this act.

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

Remove lines 8-9 and insert:

use of a controlled substance; providing an appropriation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1307 Physician Assistants
SPONSOR(S): Health Quality Subcommittee; Plasencia
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	9 Y, 0 N, As CS	Siples	McElroy
2) Health Care Appropriations Subcommittee		Mielke	Pridgeon
3) Health & Human Services Committee			

SUMMARY ANALYSIS

A physician assistant (PA) is a person licensed to perform health care services delegated by a supervising physician, in the specialty areas in which he or she has been trained. PAs are governed by the respective physician practice acts for medical doctors (MDs) and doctors of osteopathic medicine (DOs). A physician may supervise up to four PAs and is responsible and liable for the performance and the acts and omissions of the PA.

CS/HB 1307 requires a PA, as a part of the biennial licensure renewal process, to respond to a biennial workforce survey to collect information regarding the PA's practice, including information on critically needed services. DOH must issue a nondisciplinary citation to a PA who fails to complete the survey within 90 days after the renewal of his or her license. The citation must notify the PA who fails to complete the required survey that his or her licensure will not be subsequently renewed unless the PA completes the survey.

The Council on Physician Assistants (Council) advises DOH, the Board of Medicine, and the Board of Osteopathic Medicine on matters related to the licensure and regulation of PAs in this state. Currently, the Council is composed of four physicians and one PA. Beginning October 1, 2017, the bill changes the composition of the Council to two physicians and three PAs to provide PAs greater representation in developing policy that regulates the profession.

Currently, PAs must notify DOH of their supervising physician upon employment and within 30 days of a change in the supervising physician. The bill requires a PA to notify DOH of a designated supervising physician and any change of designated supervising if he or she is practicing in a facility or practice with multiple supervisory physicians. Such notice must be provided within 30 days. The requirement to have a designated supervising physician does not prevent a PA from practicing under multiple supervising physicians. The designated supervising physician must maintain a current list of all supervising physicians within the practice or facility

The bill will have an indeterminate negative fiscal impact on DOH that can be managed with existing Department resources and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Under Florida law, physician assistants are governed by the physician practice acts for medical doctors and doctors of osteopathic medicine. PAs are regulated by the Florida Council on Physician Assistants (Council) in conjunction with either the Board of Medicine for PAs licensed under ch. 458, F.S., or the Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S. As of February 2017, there are 7,527 active licensed PAs.[1]

Council on Physician Assistants

The Council on Physician Assistants (Council) consists of five members including three physicians who are members of the Board of Medicine, one physician who is a member of the Board of Osteopathic Medicine, and one licensed PA appointed by the Surgeon General.[2] Two of the physicians must be physicians who supervise physician assistants in their practice. The Council is responsible for:

- Making recommendations to DOH regarding the licensure of PAs;
- Developing rules for the regulation of PAs for consideration for adoption by the boards;
- Making recommendations to the boards regarding all matters relating to PAs;
- Addressing concerns and problems of practicing PAs to ensure patient safety; and
- Denying, restricting, or placing conditions on the license of PA who fails to meet the licensing requirements.

Licensure and Regulation of Physician Assistants

An applicant for a PA license must apply to the Department of Health (DOH). DOH must issue a license to a person certified by the Council as having met all of the following requirements:

- Satisfactorily passes the National Commission on Certification of Physician Assistants exam;
- Completes an application form and remit the registration fee;
- Completes an approved PA training program;
- Provides an acknowledgement of any prior felony convictions;
- Provides an acknowledgement of any revocation or denial of licensure or certification in any state; and
- If the applicant wishes to apply for prescribing authority, submits of a copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy.[3]

In Florida, a PA practices under the delegated authority of a supervising physician. A physician supervising a PA must be qualified in the medical area in which the PA is practicing and is responsible and liable for the performance, acts, and omissions of the PA.[4]

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[1] E-mail correspondence with the Department of Health dated February 2, 2017, (on file with the staff of the Health and Human Services Committee).
[2] Members of the Board of Medicine and the Board of Osteopathic Medicine are appointed by the Governor and confirmed by the Senate. *See* ss. 458.307 and 459.004, F.S., respectively.
[3] *See* s. 458.347 and s. 459.022, F.S.
[4] Sections 458.347(3), F.S., and 459.022(3), F.S.; and Rules 64B8-30.012, F.A.C., and 64B15-6.010, F.A.C.

The Boards have established by rule that "responsible supervision" of a PA means the ability of the supervising physician to exercise control and provide direction over the services or tasks performed by the PA. Whether the supervision of a PA is adequate, is dependent upon the:

- Complexity of the task;
- Risk to the patient;
- Background, training and skill of the PA;
- Adequacy of the direction in terms of its form;
- Setting in which the tasks are performed;
- Availability of the supervising physician;
- Necessity for immediate attention; and
- Number of other persons that the supervising physician must supervise.[5]

A supervising physician may only delegate tasks and procedures to the PA which are within the supervising physician's scope of practice.[6] The decision to permit the PA to perform a task or procedure under direct or indirect supervision is made by the supervising physician based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient.[7]

A supervising physician may delegate the authority for a PA to:

- Prescribe or dispense any medicinal drug used in the supervising physician's practice unless such medication is listed in the formulary established by the Council;[8]
- Order any medication for administration for administration to the supervising physician's patient in a hospital or other facility licensed under chapter 395, F.S., or a nursing homes licensed under part II of chapter 400, F.S.;[9] and
- Any other services that are not expressly prohibited in ch. 458, F.S., ch. 459, F.S., or the rules adopted thereunder.[10]

Health Care Professional Shortage

Florida is experiencing a health care professional shortage. This is evidenced by the fact that for just primary care, dental care, and mental health there are 655 federally designated Health Professional Shortage Areas (HPSA) within the state.[11] It would take 1,010 primary care, 1,203 dental care, and 254 mental health practitioners to eliminate these shortage areas.[12]

PAs may help alleviate the physician shortage by acting as a physician extender. PAs treat diverse patient groups and perform medical functions that are similar to the medical care provided by primary care physicians, such as performing physical examinations, diagnosing and treating illnesses, order and interpreting laboratory tests, prescribing medications, and managing patients with chronic

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[5] Rules 64B8-30.001, F.A.C., and 64B15-6.001, F.A.C.
[6] *Supra* note 3.
[7] "Direct supervision" refers to the physical presence of the supervising physician so that the physician is immediately available to the PA when needed. "Indirect supervision" refers to the reasonable physical proximity of the supervising physician to the PA or availability by telecommunication. *Supra* note5.
[8] Sections 458.347(4)(f), F.S., and 459.022(e), F.S., directs the Council to establish a formulary listing the medical drugs that a PA may not prescribe. The formulary in Rules 64B8-30.008, F.A.C., and 64B15-6.0038, F.A.C., prohibits PAs from prescribing; general, spinal or epidural anesthetics; radiographic contrast materials; and psychiatric mental health controlled substances for children younger than 18 years of age. It also restricts the prescribing of Schedule II controlled substances to a 7-day supply. However, the rules authorize physicians to delegate to PAs the authority to order controlled substances in hospitals and other facilities licensed under ch. 395, F.S.
[9] Chapter 395, F.S., provides for the regulation and the licensure of hospitals and trauma centers, part II of ch. 400, F.S., provides for the regulation and licensure of nursing home facilities.
[10] Sections 458.347(4) and 459.022(e), F.S.
[11] U.S. Department of Health and Human Services, Health Resources and Services Administration, *Shortage Areas, available at* http://www.hrsa.gov/shortage/ (last visited March 19, 2017).
[12] *Id.*

conditions.[13] PAs may also assist in the care of patients needing mental health care by conducting histories and physicals, performing psychiatric evaluations and assessments, ordering and interpreting diagnostic tests, establishing and managing treatment plans, and ordering referrals.[14]

Since there is no comprehensive studies regarding the roles PAs play in the health care system in this state, the impact of their practice cannot be determined.

Physician Workforce Survey

Each allopathic or osteopathic physician is required to complete a workforce survey in conjunction with the biennial renewal of his or her license.[15] In the survey, the physician must provide:

- Licensee information, including, but not limited to:
  - Frequency and geographic location of practice within the state;
  - Practice setting;
  - Percentage of time spent in direct patient care;
  - Anticipated change to license or practice status; and
  - Areas of specialty or certification; and
- Information on availability and trends relating to critically needed services, including, but not limited to:
  - Obstetric care and services;
  - Radiologic services, particularly performance of mammograms and breast-imaging services;
  - Physician services for hospital emergency departments and trauma centers, including on-call hours; and
  - Other critically needed specialty areas, as determined by DOH.[16]

DOH must issue a nondisciplinary citation to any Florida-licensed physician who fails to complete the survey within 90 days after the renewal of his or her license. The citation must notify a physician who fails to complete the required survey that his or her license will not be renewed for any subsequent licensure renewal unless the physician completes the survey. In conjunction with issuing the license-renewal notice, DOH must notify each physician who has failed to complete the survey at the licensee's last known address of record with DOH of the requirement that the physician survey be completed prior to the subsequent license renewal. At any subsequent license renewal, DOH may not renew the license of any physician, until the required survey is completed by the licensee.

All identifying information in the contained in the physician survey is confidential and exempt from the public records law and may only be disclosed:

- With the express written consent of the individual to whom the information pertains or the individual's legally authorized representative;
- By court order upon a showing of good cause; and
- To certain research entities.[17]

[13] American Academy of Physician Assistants, *Specialty Practice: PAs in Primary Care*, (Jan. 2010), *available at* https://www.aapa.org/wp-content/uploads/2016/12/SP_PAs_PrimaryCare.pdf (last visited March 19, 2017).
[14] American Academy of Physician Assistants, *Specialty Practice: PAs in Psychiatry* (Jan. 2010), *available at* https://www.aapa.org/wp-content/uploads/2016/12/SP_PAs_Psychiatry.pdf (last visited March 19, 2017).
[15] Sections 458.3191 and 459.0081, F.S.
[16] *Id.*
[17] Sections 458.3193 and 459.0083, F.S.

Effect of Proposed Changes

Physician Assistant Workforce Survey

The bill requires a PA to complete a workforce survey that is administered in the same manner and collects the same information as the physician survey described above. The survey must be completed as a part of the biennial licensure renewal process. Beginning July 1, 2018, DOH must report the data collected to the Boards of Medicine and Osteopathic Medicine.

If a PA fails to submit the survey within 90 days after the renewal of his or her license, DOH must issue a nondisciplinary citation notifying the PA that his or her license is not eligible for any subsequent license renewal until the survey is completed. At the time it issues the licensure renewal notice, DOH must also notify a PA that failed to complete the survey, at the last address DOH has on record, that the PA survey must be completed prior to any subsequent licensure renewal.[18] The bill prohibits DOH from renewing the license of a PA at any subsequent renewal until the survey is completed.

The bill authorizes DOH to develop rules to implement the PA survey.

Designated Supervising Physician

Under current law, a PA must notify DOH of his or her employment and the name of the supervising, within 30 days of commencing such employment or at any time his or her supervising physician changes. The bill requires a PA to also notify DOH of the designated supervising physician and any change in a designated supervising physician within 30 days.[19] If a PA has a designated supervising physician, he or she may still practice under the supervision of another physician.

The designated supervising physician must maintain a list of all approved supervising physicians at the practice or facility, which includes each supervising physician's name and area of practice. This list must be kept current and must be available upon written request by DOH.

Council on Physician Assistants

Beginning October 1, 2017, the bill changes the constitution of the Council to one physician who is a member of the Board of Medicine, one physician who is a member of the Board of Osteopathic Medicine, and three licensed physician assistants appointed by the Surgeon General. The bill clarifies that each of the physicians on the Council must supervise a physician assistant in his or her practice. Physician assistants will have a greater opportunity to assist in the development of policy for the regulation of their profession.

The bill provides an effective date of July 1. 2017.

B. SECTION DIRECTORY:

Section 1: Amends s. 458.347, F.S.; relating to physician assistants.
Section 2: Amends s. 459.022, F.S.; relating to physician assistants.
Section 3: Provides an effective date of July 1, 2017.

[18] DOH sends a renewal notification to a licensee at least 90 days before the end of a licensure period. (Section 456.038, F.S.)
[19] The bill defines "designated supervising physician" as a physician designated by the facility or practice to be the primary contact and supervising physician for the PAs in the practice where PAs are supervised by multiple supervising physicians.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DOH will incur an indeterminate negative fiscal impact related to enforcement of the PA survey requirement, including changes to its Licensure and Enforcement Information Database System and will also incur an insignificant, indeterminate negative fiscal impact for costs related to rulemaking, which current budget authority is adequate to absorb.

   The bill requires DOH to complete a PA workforce survey that is administered in the same manner and collects the same information as the physician survey. DOH should be able to leverage resources from the administration of the physician survey to absorb any fiscal impact.

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:

   Not applicable. The bill does not appear to affect local or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2017, the Health Quality Subcommittee adopted an amendment that:

- Requires the physician assistant workforce survey to be administered in the same manner and collect the same information as the current physician workforce survey;
- Requires DOH to report the data it collects to the Boards of Medicine and Osteopathic Medicine every two years beginning July 1, 2018;
- Clarifies that a PA must notify DOH of his or her supervising physician or designated supervising physician upon employment or when there is a change; and
- Provides an effective date of October 1, 2017, for the new composition of the Council on Physician Assistants.

The bill was reported favorably as a committee substitute. This analysis is drafted to the committee substitute.

A bill to be entitled

An act relating to physician assistants; amending ss. 458.347 and 459.022, F.S.; defining the term "designated supervising physician"; revising licensure renewal requirements to include a physician assistant workforce survey; requiring the Department of Health to issue a nondisciplinary citation to a physician assistant who fails to complete such survey; providing reporting requirements; requiring rulemaking; providing requirements related to designated supervising physicians; revising the membership of the Council on Physician Assistants as of a specified date; providing an effective date.

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

Section 1. Paragraph (i) is added to subsection (2) of section 458.347, Florida Statutes, and paragraphs (b) and (d) of subsection (7) and paragraphs (a) and (b) of subsection (9) of that section are amended, to read:

458.347 Physician assistants.—

(2) DEFINITIONS.—As used in this section:

(i) "Designated supervising physician" means a physician designated by a facility or practice to be the primary contact and supervising physician for the physician assistants in a

practice in which physician assistants are supervised by multiple physicians.

(7) PHYSICIAN ASSISTANT LICENSURE.—

(b) The license must be renewed biennially. Each renewal must include:

1. A renewal fee not to exceed $500 as set by the boards.

2. Acknowledgment of no felony convictions in the previous 2 years.

3. Completion of a physician assistant workforce survey which shall be administered in the same manner and have the same content as the physician workforce survey required under s. 458.3191.

a. The department shall issue a nondisciplinary citation to a physician assistant licensed under this chapter or chapter 459 who fails to complete the physician assistant workforce survey within 90 days after the renewal of his or her license.

b. The citation must notify a physician assistant who fails to complete the physician assistant workforce survey that his or her license is not eligible for any subsequent license renewal until he or she completes such survey.

c. In conjunction with the issuance of the license renewal notice required by s. 456.038, the department shall notify each physician assistant who has failed to complete the physician assistant workforce survey at his or her last known address of record with the department of the requirement that such survey

be completed before subsequent license renewal. The department may not subsequently renew the license of a physician assistant until he or she completes such survey.

d. Beginning July 1, 2018, and every 2 years thereafter, the department shall report the data collected from the physician assistant workforce surveys to the boards.

e. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this subparagraph.

(d)1. Upon employment as a physician assistant, a licensed physician assistant must notify the department in writing within 30 days after such employment of ~~or after any subsequent changes in the supervising physician. The notification must include~~ the full name, Florida medical license number, specialty, and address of a supervising physician or designated ~~the~~ supervising physician. A physician assistant shall report any subsequent changes in a supervising physician or designated supervising physician to the department within 30 days after the change. The assignment of a designated supervising physician does not preclude a physician assistant from practicing under the supervision of a physician other than the designated supervising physician.

2. The designated supervising physician shall maintain a list of all approved supervising physicians at the facility or practice, including each physician's name and area of practice, and shall update the list as needed. The designated supervising

physician shall provide the list to the department in a timely manner upon written request.

(9) COUNCIL ON PHYSICIAN ASSISTANTS.—The Council on Physician Assistants is created within the department.

(a) Beginning October 1, 2017, the council shall consist of five members appointed as follows:

1. The chairperson of the Board of Medicine shall appoint one member ~~three members~~ who is a physician ~~are physicians~~ and a member ~~members~~ of the Board of Medicine. ~~One of~~ The physician appointed by the Board of Medicine ~~physicians~~ must supervise a physician assistant in the physician's practice.

2. The chairperson of the Board of Osteopathic Medicine shall appoint one member who is a physician and a member of the Board of Osteopathic Medicine. The physician appointed by the Board of Osteopathic Medicine must supervise a physician assistant in the physician's practice.

3. The State Surgeon General or his or her designee shall appoint three ~~a~~ fully licensed physician assistants ~~assistant~~ licensed under this chapter or chapter 459.

(b) ~~Two of the members appointed to the council must be physicians who supervise physician assistants in their practice.~~ Members shall be appointed to terms of 4 years, except that of the initial appointments, two members shall be appointed to terms of 2 years, two members shall be appointed to terms of 3 years, and one member shall be appointed to a term of 4 years,

as established by rule of the boards. Council members may not serve more than two consecutive terms. The council shall annually elect a chairperson from among its members.

Section 2. Paragraph (i) is added to subsection (2) of section 459.022, Florida Statutes, and paragraphs (b) and (d) of subsection (7) and paragraphs (a) and (b) of subsection (9) of that section are amended, to read:

459.022 Physician assistants.—

(2) DEFINITIONS.—As used in this section:

(i) "Designated supervising physician" means a physician designated by a facility or practice to be the primary contact and supervising physician for the physician assistants in a practice in which physician assistants are supervised by multiple physicians.

(7) PHYSICIAN ASSISTANT LICENSURE.—

(b) The licensure must be renewed biennially. Each renewal must include:

1. A renewal fee not to exceed $500 as set by the boards.

2. Acknowledgment of no felony convictions in the previous 2 years.

3. Completion of a physician assistant workforce survey which shall be administered in the same manner and have the same content as the physician workforce survey required under s. 459.0081.

a. The department shall issue a nondisciplinary citation

to a physician assistant licensed under this chapter or chapter 458 who fails to complete the physician assistant workforce survey within 90 days after the renewal of his or her license.

b. The citation must notify a physician assistant who fails to complete the physician assistant workforce survey that his or her license is not eligible for any subsequent license renewal until he or she completes such survey.

c. In conjunction with the issuance of the license renewal notice required by s. 456.038, the department shall notify each physician assistant who has failed to complete the physician assistant workforce survey at his or her last known address of record with the department of the requirement that such survey be completed before subsequent license renewal. The department may not subsequently renew the license of a physician assistant until he or she completes such survey.

d. Beginning July 1, 2018, and every 2 years thereafter, the department shall report the data collected from the physician assistant workforce surveys to the boards.

e. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 necessary to implement this subparagraph.

(d)1. Upon employment as a physician assistant, a licensed physician assistant must notify the department in writing within 30 days after such employment of ~~or after any subsequent changes in the supervising physician. The notification must include~~ the full name, Florida medical license number, specialty, and

address of a supervising physician or designated ~~the~~ supervising physician. A physician assistant shall report any subsequent changes in a supervising physician or designated supervising physician to the department within 30 days after the change. The assignment of a designated supervising physician does not preclude a physician assistant from practicing under the supervision of a physician other than the designated supervising physician.

2. The designated supervising physician shall maintain a list of all approved supervising physicians at the facility or practice, including each physician's name and area of practice, and shall update the list as needed. The designated supervising physician shall provide the list to the department in a timely manner upon written request.

(9) COUNCIL ON PHYSICIAN ASSISTANTS.—The Council on Physician Assistants is created within the department.

(a) Beginning October 1, 2017, the council shall consist of five members appointed as follows:

1. The chairperson of the Board of Medicine shall appoint one member ~~three members~~ who is a physician ~~are physicians~~ and a member ~~members~~ of the Board of Medicine. ~~One of~~ The physician appointed by the Board of Medicine ~~physicians~~ must supervise a physician assistant in the physician's practice.

2. The chairperson of the Board of Osteopathic Medicine shall appoint one member who is a physician and a member of the

Board of Osteopathic Medicine. The physician appointed by the Board of Osteopathic Medicine must supervise a physician assistant in the physician's practice.

3. The State Surgeon General or her or his designee shall appoint three ~~a~~ fully licensed physician assistants ~~assistant~~ licensed under chapter 458 or this chapter.

(b) ~~Two of the members appointed to the council must be physicians who supervise physician assistants in their practice.~~ Members shall be appointed to terms of 4 years, except that of the initial appointments, two members shall be appointed to terms of 2 years, two members shall be appointed to terms of 3 years, and one member shall be appointed to a term of 4 years, as established by rule of the boards. Council members may not serve more than two consecutive terms. The council shall annually elect a chairperson from among its members.

Section 3. This act shall take effect July 1, 2017.

STORAGE NAME: h6501.CJC
DATE: 3/16/2017

March 16, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6501 - Representative Plakon and others
Relief/J.D.S./Agency for Persons with Disabilities

THIS IS AN EQUITABLE CLAIM BASED ON A SETTLEMENT AGREEMENT, WHEREIN THE AGENCY FOR PERSONS WITH DISABILITIES, AS SUCCESSOR AGENCY OF THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES, HAS AGREED TO PAY $1,150,000 FOR THE RELIEF OF J.D.S., AN INCAPACITATED PERSON, FOR DAMAGES SHE RECEIVED AS A RESULT OF HER RAPE AND IMPREGNATION BY PHILLIP STRONG WHILE SHE WAS LIVING IN THE STRONG GROUP HOME. THE AGENCY HAS PAID $200,000 PURSUANT TO THE STATUTORY CAP LEAVING $950,000 TO BE PAID PURSUANT TO THIS CLAIM BILL.

FINDING OF FACT:

In 1980, J.D.S. was born with severe disabilities, including cerebral palsy, autism, and mental retardation. Since the age of 4, J.D.S. resided at the Strong Group Home as a developmentally-disabled ward of the State of Florida.[1] DCF licensed the Strong Group Home and conducted monthly assessments of the residents and the home. Hester Strong was the administrator of the Strong Group Home while her husband,

[1] When J.D.S. was 4 she was placed in the Lamey Group Home which was subsequently purchased and renamed by the Strongs in September 1987 when J.D.S. was 7 years old.

Phillip Strong, would assist her in the operation of the group home, which at any given time had between four to six developmentally disabled individuals living there. As of December 2002, Hester Strong was 74 years old and Phillip Strong was 78 years old.

In December 2002, Phillip Strong raped J.D.S., resulting in J.D.S.'s impregnation. On April 24, 2003, J.D.S.'s physician discovered her pregnancy, and soon thereafter DCF revoked the Strong Group Home's license. J.D.S. was moved to another group home, and DCF's Adult Protective Services Investigator commenced an investigation into the circumstances of the rape. On August 30, 2003, J.D.S. gave birth to a baby girl, known as G.V.S., who was immediately taken from J.D.S. and placed for adoption.

After several months of investigation by its Adult Protective Services Investigator Gerald Robinson, DCF determined that Phillip Strong was responsible for the rape and impregnation of J.D.S.. Additionally, on September 9, 2003, FDLE serologist Timothy Petree confirmed that Phillip Strong was the biological father of J.D.S.'s daughter with DNA evidence. It was further determined that during the time of her residency at the Strong Group Home, J.D.S. was mentally incompetent and unable to provide or deny meaningful and knowing consent to sexual intercourse with Phillip Strong.

Dr. Deborah Day, a behavioral psychologist, reviewed J.D.S.'s case file and determined that J.D.S. exhibited telltale signs of abuse. Dr. Day pointed to DCF records that showed behavioral changes in J.D.S. beginning in 2001; J.D.S.'s behavioral changes included increased aggression and regular incontinence. Dr. Day further opined that psychologically J.D.S. was permanently injured by the rape and impregnation and that she will suffer with more difficulty trusting, more difficulty being around people, more difficulty making transitions to new activities, and will probably be more sensitive to males who are providing services to her. Further, Dr. Day stated that J.D.S. needs physical, occupational, speech, and behavioral therapy.

The Petitioners hired F.A. Raffa, Ph.D. to provide an assessment of the cost of J.D.S.'s future life care needs. At the time of the assessment J.D.S. was 30 years old with a statistical average remaining life expectancy of 47.44 years. Dr. Raffa concluded that if J.D.S. continues to reside in a group home, as she currently does, the present value of her life care needs as of June 2011, would be $11,301,146. Dr. Raffa further concluded that if J.D.S. goes to live in an independent residence, an option suggested by Larry Forman, an expert in habilitation and rehabilitation for the mentally disabled, the present value of J.D.S.'s life care plan as of June 2011, would

be $13,266,398.[2]

The remaining $950,000 that would be paid if this claim bill is passed would be paid out of the General Revenue Fund.

LITIGATION HISTORY

On February 3, 2006, Patti Jarrell, J.D.S.'s Guardian, filed a complaint on behalf of J.D.S. against the Department of Children and Families (DCF) in the 9th Judicial Circuit, in and for Orange County, Florida, alleging that the department negligently supervised the Strong Group Home and that the Strong Group Home was negligently operated, thereby allowing Phillip Strong to rape J.D.S., which resulted in her impregnation. The Complaint was subsequently dismissed on September 6, 2006, by the Honorable John H. Adams, Sr. on the grounds that DCF was not a proper defendant in the action. After DCF was dismissed as a defendant, the Petitioner submitted an Amended Complaint substituting the Agency for Persons with Disability (APD) as a party defendant in lieu of DCF.

The case was extensively litigated for several years and all of the issues relating to DCF and APD's liability was vetted by the Orange County Circuit Court judges. J.D.S.'s claims against APD, the Strong Group Home, and other parties, namely Hester and Phillip Strong individually, were based upon negligence, violations of chapter 393, Florida Statutes, and violations of the Bill of Rights of Persons with Developmental Disabilities, s. 393.13, Florida Statutes. J.D.S. alleged that the Agency had a nondelegable duty to protect J.D.S. from foreseeable harm, including sexual abuse. J.D.S. also alleged that the Agency was liable for direct negligence relating to its oversight of the Strong Group Home and that it was vicariously liable for the negligence of the Strong Group Home under the doctrine of respondeat superior.

Before the jury trial began on February 6, 2012, the parties agreed to settle the case for the sum of $1.15 million. Under the terms of the settlement agreement, APD agreed to pay $200,000 to J.D.S. and to pay the amount approved in any claim bill not to exceed $950,000.

Pursuant to the settlement agreement, APD paid $200,000 through Risk Management on behalf of APD and Hester Strong, individually and as operator of The Strong Group Home. $100,000 was made payable to the "J.S. Pooled Special Needs Trust" and $100,000 was made payable to "Morgan & Morgan P.A. Trust Account."

Phillip Strong was arrested and charged with one count of sexual battery on a mentally disabled person. However, he was

[2] The Respondent posited that Dr. Raffa's life care plans included certain treatments and types of care that J.D.S. would have required prior to her rape and impregnation.

found to be mentally incompetent to stand trial, and he was not prosecuted for the rape and impregnation of J.D.S.

CONCLUSION OF LAW: I find the damages claimed in this case to be appropriate and based on competent substantial evidence. Because settlement agreements are sometimes entered into for reasons that may have very little to do with the merits of a claim or the validity of a defense, stipulations or settlement agreements between the parties to a claim bill are not necessarily binding on the legislature or its committees, or on the Special Master. However, all such agreements must be evaluated. If found to be reasonable and based on equity, then they can be given effect, at least at the Special Master's level of consideration. I find that the settlement of $1,150,000 in this case is reasonable and equitable in light of the damages to J.D.S. including the between $11,301,146 and $13,266,398 that will be required for her future life care needs and recommend that the settlement be given effect by the Legislature.

ATTORNEY'S/ LOBBYING FEES: Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. There are no outstanding costs.

LEGISLATIVE HISTORY This is the fourth year this instant claim has been filed in the Legislature. In 2016, this bill was introduced as House Bill 3521 by Representative Plakon and Senate Bill 38 by Senator Soto. The House bill died in the Civil Justice Subcommittee but the Senate Bill was heard in two committees but died in Senate Appropriations.

In 2015, this bill was introduced as House Bill 3503 by Representative Plakon and Senate Bill 24 by Senator Soto. House Bill 3503 died in the Civil Justice Subcommittee but the Senate Bill 24 was heard in two Senate committees but died in Senate Appropriations Committee.

This bill was introduced in 2014 as Senate Bill 6 by Senator Soto and as House Bill 3511 by Representative Pafford. Neither bill was heard by any Committee, and the bills died in the Judiciary Committee and Civil Justice Subcommittee, respectively.

RECOMMENDATIONS: I respectfully recommend that House Bill 6501 be reported **FAVORABLY**

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Plakon, House Sponsor
Senator Simmons, Senate Sponsor
Barbara Crosier, Senate Special Master

IN RE:

SENATE BILL 28 – RELIEF OF J.D.S. BY THE AGENCY FOR PERSONS WITH DISABILITIES

SECOND AMENDED AFFIDAVIT OF ALEXANDER M. CLEM AND ALBERT BALIDO

STATE OF FLORIDA

COUNTY OF ORANGE

BEFORE ME, the undersigned authority, this day personally appeared Alexander M. Clem, Esq., attorney with Morgan & Morgan, P.A. and legal counsel for J.D.S. ("Claimant"), who, after being duly sworn, deposes and says:

1. Claimant has agreed to pay attorney's fees for legal services at the rate of 25% of the $950,000.00 for a total of $237,500.00. This amount shall be inclusive of lobbying fees payable to Albert Balido/Anfield Consulting and litigation costs.

2. Claimant has agreed to pay lobbyist fees for lobbying services at 5% (i.e., $47,500.00).

3. Attorney's fees as specified in paragraph 1 above herein include the lobbyist's, Albert Balido, fees specified in paragraph 2 above.

I, Albert Balido, agree with the foregoing statement regarding lobbyist's fees.

Dated: 3/9/17 Signature: _____
Albert Balido, lobbyist

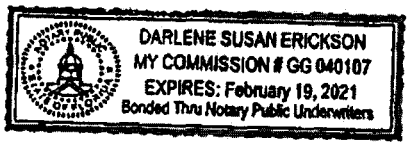
FURTHER AFFIANT SAYETH NOT.

_____
Alexander M. Clem

SWORN TO and subscribed before me this 9th day of March, 2017.

Notary Public, State of Florida at Large

MY COMMISSION EXPIRES:



A bill to be entitled

An act for the relief of J.D.S.; providing an appropriation from the General Revenue Fund to compensate J.D.S. for injuries and damages sustained as a result of the negligence of the Agency for Persons with Disabilities, as successor agency of the Department of Children and Family Services; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, in December 2002, J.D.S., a 22-year-old developmentally disabled woman with autism, cerebral palsy, and mental retardation, was living at the Strong Group Home, which was owned and operated by Hester Strong and licensed and supervised by the Department of Children and Family Services, and

WHEREAS, in December 2002, J.D.S. was raped and impregnated by Philip Strong, husband of the owner and operator of the Strong Group Home, and

WHEREAS, on April 24, 2003, J.D.S.'s pregnancy was discovered by her physician, and on August 30, 2003, J.D.S. gave birth to a baby girl, known as G.V.S., who was immediately taken from J.D.S. and placed for adoption, and

WHEREAS, as a result of her rape and impregnation, J.D.S. sustained mental anguish and a further diminution in the quality of her life, and

WHEREAS, J.D.S. filed a claim in Orange County Circuit Court alleging that the department negligently supervised the Strong Group Home and that the Strong Group Home was negligently operated, thereby allowing Philip Strong to rape J.D.S., which resulted in her impregnation, and

WHEREAS, J.D.S.'s claims against the department, the Strong Group Home, and other parties were based upon negligence, violations of chapter 393, Florida Statutes, and violations of the Bill of Rights of Persons with Developmental Disabilities, as set forth in s. 393.13, Florida Statutes, and

WHEREAS, as a client of the department, as the term "client" is defined in s. 393.063, Florida Statutes, J.D.S. had a right under s. 393.13, Florida Statutes, to "dignity, privacy, and humane care, including the right to be free from abuse, including sexual abuse, neglect, and exploitation," and

WHEREAS, J.D.S. alleged that the department had a nondelegable duty to protect her from foreseeable harm, including sexual abuse, and

WHEREAS, J.D.S. alleged that the department was liable for direct negligence relating to its oversight of the Strong Group Home and that it was vicariously liable for the negligence of the Strong Group Home under the doctrine of respondeat superior

established under s. 768.28(9)(a), Florida Statutes, and

WHEREAS, before the jury trial was scheduled to commence on February 6, 2012, the parties agreed to settle the case titled *Patti R. Jarrell, as plenary guardian of J.D.S., an incapacitated person, Plaintiff, v. State of Florida, Agency for Persons With Disabilities, as successor agency of the Department of Children and Family Services*, for the sum of $1.15 million, and

WHEREAS, under the terms of the settlement agreement consented to by the parties, the Agency for Persons with Disabilities agreed to pay $200,000 to J.D.S., with the remaining $950,000 to be paid pursuant to a stipulated claim bill, and

WHEREAS, the agency has agreed to request an appropriation from the Legislature in the amount of $950,000, and

WHEREAS, the $950,000 stipulated settlement is sought through the submission of a claim bill to the Legislature, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $950,000 is appropriated from the General Revenue Fund to the Agency for Persons with Disabilities

for the relief of J.D.S. as compensation for the injuries and damages she sustained.

Section 3. The Chief Financial Officer shall draw a warrant upon funds of the Agency for Persons with Disabilities in the sum of $950,000 and shall pay such amount out of funds in the State Treasury to the AGED Pooled Special Needs Trust, which shall be managed and administered on behalf of J.D.S. by AGED, Inc., a nonprofit trust company.

Section 4. The amount paid by the Agency for Persons with Disabilities pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the injuries and damages to J.D.S. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $237,000, the total amount paid for lobbying fees may not exceed $47,500, and no amount may be paid for costs and other similar expenses relating to this claim.

Section 5. This act shall take effect upon becoming a law.

STORAGE NAME: h6511.CJC
DATE: 3/16/2017

March 16, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6511 - Representative Miller
Relief/L.T./Department of Children and Families

THIS IS AN UNCONTESTED CLAIM FOR $800,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN THE CLAIMANT AND THE DEPARTMENT OF CHILDREN AND FAMILIES FOR DAMAGES SUFFERED BY L.T. WHILE IN FOSTER CARE SUPERVISION. THE DEPARTMENT HAS ALREADY PAID $200,000.

FINDING OF FACT:

In August of 1995, L.T. was removed from her family by the Department of Children and Families ("DCF"), and placed with her maternal great uncle, Eddie Thomas, and his wife Vickie Thomas. DCF conducted a background check on Eddie Thomas revealing prior convictions for possession of narcotics equipment and larceny. Initial background checks did not reveal any prior history of violence, sex offenses or child abuse. DCF conducted a home study and determined that the Thomas's were capable of providing a safe home environment for L.T.

In September 1996, DCF was notified that on September 9, 1996, the State Attorney's Office filed an information charging Eddie Thomas with "lewd, lascivious, or indecent assault on a child under 16 years of age". After multiple "hung" juries, Eddie Thomas pled no contest in April 1997 to committing a lewd, lascivious, and indecent act on a child under the age of 16.

Eddie Thomas was placed on five years' probation, required to attend sexual abuse counseling, and required to register as a sex offender. On May 9, 1997, only one month after Eddie Thomas entered his plea deal, DCF recommended, and the judge approved, an order allowing Eddie Thomas to return home and have unsupervised contact with the children. Despite knowing that L.T. would remain in the custody of a registered sex offender, DCF recommended to the court the permanent, long-term placement of L.T. in the Thomas home and further recommended that the children be removed from protective services, with no further supervision by the department. On March 3, 2000, the court approved L.T.'s long term placement with Mr. and Mrs. Thomas, and removed the children from continued protective services.

On March 24, 2003, an abuse hotline call to DCF reported that L.T. was being abused by Eddie Thomas and that both Mr. and Mrs. Thomas were using drugs in the children's presence. DCF conducted an investigation by interviewing the children in front of Mrs. Thomas, one of the alleged perpetrators of abuse. DCF further conducted background checks and drug screens which returned negative results concluding that L.T. was not at risk of abuse and closed the case.

On February 24, 2005, L.T. ran away from the Thomas home and was subsequently picked up by a Gadsden County Sherriff's deputy. She reported to the deputy that she had been exposed to extensive drug use in the Thomas home and had been physically, sexually, and emotionally abused by Mr. and Mrs. Thomas. The DCF child protection team concluded that "there are verified findings of sexual molestation of L.T. by her uncle, Eddie Thomas". L.T. was subsequently removed from the home and placed in the home of Vicki McSwain.

L.T. has been the subject of multiple Baker Act proceedings and suicide attempts, and has been in and out of inpatient and outpatient psychiatric facilities. L.T. has been diagnosed with depression, post-traumatic stress disorder and anxiety disorder as a direct and proximate result of the abuse she sustained while under DCF's supervision while being cared for by Mr. and Mrs. Thomas. L.T. will continue to require therapeutic treatment throughout the rest of her life.

As of today, L.T. still suffers from depression and receives treatment from a therapist. Her diagnosis includes Post Traumatic Stress Disorder. L.T. is now married and has two children. She is pursuing a degree from Florida State College at Jacksonville and wishes to pursue a career as a child therapist focusing on aiding child abuse victims.

LITIGATION HISTORY:

A lawsuit was brought on L.T.'s behalf by her guardian, Vicki McSwain, in state and federal courts alleging negligence pursuant to s. 768.28, Florida Statutes, and civil rights

violations pursuant to 42 U.S.C. s. 1983. The civil rights claims were disposed of by the trial court, but the negligence claims continued to be litigated, and a jury trial of the case was set in Leon County. The parties attended a court-ordered mediation and on June 21, 2010, the parties agreed to a mediated settlement under which L.T. would receive $1,000,000, of which $200,000 has been paid, and the balance of which would be submitted through a claim bill that the Department of Children and Families would agree to support. The remaining $800,000 would be paid from General Revenue funds and placed into a special needs trust.

CLAIMANT'S POSITION: Claimant asserts that the Department of Children and Families was negligent when it allowed L.T. to stay in the same home as Eddie Thomas, a registered sex offender.

RESPONDENT'S POSITION: The Department of Children and Families will not oppose, obstruct or delay the passage of the claims bill or direct its representatives, agents or lobbyist to oppose obstruct or delay the passage of said claims bill in the amount of $800,000.

CONCLUSION OF LAW: I find that the Department breached its duty of care owed to L.T. DCF has a non-delegable duty to ensure the safety of its dependent children. DCF failed to exercise reasonable care, thereby breaching this duty, when DCF knowingly left L.T. in the home of a registered sex offender. It was foreseeable by the DCF that by leaving L.T. in the home that it was more than likely that she would be sexually abused. DCF's own experts concurred that "under no set of circumstances should DCF have left a child in the custody of Mr. Thomas". The culmination of DCF's actions, continuing to allow L.T. to be placed in the home and under the care of a registered sex offender, breached DCF's duty of care.

The breach of DCF's duty led to L.T. being raped in the Foster Home resulting in substantial emotional injury to L.T. The settled upon amount for damages is reasonable under the circumstances. It is likely a jury would have awarded a greater amount.

ATTORNEY'S/ LOBBYING FEES: Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 10% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total $2,000.

LEGISLATIVE HISTORY: House Bill 3531 by Representative Miller and Senate Bill 26 by Senator Negron were filed during the 2016 Legislative Session. The Senate Bill was heard in two committees but died in Senate Appropriations. The House Bill died in the Civil Justice Subcommittee.

House Bill 3551 by Representative Miller and Senate Bill 40 by

Senator Ring were field during the 2015 Legislative Session. The Senate Bill was heard in two committees but died in Senate Appropriations Committee. The House Bill died in the House Civil Justice Subcommittee.

HB 3525 by Representative Pafford and SB 46 by Senator Ring were filed during the 2014 Legislative Session. Neither bill was ever heard in any committee.

HB 541 by Representative Caldwell and SB 24 by Senator Ring were filed during the 2013 Legislative Session. Neither bill was ever heard in any committee.

HB 1161 by Representative Nehr and SB 18 by Senator Ring was filed during the 2012 Legislative Session. Neither bill was ever heard in any committee.

SB 28 by Senator Ring was filed during the 2011 Legislative Session. The bill was never heard in any committee.

RECOMMENDATIONS: I respectfully recommend that HB 6511 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Miller, M., House Sponsor
Senator Benacquisto, Senate Sponsor
Mary Kraemer, Senate Special Master

HB 6511
IN RELIEF OF L.T. BY STATE OF FLORIDA/

AMENDED AFFIDAVIT AND VERIFIED STATEMENT OF LANCE BLOCK

STATE OF FLORIDA)

COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared, LANCE BLOCK, who being first duly sworn, deposes and says:

1. My name is Lance Block.

2. I am a member of the Florida Bar and am registered as a lobbyist on behalf of L.T., the claimant in this matter. Additionally, I represented L.T. as an attorney in the underlying case. I waived my rights to an attorney fee from the sovereign immunity payment to benefit L.T.

3. Attorney fees are 25 percent pursuant to Fla. Stat. 768.28(8). See affidavit of attorneys Haas and Filson. My firm is under contract to receive a 10 percent fee of the total claim bill award for legal and lobbying services to be paid from the 25 percent attorney fee pursuant to Fla. Stat. 768.28(8). Attorneys Haas and Filson shall be paid the remaining 15 percent fee from the attorney fee award.

4. Of the 10 percent to be paid to my firm, Corcoran & Johnson firm shall receive a 3 1/3 percent lobbying fee, Ballard Partners shall receive 3 1/3 percent, and my firm shall receive 3 1/3 percent.

5. Therefore, the total of all attorney and lobbying fees shall be limited to 25 percent of the total claim bill recovery.

6. Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Lance Block Date 3/15/17

Affiant has verified this affidavit without notarization as authorized by § 92.525, Fla. Stat. (1986). *See State v. Shearer, 628 So.2d 1102 (Fla. 1993); Dodrill v. Infe, Inc.*, 837 So.2d 1187 (Fla. 4th DCA 2003); *Goines v. State*, 691 So.2d 593 (Fla. 1st DCA 1997).

AFFIDAVIT OF MATTHEW BLAIR

STATE OF FLORIDA)

COUNTY OF PASCO)

ON THIS DAY, before me, the undersigned authority, personally appeared, MATTHEW BLAIR, who, after being duly sworn, deposes and says:

1. My name is Matthew Blair, I am an employee of Corcoran & Johnston a government relations firm retained by L.T.

2. I am over 18 years of age and competent to make this affidavit.

3. Corcoran & Johnston has been retained as consultants/lobbyists in regard to the consideration Senate Bill 38 and HB 6511 for the relief of L.T. by the Florida Department of Children and Families.

4. Corcoran & Johnston will receive 3 1/3% in fees on this claims bill.

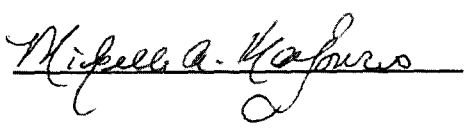
5. There are no additional costs of Corcoran & Johnston that are expected to be reimbursed from any recovery obtained through the passage of Senate Bill 38 and HB 6511 for the relief of L.T. by the Florida Department of Children and Families.

Further Affiant Sayeth Naught.

MATTHEW BLAIR
Corcoran & Johnston

STATE OF FLORIDA
COUNTY OF Pasco

The foregoing Affidavit was acknowledged before me this 15th day of March, 2017, by Matthew Blair, who is personally known to me.



MICHELLE A. KAZOURIS
MY COMMISSION # FF 038908
EXPIRES: August 7, 2017
Bonded Thru Budget Notary Services

Signature of Notary Public

Michelle A. KAZOURIS

Printed Name of Notary Public

HB 6511
Relating to Relief/L.T./Department of Children and Families

AFFIDAVIT OF MATHEW FORREST

STATE OF FLORIDA)
COUNTY OF LEON)

BEFORE ME, the undersigned authority, personally appeared, MATHEW FORREST, who being first duly sworn, deposes and says:

1. My name is Mathew Forrest. I am over the age of twenty-one years and am of sound mine.

2. Ballard Partners and I are registered as lobbyists on behalf of the claimant.

3. My firm is under contract to receive a 3 1/3% fee from the recovery of the claim bill in this matter.

4. Our contingency fee is 3 1/3% of the total recovery of the claim bill.

5. Our cost for expenses are $495.00 to be recovered from the claim bill.

6. All expenses are external costs.

I declare that I have read the foregoing affidavit and that the facts stated in it are believed to be true.

FURTHER AFFIANT SAYETH NOT.

Mathew Forrest

The foregoing instrument was acknowledged before me this 15th day of March, 2017, by Mathew Forrest, **who is personally known to me** or who has produced N/A as identification and who did/did not take an oath.

Notary Signature,

Notary Public, State of Florida

SHANNA KAYE CRAWLEY
Commission # FF 161625
Expires January 4, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

(Seal)

A bill to be entitled

An act for the relief of L.T.; providing an appropriation to compensate L.T. for injuries and damages sustained as a result of the negligence of employees of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing legislative intent regarding certain Medicaid liens; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on August 15, 1995, the Department of Children and Families removed 14-month-old L.T. and her infant brother from their mother's custody because they were not receiving adequate care, and

WHEREAS, the Department of Children and Families temporarily placed the children into the home of the children's great aunt and uncle, Vicki and Eddie Thomas, and

WHEREAS, a background check that was conducted shortly after L.T. and her brother were placed in the Thomases' home indicated that Mr. Thomas had once been convicted of a misdemeanor and possession of narcotics equipment, and

WHEREAS, the background check also revealed that Ms. Thomas had been charged with, but apparently not convicted of, larceny, and

WHEREAS, the background check did not reveal any prior history of violence, sex offenses, or child abuse, and

WHEREAS, after conducting a home study, interviews, and an investigation, the Department of Children and Families concluded that the Thomases were capable of providing a safe home for L.T. and her brother and approved the placement, and

WHEREAS, on August 21, 1996, approximately 1 year after L.T. and her brother had been placed in the Thomases' home, Mr. Thomas was charged with committing a lewd and lascivious act on a child under the age of 16, and

WHEREAS, the alleged victim was the 13-year-old daughter of a woman with whom Mr. Thomas was having an extramarital affair, and the state later amended the charge to add a count for sexual battery on a child by a familial or custodial authority, and

WHEREAS, after two hung jury trials in January and March of 1997, Mr. Thomas pled no contest in April 1997 to committing a lewd, lascivious, and indecent act on a child under the age of 16, and

WHEREAS, Mr. Thomas was sentenced to 5 years' probation and required to attend sex offender classes and register as a sex offender, and

WHEREAS, on May 9, 1997, 1 month after Mr. Thomas entered his plea and was convicted of a child sex crime, the Department of Children and Families recommended, and the judge approved, an order allowing Mr. Thomas to return home and have unsupervised

contact with the children, and

WHEREAS, although the policies of the Department of Children and Families barred Mr. Thomas from being able to adopt a child because of his conviction for a sex act with a child and his sex offender status, the policies did not prohibit the continued placement of L.T. and her brother in the Thomases' home, and so the children remained with the Thomases, and

WHEREAS, the Department of Children and Families subsequently recommended to the court the permanent, long-term placement of L.T. and her brother in the Thomases' home and further recommended that the children be removed from protective services, with no further supervision by the department, and

WHEREAS, on March 3, 2000, following the recommendation of the Department of Children and Families, the court approved L.T. and her brother's long-term placement with the Thomases and removed the children from continued protective services, and

WHEREAS, on March 24, 2003, an abuse hotline call to the Department of Children and Families reported that L.T. was being abused by Mr. Thomas and that both Mr. and Ms. Thomas were using drugs in the children's presence, and

WHEREAS, the next day, a child protective investigator for the Department of Children and Families interviewed L.T. and her brother while in the presence of Ms. Thomas, and neither child was asked to be interviewed outside Ms. Thomas's presence, and

WHEREAS, L.T. and her brother denied the abuse allegations

while Ms. Thomas watched and listened to them, and

WHEREAS, results from new background checks and drug screens were negative, and the Department of Children and Families concluded that L.T. and her brother were not at risk of abuse and closed the case, and

WHEREAS, on February 24, 2005, L.T. ran away from the Thomases' home and was found by law enforcement officers, and

WHEREAS, L.T. ran away from home because she had been repeatedly sexually and physically abused by Mr. Thomas and physically, verbally, and emotionally abused for years by Ms. Thomas, and

WHEREAS, L.T. and her brother were finally removed from the Thomases' home in 2005, and

WHEREAS, during her adolescent and teenaged years, L.T. was the subject of repeated Baker Act proceedings and suicide attempts and was in and out of inpatient and outpatient psychiatric facilities, and

WHEREAS, L.T. has been seen and treated by physicians and mental health care professionals who have diagnosed her with depression, posttraumatic stress disorder, anxiety disorder, and other disorders attributed to her trauma, and

WHEREAS, although L.T. struggles with the symptoms of depression, posttraumatic stress disorder, and anxiety disorder, she is now 22 years of age, is married to a Naval Petty Officer who is stationed at Naval Air Station Jacksonville, is the

mother of 2 very young daughters, and attends Florida State College at Jacksonville as she works toward her goal of becoming a mental health care professional specializing in treating children who have been abused, neglected, or traumatized, and

WHEREAS, a lawsuit was brought on L.T.'s behalf in state and federal courts alleging negligence pursuant to s. 768.28, Florida Statutes, and civil rights violations pursuant to 42 U.S.C. s. 1983, and

WHEREAS, the civil rights claims were disposed of by the trial court, but the negligence claims continued to be litigated, and a jury trial of the case was set in Leon County, and

WHEREAS, the parties attended a court-ordered mediation and on June 21, 2010, agreed to a mediated settlement under which L.T. will receive $1 million, of which $200,000 has been paid, and the claim for the remaining $800,000 is being submitted through this bill, which the Department of Children and Families agrees to support, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. There is appropriated from the General Revenue Fund to the Department of Children and Families the sum of

$800,000 for the relief of L.T. for the injuries and damages she sustained. After payment of attorney fees and costs, lobbying fees, and other similar expenses relating to this claim; outstanding medical liens other than Medicaid liens; and other immediate needs, the remaining funds shall be placed into a trust created for the exclusive use and benefit of L.T. The trust shall be administered by an institutional trustee of L.T.'s choosing and shall terminate upon L.T.'s 25th birthday, at which time the remaining principal and interest shall revert to L.T. or, if she predeceases the termination of the trust, to her heirs, beneficiaries, or estate.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of L.T. in the sum of $800,000 upon funds in the State Treasury to the credit of the Department of Children and Families, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury not otherwise appropriated.

Section 4. It is the intent of the Legislature that any and all Medicaid liens arising from the treatment and care of the injuries and damages to L.T. described in this act shall be waived or paid by the state.

Section 5. The amount awarded pursuant to the waiver of sovereign immunity under s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of

the factual situation described in the preamble to this act which resulted in the injuries and damages to L.T. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $120,000, the total amount paid for lobbying fees may not exceed $80,000, and no amount may be paid for costs and other similar expenses relating to this claim.

Section 6. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health Care Appropriations Subcommittee

Representative Brodeur offered the following:

Amendment

Remove lines 141-142 and insert:

the same out of such funds in the State Treasury.

STORAGE NAME: h6523.CJC
DATE: 3/6/2017

March 6, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6523 - Representative Diaz
Relief/"Survivor" & Estate of "Victim"/DCF

THIS IS AN EQUITABLE CLAIM BASED ON A SETTLEMENT AGREEMENT, WHEREIN THE DEPARTMENT OF CHILDREN AND FAMILIES HAS AGREED TO PAY $5,000,000 TO SURVIVOR AND THE ESTATE OF VICTIM FOR DAMAGES THEY RECEIVED AS A RESULT OF ALLEGED NEGLIGENT ACTIONS OF THE DEPARTMENT THAT FAILED TO PROTECT THEM FROM THE ABUSIVE BEHAVIOR OF THEIR ADOPTIVE PARENTS. DCF, THROUGH THE CHIEF FINANCIAL OFFICER, HAS PAID $1,250,000 PURSUANT TO THE SETTLEMENT LEAVING, $3,750,000 TO BE PAID PURSUANT TO THIS CLAIM BILL.

FINDING OF FACT:

On February 14, 2011, eleven year-old Victim was found dead in a truck parked off on I-95 in Palm Beach County. Victim's twin, Survivor, was found inside the truck, suffering from chemical burns. Mr. Barahona, the children's adoptive father, claims Survivor received those burns when the truck they were in bounced off the highway, spilling caustic chemicals over both of them, but it appears that something far more insidious occurred.

The events that precede this span seven years and lucidly portray the Barahona's ongoing abuse of Survivor and Victim

both during and after the twins were in the care of the Department of Children and Families (DCF). In August 2003, the court terminated the parental rights of the twins' mother. In March of 2004, DCF removed Survivor and Victim from their biological father's custody when he was charged with sexual battery on a minor that he was not related to. DCF placed the twins in the foster home of Jorge and Carmen Barahona.

Just four days after Survivor and Victim were placed in the Barahona home, a paternal aunt and uncle in Texas reached out to DCF and asked for custody of the twins. A month later the Court ordered the home study be conducted. In May of 2004, two months after the relatives made their existence and desire to take custody of the children known, the Guardian ad Litem noted that a home study that needed to be done before the relatives could take custody would take up to three months. However, Texas did not return the home study until over a year later. By that time it was determined that removing the children from the Barahona's home would not be in their best interests.

In the five years the Barahonas first became foster parents until the twins were adopted, several questionable incidents were recorded. Near the end of 2004, a nurse for Victim's endocrinologist said she felt the twins were not in a good placement situation because the parents sent Victim to her doctor's appointment in DCF provided transportation but did not accompany her.

In January 2005, less than a year after Victim came into the Barahona home, Victim reported being sexually abused by one of her fathers. It was initially believed that she was alleging that Mr. Barahona was the abuser, but her psychologist determined that, because of inconsistencies in her story, she was talking about her biological father. The DCF investigation was closed after face to face meetings with the family members alleviated any lingering concerns. The biological father was ultimately charged with sexual abuse of both of the twins and ordered to undergo treatment.

In February 2006, a call came into the child abuse hotline mentioning Victim had a large bruise on her neck and was missing many days of school. DCF investigated the event by interviewing Survivor and Victim at school and by interviewing Mr. Barahona and school officials. Victim had two different stories about how she got the bruise, but Survivor said that no one hit Victim and that he did not know how she got the bruise. DCF found no abuse but stated that the child was very hyper and should be tested for hyperactivity.

In March 2007, DCF received another hotline call. School administrators stated that Victim was unclean, smelled, hoarded food at school, fell asleep in class often, and was, at times, scared to go home at the end of the day. She also was

observed one morning with applesauce in her hair, but when she came back the next day with the same applesauce in her hair, it was a cause for concern for school officials. There were also worries that Mrs. Barahona was punishing Victim by hitting her on the bottom of her feet, a method of corporal punishment often used by abusers that does not leave bruises or marks. The case was investigated by staff, but the information was never sufficiently communicated with all those involved in caring for the twins. Also, staff did not conduct an interview with Victim outside the presence of her alleged abuser. The Gaurdian ad Litem stated in his notes regarding the incident that "the principal said that something just does not seem right with the foster parents situation; I'm starting to agree." The case was closed with staff noting no indication of neglect.

In October of 2007 a citizen review panel was established to provide opinion on Survivor and Victim's case thus far, and said that DCF was in substantial compliance. The review panel noted some missing documentation regarding medical care, but the prevalent suggestion was that permanence (adoption) be achieved as soon as possible.

In 2008, the biological father's appeals of his termination of parental rights were exhausted. Dr. Archer declared that Survivor and Victim were already a part of the Barahona family, and their adoption would merely formalize what was already true in fact. The possibility of placement with the relatives in Texas was all but permanently foreclosed when Dr. Archer said that removing the children from their current home would inflict irreparable mental and developmental harm while also encouraging their adoption by the Barahonas.

In May 2009, the adoption of Survivor and Victim was finalized.

A year later, in June 2010, the DCF hotline received another call from school officials alleging many of the same symptoms of neglect from the March 2007 call. Victim was hungry, unfocused, jittery, exhibited hair loss, and had missed many days of school due to heavy bleeding. Mrs. Barahona attributed most of Victim's symptoms to her medical condition, which includes hormone imbalances, but the report from DCF admits that the investigator does not know the last time Victim visited her endocrinologist. A simple check with Victim's doctor would have turned up the fact that her medical condition would not cause any of the problems Mrs. Barahona attributed to it. It is also noted that Victim's adoption was held up because she often came to school dirty while in Mrs. Barahona's care. DCF also admitted that the call was misclassified and that CPI's were required by policy to interview neighbors but did not. The referral was closed with no services recommended. The Barahonas removed the twins from school and began homeschooling them shortly after, realizing that most of the complaints about the twins' condition was coming from school

officials.

Two days before Victim's death, DCF received two calls on back to back days. The first call came from a doctor treating one of the Barahona's grandchildren. The grandchild stayed with them in the afternoons and said that Victim and Survivor were constantly tied up and put in the bath tub. When she went in the bathroom to use the bathroom, Mrs. Barahona went in and watched to make sure that she didn't talk to or even acknowledge Victim and Survivor. This call should have warranted an immediate response and a referral to law enforcement. Instead it was given a 24-hour response time. DCF investigators attempted to locate the children at school but they were not there. Even though the children were missing, DCF investigators never called the police.

The next day, Mr. Barahona's brother made a disturbing call to the hotline. He had seen Mr. Barahona and Survivor that day, but Victim wasn't with them. He asked where Victim was, and Mr. Barahona gave evasive, non-responsive answers. Even though DCF had this information, it was not aware that Victim had been missing since the day before and did not call law enforcement. This is illustrative of DCF's failure to communicate pertinent information with all others in the organization. If this information had been properly communicated, DCF would have certainly realized the gravity of the situation and called law enforcement.

Two days later, on February 14, 2011, Victim was found dead, wrapped in a plastic bag in the back of the truck where Mr. Barahona and Survivor were found. Due to Mr. Barahona's actions involving the caustic chemicals, Survivor suffered burns to 10% of his body.

Survivor has since revealed more specifics about the abuse that he and Victim were subjected to in the Barahona house. The children were made to eat feces, while at other times the Barahonas smeared it on their faces. At one point Mr. Barahona put it into Survivor's ears with a q-tip. They also had hot sauce put in their ears. Victim was subjected to electrical shocks. Both children had marks on their ankles and wrists from constantly being tied up in the bathtub. Survivor reported being suffocated with a plastic bag while lying on his bed. All of these things illustrate systematic efforts of the Barahonas to emotionally and physically torture the twins.

Dr. Newberger, a pediatrician who has met and examined Survivor on numerous occasions, stated that he suffers from ongoing, chronic post-traumatic stress disorder as a result of the physical and mental abuse he suffered at the hands of the Barahonas. Like many with PTSD, Survivor struggles to turn off his body's fight or flight response, which prevents higher order brain functioning. He has trouble going to therapy to discuss

what has happened to him and is constantly overwhelmed with his abuse. The chemical burns to his lower back and genitals will be long lasting, if not permanent, and are a haunting reminder of the trauma he suffered.

LITIGATION HISTORY:

The plaintiffs brought two cases against DCF and their agents. Survivor v. Our Kids of Miami-Dade/Monroe, Inc., Case No. 1:11-cv-24611 PAS (the "Federal Case"), and Survivor v. Fla. Dep't of Children & Families, Case No. 13-2715-ca-25 (the "State Case").

The Federal Case included DCF, Our Kids, Center for Family and Child Enrichment, and individual employees of those name entities. The plaintiffs settled Our Kids and CFCE for an amount that remains confidential.

The State Case named only one defendant, DCF.

On March 6, 2013, DCF entered into a settlement with the plaintiffs in the Federal Case for $1,250,000. As a part of the settlement, DCF agreed to settle the state negligence claims and not oppose this $3,750,000 claim bill and submit a letter supporting the claimants. On June 18, 2013 the State Case was settled under the same terms.

CONCLUSION OF LAW:

I concur with the claimants' assertion that DCF had a duty to act reasonably in protecting Survivor and Victim, that they breached that duty, and that those negligent acts were the legal cause of Victim's death and the permanent physical and emotional damage suffered by Survivor.

Florida's limited waiver of sovereign immunity requires that the state's actions be operational as opposed to decisional in order to be subject to the waiver.[1] In other words, the state has waived sovereign immunity for actions that carry out policy rather than create it. Florida courts have decided that failure to remove a foster child from an abusive home is operational, not decisional.[2] The Florida Supreme Court has also said that the state owes a duty where it is providing general services for the health and welfare of its citizens.[3] Therefore, DCF had a duty to act reasonably in detecting, preventing, and remedying child abuse.

DCF had evidence of several instances of abuse that were each ruled as not being abusive in nature because the Department failed to properly share and gather evidence together in order to more clearly establish the pattern of abuse the twins suffered while being fostered by the Barahonas. On many occasions, DCF employees failed to properly follow DCF

[1] *Commercial Carrier Corp. v. Indian River Cty*, 371 So. 2d 1010 (Fla. 1979).
[2] *Department of Health & Rehabilitative Svcs. v. Yamuni*, 529 So. 2d 258 (Fla. 1988).
[3] *Trianon Park Condominium Ass'n, Inc. v. City of Hialeah*, 468 So. 2d 912, 921 (Fla. 1985).

policies and generally acted in a manner that fell far below the reasonable duty of care. In sum, the cumulative effect of the evidence shows that DCF should have known the twins were being abused and failed to prevent the situation from continuing. DCF employees performed their tasks in a mere perfunctory fashion, filling out forms and bubbling in boxes without adequate critical thinking and analysis of the data they were collecting. The Department and its employees had a duty and breached that duty.

It should be noted that though almost all of the injuries suffered by the twins were at the hands of the Barahonas, DCF's failure to detect, prevent, and remedy the abuse was a legal cause of the twins' injuries.

In sum, before the adoption, DCF had an ongoing duty to protect the children from threats that it knew of or should have discovered by exercising reasonable care. After the adoption, DCF had a duty to act reasonably in discovering and stopping abuse when it received calls alleging abuse and agreed to investigate those allegations. DCF was negligent on multiple instances relating to the care of Survivor and Victim therefore breaching those duties.

The injuries the twins suffered have been outlined above. The permanent emotional and physical damages that Survivor has to carry with him are significant, and the years of suffering Victim endured that ultimately led to her death defies calculation. The prolonged nature and severity of the injuries justifies a large settlement.

COLLATERAL SOURCES & OTHER ISSUES:

There is still the issue of collateral sources. The claimants argue that collateral sources should not factor into the Legislature's decision because DCF settled with the claimants for $5,000,000 knowing the amount Our Kids and CFCE had settled for. Therefore, the collateral sources have already been factored in. This argument neglects to understand that the Legislature is not bound by the settlement amount DCF has agreed to and has the prerogative to assess the collateral sources to determine the total amount it thinks should be fair compensation. For that reason, I feel that the amount of the settlement with CFCE and Our Kids is relevant in determining the amount of the settlement with the state. The state waived sovereign immunity and made itself amenable to tort suits up to a $300,000 threshold for multiple claimants.[4] Any amount over that threshold is an equitable remedy, not a legal right that is subject to the independent approval of the Legislature.[5] Thus, the Legislature has the unfettered ability to grant any award over the threshold on whatever basis it determines to

[4] s. 768.28(5).
[5] *Id.*

be best. Here, that determination should include the calculation of collateral sources. The fact that the amount is confidential, thus effectively unavailable for calculating the total compensation, is somewhat problematic. My recommendation is that the $5,000,000 ($3,750,000 of which is to be paid by this claim bill) settlement amount is appropriate compensation.

Since Victim has died intestate, her share of this claim bill will pass through intestacy by the Florida rules of intestate succession. Those intestate heirs have been determined.[6] Her three siblings, Survivor, her blood brother, and GK and JB, her two adoptive siblings, will split her share.[7]

ATTORNEY'S/ LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total $76,312.81.

The attorney's fees collected from the settlement with Our Kids and CFCE are unavailable.

LEGISLATIVE HISTORY:

This is the fourth legislative session this claim has been filed. In the 2016 legislative session, the claim was filed as Senate Bill 48 by Senator Flores and House Bill 3529 by Representative Diaz, J. The Senate bill was heard in two committees but died in the Appropriations Committee. The House bill was not heard in a committee and died in the Civil Justice Subcommittee.

In 2015, the claim was filed as Senate Bill 74 by Senator Flores and House Bill 3539 by Representative Avila. Neither bill was heard in a committee.

In 2014, the claim was filed as Senate Bill 44 by Senator Flores. It was not heard in a committee and a House bill was not filed.

RECOMMENDATIONS:

I respectfully recommend House Bill 6523 be reported **FAVORABLY**.

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[6] On October 7, 2015, Circuit Judge Bernard Shapiro approved an Order Determining Heirs, which provided that for $200, Jorge and Carmen Barahona waived any claims they had as heirs to Victim's estate.

[7] Both G.K. and J.B. brought lawsuits against DCF. In 2016, G.K.'s claim was settled for $100,000 while J.B.'s claim is still pending and in the discovery phase.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Diaz, J., House Sponsor
Senator Flores, Senate Sponsor
Tom Cibula, Senate Special Master

IN RE: HOUSE BILL 6523 Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families

IN RE: SENATE BILL 18 Relief of "Survivor" and the Estate of "Victim" by the Department of Children and Families

AFFIDAVIT OF NEAL A. ROTH AND J. ALEX VILLALOBOS

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority personally appeared NEAL A. ROTH and J. ALEX VILLALOBOS, personally known to me who, after being duly sworn, deposes and says:

1. Pursuant to the Contract entered into with the clients relating to this claim bill, the attorneys' fee is contingent in nature and pursuant to §768.28 represents twenty-five (25%) percent of the total recovery to be made from the claim bill should it pass the Florida Legislature and become law.

2. The lobbyist fee is five (5%) percent of the total amount of the claim bill to be awarded upon becoming law and is inclusive of the 25% total fee charged as set forth in paragraph 1. That is, there are no additional lobbyist fees to be paid by the clients.

3. The total amount of outstanding costs which relate to the underlying cases of Survivor 1 and Estate of Victim is $76,312.81. Of that amount, $66,914.12 are external costs and $9,398.69 are internal costs.

4. The total dollar amount of costs that were paid from the statutory cap payment equaled $33,842.81 and of that amount $32,403.73 were external costs and $1,439.08 were internal costs.

FURTHER AFFIANTS SAYETH NAUGHT.

Neal A. Roth

J. Alex Villalobos

STATE OF FLORIDA
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 28 day of February, 2017 by Neal A. Roth, who is personally known to me and who did take an oath.

Name:
NOTARY PUBLIC
State of Florida at Large
My Commission Expires:

MARY B. NAGLER
MY COMMISSION # GG 032035
EXPIRES: December 3, 2020
Bonded Thru Notary Public Underwriters

STATE OF FLORIDA
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 28 day of February, 2017 by J. Alex Villalobos, who is personally known to me and who did take an oath.

Name:
NOTARY PUBLIC
State of Florida at Large
My Commission Expires:

MARY B. NAGLER
MY COMMISSION # GG 032035
EXPIRES: December 3, 2020
Bonded Thru Notary Public Underwriters

A bill to be entitled

An act for the relief of "Survivor" and the Estate of "Victim"; providing an appropriation to compensate Survivor and the Estate of Victim for injuries and damages sustained as result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, on May 30, 2000, 4 days after their birth, a baby boy, hereinafter referred to as "Survivor" and his twin sister, hereinafter referred to as "Victim," first came to the attention of the Department of Children and Families, formerly known as the Department of Children and Family Services, due to the fact that the children were to be sent to separate foster homes, and

WHEREAS, Survivor was reunited with his biological mother and father on July 26, 2000, and Victim was reunited with them on January 8, 2001, and

WHEREAS, on August 4, 2003, the court terminated the parental rights of Survivor's and Victim's biological mother, and

WHEREAS, on March 26, 2004, Survivor's and Victim's biological father was arrested, which resulted in both Survivor and Victim being placed in the custody of the state and moved

into the foster home of Jorge and Carmen Barahona, and

WHEREAS, within 4 days of the placement of Survivor and Victim in foster care, contact was made with paternal relatives in Texas, Mr. and Mrs. Reyes, to explore their potential role as caregivers, and

WHEREAS, on March 30, 2004, Mr. and Mrs. Reyes informed the Department of Children and Families that they were interested in caring for Survivor and Victim, and

WHEREAS, pursuant to s. 39.521, Florida Statutes, placement with adult relatives takes priority over out-of-home licensed foster care placement, and Survivor and Victim should have been placed in the Reyes's home as soon as due diligence allowed, and

WHEREAS, pursuant to s. 39.001, Florida Statutes, Department of Children and Families case workers are required to achieve permanency within 1 year, either through reunification with a child's natural parents or adoption, and

WHEREAS, due to significant delays in the placement process, the Reyes' were not permitted to adopt Survivor and Victim, who were ultimately adopted by the Barahonas on May 29, 2009, and

WHEREAS, prior to the adoption of Survivor and Victim by the Barahonas, significant events occurred which the Department of Children and Families knew or should have known were indicative of the perpetration of abuse of Survivor and Victim, and

WHEREAS, in at least one instance, allegations of medical neglect were reported and, pursuant to Department of Children and Families Operating Procedure 175-28, the allegations should have been verified and Survivor and Victim should have been immediately removed from the Barahona home, and

WHEREAS, in January 2005, it was reported that Jorge Barahona had "tickled the private parts" of Victim, which the child protective investigator dismissed as being of "little concern," and

WHEREAS, on March 20, 2007, Survivor's and Victim's school principal called in an abuse report to the Department of Children and Families which alleged that, for 5 months, Victim had been going to school at least two to three times per week with serious body odor, smelling rotten, and appearing unkempt; that Victim's uniforms were not clean and her shoes were dirty; that on one occasion Victim had spilled applesauce in her hair at school and returned the following day with the applesauce still in her hair; that Victim was always hungry and eating a lot at school, hoarding food in her backpack from breakfast and lunch, and there was a concern that she was not eating at home; that Victim was afraid to talk; that Survivor also went to school appearing unkempt; and that both Survivor and Victim were having trouble staying awake during classes, and

WHEREAS, on March 29, 2007, the Department of Children and Families learned that Survivor and Victim had been absent from

school approximately 20 days, taken out of school early about a dozen times, and were expected to be retained in the first grade, and

WHEREAS, on May 29, 2009, Victim and Survivor were adopted by the Barahonas, despite numerous incidents that should have led to an active investigation and discovery of abuse, and

WHEREAS, in February 2011, the Department of Children and Families Abuse Hotline received another report concerning Survivor and Victim, this time alleging that Survivor and Victim were being severely abused and imprisoned from the world, and

WHEREAS, it was the duty of the Department of Children and Families to remove Survivor and Victim from a placement in which there was a substantial risk of harm and, over the course of 6 years, there were multiple instances of abuse which the department either knew or should have known were occurring in connection with their placement with the Barahonas, and

WHEREAS, on February 14, 2011, Victim, was found dead in a truck parked off I-95 in Palm Beach County, and Survivor was found near-death, in critical condition, and

WHEREAS, after the death of Victim and the discovery of the severe abuse of both children, the Secretary of the Department of Children and Families, David E. Wilkins, conducted an investigation that culminated on March 14, 2011, with the issuance of a report of findings and recommendations, and

WHEREAS, in the executive summary of the report,

investigators reported that there were significant gaps and failures in common sense, critical thinking, ownership, follow-through, and timely and accurate information sharing, all of which defined the care of Survivor and Victim from the inception of their relationship with the state child welfare system, and

WHEREAS, investigators determined that the systematic failure included both investigative and case management processes, as well as the pre- and post-adoption processes, and

WHEREAS, the investigative report cited numerous incidents of abuse of the children, including, but not limited to, punching, kicking, choking, beatings, the denial of basic and necessary medical care, forcing the children to eat cockroaches and food that contained feces, sexual abuse, sticking cotton swabs with human feces in the children's ears, suffocating one child with a plastic bag while the other child watched, smearing feces over the children's faces and placing feces on the children's hands for extended periods of time, and binding the children with duct tape and placing them naked in a bathtub together for days on end, and

WHEREAS, after the death of Victim and the discovery of Survivor, criminal charges were filed against the Barahonas, and

WHEREAS, tort claims were filed on behalf of Victim and Survivor in the United States District Court for the Southern District of Florida, Case No. 1:11-civ-24611-PAS, and a complaint was also filed in the Circuit Court for the Eleventh

Judicial Circuit of Miami-Dade County, Case No. 13-2715 CA 25, and

WHEREAS, the personal representative of the Estate of Victim and the newly adoptive parents of Survivor have agreed to amicably settle this matter and have entered into a settlement agreement in which the Department of Children and Families has agreed to pay $5 million to Survivor and the Estate of Victim, and

WHEREAS, as a result of the allegations of both negligence and civil rights violations, and pursuant to s. 768.28, Florida Statutes, the Department of Children and Families has paid $1.25 million to Survivor and the Estate of Victim, and

WHEREAS, the balance of the settlement agreement is to be paid through the passage of this claim bill in the amount of $3.75 million, and

WHEREAS, the Department of Children and Families fully supports the passage of this claim bill, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $3.75 million is appropriated from the General Revenue Fund to the Department of Children and Families for the relief of Survivor for the personal injuries he

sustained and to the Estate of Victim for damages relating to the death of Victim.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of the adoptive parents of Survivor, as legal guardians of Survivor, and to Richard Milstein, as personal representative of the Estate of Victim, in the sum of $3.75 million upon funds of the Department of Children and Families in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 4. The amount paid by the Department of Children and Families pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the personal injuries of Survivor and the death of Victim. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $750,000, the total amount paid for lobbyist fees may not exceed $187,500, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $76,312.81.

Section 5. This act shall take effect upon becoming a law.

STORAGE NAME: h6525.CJC
DATE: 3/10/2017

March 9, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6525 - Representative Grant
Relief/C.M.H./Department of Children and Families

THIS IS AN EXCESS JUDGMENT CLAIM FOR $5,076,543.08, BASED ON A JURY VERDICT AWARDING DAMAGES TO C.M.H. FOR PHYSICAL AND SEXUAL ABUSE CAUSED BY THE NEGLIGENT FOSTER PLACEMENT OF A KNOWN SEXUALLY AGGRESSIVE CHILD BY THE DEPARTMENT OF CHILDREN AND FAMILIES ("DCF"). DCF HAS PAID $100,000 OF THE JUDGMENT PURSUANT TO SECTION 768.28, F.S.

DCF DOES NOT OPPOSE THIS CLAIM.

FINDING OF FACT:

Standard of Review
Findings of fact are supported by a preponderance of evidence. The Special Master collected, considered, and included in the record, any reasonably believable information that the Special Master found to be relevant or persuasive in the matter under inquiry. The claimant had the burden of proof on each required element of the claim.

On September 6, 2002, the Department of Children and Families ("DCF") placed J.W., a 10 year old foster child with a history of sexually aggressive behavior towards younger children, in the home of Christopher and Theresa Hann ("The

Hanns"). The Hanns were not licensed or trained foster parents and had no expertise in providing therapeutic services to a child with pervasive social, emotional, psychological, behavioral, and psychiatric problems. Further, despite a specific request, DCF failed to provide the Hanns', who shared the home with their own two young children, with any information regarding J.W.'s psychosocial and behavioral history.

DCF's placement of J.W. in the Hanns' home directly contradicted prior recommendations by DCF providers that J.W. not have access to young children and that his caregivers be able to provide adequate supervision in the home, be informed about his sexual issues, and receive training to deal with such issues. The placement also departed from DCF's own operating procedures and rules regarding the placement of foster children who have been sexually abused or who are sexually aggressive.

The negligent placement resulted in the physical, emotional, and sexual abuse of C.M.H., the Hanns' 8 year old son, by J.W.

Background of J.W. and History of DCF Involvement

J.W. was born in 1992 to a teenage single mother with a history of mental illness and homelessness. She did not receive prenatal care and attempted suicide during the third month of her pregnancy by inhaling butane. While in his mother's care and custody, J.W. was subjected to extreme neglect, cruelty, and physical and sexual abuse.

At an early age, J.W. began to exhibit symptoms of Post-Traumatic Stress Disorder related to his repeated abuse and neglect. His behaviors led to his dismissal from several pre-schools and ultimately, a mental health and medical intervention.

Due to the ongoing abuse, J.W. was removed from his mother's home by DCF and placed in foster care when he was 4 years old. Tragically, while in foster care, J.W. was sexually assaulted by another foster child and when J.W. returned to the care of his mother at age 5 ½, he was severely psychotic. He began setting fires, burning himself on at least one occasion, and intentionally running into the path of oncoming cars. J.W. was diagnosed with non-specified psychosis, major depression with psychotic features; adjustment disorder with mixed disorder of conduct and emotion; and attention deficit hyperactivity disorder and was treated with anti-psychotic medication.

After receiving additional reports of sexual abuse, DCF placed J.W. back into foster care where he resided on and off for approximately the next five years. He would go on to be involuntarily hospitalized at least twice more at the age of 9, due to psychotic behaviors.

Initial Exhibitions of Sexually Aggressive Behavior by J.W.
In 2002, while living with his mother, J.W. began to exhibit sexually aggressive behavior towards other neighborhood children. On June 14, a Family Services Counselor for DCF (the "DCF Counselor"), referred J.W. to Camelot Community Care, a DCF provider of child welfare and behavioral health services, for intensive therapeutic in-home services. However, realizing the severity of his behavioral and mental disturbances, in a communication to Camelot on June 24, the DCF Counselor noted that J.W. needed to be in a residential treatment center as soon as possible.

Camelot accepted the referral to provide in-home mental health services to J.W. as an "emergency temporary solution while DCF [sought] residential placement", concluding that J.W. was "a danger" in the home. However, the Camelot in-home counselor assigned to J.W.'s case did not have experience with sexual trauma and Camelot's initial treatment plan failed to include any specific goals or specialized treatment for sexual abuse.

On July 5, J.W.'s mother informed Camelot that J.W. was continuing to engage in inappropriate sexual behaviors with younger children. A child safety determination conducted by Camelot on July 12, found that based on J.W.'s history, a sibling was likely to be in immediate danger of moderate to severe harm if J.W. was not supervised. Camelot recommended that J.W.'s parents keep him separated from younger siblings at night to preclude inappropriate touching and provide eye contact during the day whenever J.W. interacted with younger children.

However, DCF would remove J.W. from his mother's custody in August of 2002 after she abandoned her children at a friend's home. J.W. was temporarily sheltered in the home of a family friend, a non-relative placement.

A subsequent Comprehensive Behavioral Health Assessment of J.W. conducted at the behest of DCF, found that, in terms of temporal consistency of problems, J.W.'s issues had begun more than two years earlier and remained generally consistent over time. The assessment therefore concluded that J.W. "should not have unsupervised access to . . . any younger, or smaller children wherever he resides." The CBHA goes on to state that, **"J.W.'s caregivers must be informed about these issues and must be able to demonstrate that that they can provide adequate levels of supervision in order to prevent further victimization. These issues should be strongly considered in terms of making decisions about both temporary and long term care and supervision of J.W."**

Inappropriate placement with Hanns
On September 6, 2002, the DCF Counselor removed J.W. from

his temporary placement with a family friend due to allegations that he had been sexually abused by a member of the household.[1] He was thereafter immediately placed with Christopher and Theresa Hann.

Christopher and Theresa Hann were former neighbors of J.W. and his natural family. The couple lived with their two children, a daughter, age 16, and a son, C.M.H., age 8. They were not licensed or trained foster parents but had developed a profound empathy for the neighborhood boy, who would often seek shelter in the Hann home when left alone by his mother. Observing the troubled and chaotic family dynamic in his natural home, Theresa Hann had offered to care for J.W. J.W.'s mother also lobbied to have J.W. placed with the Hann family.

Despite the willingness of the Hanns to care for J.W., his placement in the Hann home violated DCF rules. DCF is required to obtain prior court approval for all non-relative placements. This requirement eliminates the use of non-relative placements in lieu of emergency shelter care.[2] The DCF Counselor failed to obtain the required court approval prior to placing J.W. in the Hann home. She also failed to notify DCF's legal department of the allegation of sexual abuse of J.W. in the initial temporary placement or his subsequent placement in the Hann home until November 5, 2002, two months later. Prior to even seeking court approval, the DCF Counselor was required to refer the Hann's for foster home licensing, and inform the court if the non—relative placement did not become licensed as required.[3] The Hanns were never licensed or trained as foster parents.

Additionally, the placement directly contradicted previous recommendations by DCF providers regarding placement for J.W. due to his sexually aggressive behavior. The DCF Counselor placed J.W. in a home with an 8 year old child after receiving a warning from Camelot two months earlier that a sibling would be in danger in a home with J.W. The Comprehensive Behavioral Health Assessment completed just one week prior to the placement, also recommended that J.W. not have unsupervised access to younger children. Due to his troubling history of sexual abuse and such warnings by DCF providers, DCF was prohibited by its own operating procedures from placing J.W. in a home with a younger child.[4] Further, the Hanns, without knowledge of J.W.'s ongoing inappropriate sexual behavior with younger children, allowed J.W. to share a

[1] The DCF Counselor failed to report the abuse allegation as required by s. 39.201, Florida Statutes. The incident was ultimately reported by Theresa Hann. The perpetrator would later confess to and be convicted of the offense of child molestation.
[2] Rule 65C-11.004(2).
[3] *Id.*
[4] DCF Operating Procedure 175-88 The Prevention and Placement of Child Victims and Aggressors Involved in Child-On-Child Sexual Abuse, Sexual Assault, Seduction Or Exploitation In Substitute Care; *See also* Rule 65C-13.015(2)(b); *See also* Rule 65C-30.001(24); s. 409.145(2)(d), F.S.

bedroom with their son, C.M.H. DCF rules explicitly prohibit placing a sexually aggressive child in a bedroom with another child.[5] The DCF Counselor knew of the planned sleeping arrangements prior to placing J.W. in the Hann home and did not convey the prohibition to the Hanns.

Moreover, DCF failed to provide any information regarding J.W.'s troubling history of child-on-child sexual abuse to the Hann family, or any information on his background generally, even after a specific request by Christopher Hann for such information. DCF is required by law to share with caregivers, psychological, psychiatric and behavioral histories; and comprehensive behavioral assessments and other social assessments – such information is often found in the child resource record[6]. DCF acknowledged during the litigation of this action that no evidence of a child resource record was found for J.W.[7] Additionally, for the purpose of preventing the reoccurrence of child-on-child sexual abuse, DCF must provide caregivers of sexual abuse victims and aggressors with written, complete, and detailed information and strategies related to such children including the date of the sexual abuse incident(s), type of abuse, narrative outlining the event, type of treatment received, and outcome of the treatment, in order to "provide a safe living environment for **all** of the children living in the home".[8]

Not only did DCF fail to comply with these requirements, the DCF Counselor erroneously informed Christopher Hann that she was not allowed to give them such information because they were only a temporary placement. However, J.W. would remain in the Hann home for approximately three years wherein his behavioral problems continued and quickly escalated.

Inappropriate behavior of J.W. in Hann Residence

Within a few weeks of J.W.'s placement with the Hann family, Theresa Hann would report to Camelot that J.W. was violently lashing out at members of the household, including C.M.H. Camelot recommended to the DCF Counselor that the Hanns place a one way monitor in the bedroom the boys shared. The DCF Counselor agreed and promised to pass the recommendation along to the Hanns. No evidence was presented that the Hanns were ever informed of the

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[5] *Id.* at 6.
[6] A Child's Resource Record means a standardized record developed and maintained for every child entering out-of-home care that contains copies of the basic legal, demographic, available and accessible educational, and available and accessible medical and psychological information pertaining to a specific child. The CRR remains in the home where the child is placed and will accompany the child(ren) if there is a change in placement. This allows consistent and complete information to be available to those who are caring for the child(ren). Rule 65C-30.001(24).
[7] CF Operating Pamphlet 15-7 Records Retention Schedule.
[8] *Id.* at 6.

recommendation or obtained the monitor.

On October 24, 2002, J.W.'s troubling behavior further escalated when after a physical altercation with C.M.H., he pulled a knife on the younger child and was stopped from further assaulting C.M.H. by Christopher Hann. Christopher Hann immediately informed Camelot of the incident and J.W. was again made to undergo a mental health assessment. The DCF Counselor later acknowledged that at this point in time, she should have considered removing J.W. from the Hann residence because of the immediate danger he posed to himself, the Hanns, and their son.

However, the DCF Counselor did not remove J.W. and a week later he engaged in inappropriate sexual behavior with a younger child who was visiting the Hann home. Theresa Hann reported the incident to DCF. During the course of its investigation, DCF learned that the children were not under the direct supervision of any adult at the time of the incident – a failure that DCF providers had warned would lead to harm of other children when left alone with J.W. At this time, DCF was again required to give immediate consideration to the safety of C.M.H.[9] But, in spite of the inability of the Hanns, who both worked outside of the home, to adequately supervise J.W. and his continuing access to young children, DCF did not remove J.W. from the Hann home.

Camelot began pressuring the DCF Counselor to set up a psychosexual evaluation for J.W., something the DCF Counselor should have done months earlier pursuant to DCF operating procedures.[10] In fact, Camelot had requested such an evaluation upon J.W.'s placement with the Hanns, and again two days before his inappropriate sexual behavior with a child visiting the Hann home. Camelot notes indicate that they reiterated to the DCF Counselor that "[J.W.] needed specific sexual counseling by a specialist in this area." In the absence of any action by the DCF Counselor, Camelot advised Christopher Hann that a new safety plan would be implemented prohibiting the boys from sharing a room and requiring that J.W. be under close adult supervision when other children were present. Such recommendations had already been a demonstrable failure at preventing J.W. from perpetuating sexual abuse on other children. Further, Christopher Hann, still without knowledge of J.W.'s extensive history of sexual abuse as a victim and aggressor, informed Camelot that the family disagreed with and would not follow the safety plan.

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[9] CFOP 175-88: "If a . . . child-on-child sexual abuse incident occurred or is suspected to have occurred, immediate consideration will be given to the safety of all children residing in the placement."

[10] The family services counselor must initiate a referral for a clinical consultation with a professional trained in childhood sexual abuse within three working days for any child that has been identified as the victim of sexual abuse or as a sexual aggressor. Despite the allegations of sexual abuse in the initial non-relative placement, no referral was made for such a consultation until July 15, 2003, approximately one year after DCF first learned of J.W.'s sexual abuse and aggressive behavior.

By November 2002, C.M.H. began to exhibit behavioral problems which Camelot directly attributed to J.W. being in the home. His grades in school began to drop, and in one school year he went from being an "A", "B", or "C" student to failing grades.

The Hann family, overwhelmed with the number of providers involved in J.W.'s care and the disruption to the family, canceled the services of Camelot in December 2002. On its discharge form, signed by the DCF Counselor, Camelot recommended that J.W. be placed in residential treatment center. However, no change in placement was initiated by DCF.

In June of 2003, J.W. began expressing sexually inappropriate behavior towards C.M.H. Following escalation in J.W.'s behavior, now directed towards C.M.H., DCF finally secured the psychosexual evaluation for J.W. but still did not remove him from the Hann home. The evaluation found that J.W. "fit the profile of a sexually aggressive child due to the fact that he continues to engage in extensive sexual behaviors and with children younger than himself". Further they found that J.W. "[presented] a risk of potentially becoming increasingly more aggressive" and "continuing sexually inappropriate behaviors". They warned that J.W. "may potentially seek out victims who are children and coerce them to engage in sexual activity" and again recommended sexual specific counseling for J.W. and appropriate training for his caregivers.

In October 2003, the Hann family requested that J.W. be placed in a therapeutic treatment facility as they did not feel equipped to provide him with the services and interventions he needed. Therapeutic placement was authorized for J.W. and he was referred to a care facility. However, the Hanns were told that if J.W. was removed from their home, they may not be permitted visitation privileges with him at the facility in which he would be placed. This was the source of considerable angst on the part of the Hanns who did not want to be the next in a series of parental figures who "abandoned" J.W. Ultimately, the Hanns made the decision to maintain J.W. in their home and requested additional services to treat his ongoing issues. They also began training to become therapeutic foster parents.

C.M.H.'s problems due to J.W.'s presence in the home continued at school. From late 2003 to early 2004, C.M.H. began to act out and have more conflicts in school. In January he would receive a student discipline referral for ongoing behavioral problems in the classroom. He also began gaining weight in the first quarter of 2004 and would subsequently gain approximately 40 pounds over the next two years.

Closure of DCF Dependency Case

On March 3, 2004, Theresa Hann was diagnosed with terminal cancer. Christopher Hann contacted DCF within 48 hours of the diagnosis to stop the process of having J.W. placed with the family as long term non-relative caregivers and asked that he be placed elsewhere. The DCF Counselor visited the home within 24 hours and informed the family that "we'll get on it".

However, nothing was done, and contrary to the express wishes of the Hanns and without their knowledge, on April 12, 2004, DCF had the Hanns declared as "long term non-relative caregivers" of J.W. DCF subsequently closed J.W.'s dependency case, leaving him in the care and custody of the Hanns.

Because the Hanns were not a part of the foster care system, once DCF closed its dependency case, the Hann family lost approximately 50% of the services and counseling that had been provided to the family. The Hanns would later directly attribute the subsequent resurgence in J.W.'s inappropriate sexual behavior to the loss of counseling services.

J.W.'s sexual abuse of C.M.H.; Removal from Hann home

The Hanns, left with almost no support from DCF, grew desperate and more hopeless as they grappled with Theresa Hann's illness and J.W.'s continuing deviant behavior.

C.M.H.'s troubles also continued. An April 2005 treatment plan from a child development center noted that he had begun to have nightmares and became frustrated at the slightest inconvenience. He presented for treatment with avoidance of thoughts, feelings, or conversations about sexual trauma. The treatment plan also indicated that Theresa Hann's diagnosis of terminal cancer and intensive chemotherapy treatments were contributing to C.M.H.'s increasing separation anxiety (related to his mother) and grief issues. He was diagnosed with Posttraumatic Stress Disorder.

At that time, Christopher Hann wrote DCF and the juvenile judge requesting an emergency hearing to move J.W. to a residential placement. He explained that although they were doing all they could for the family and J.W., they could no longer cope. He described his wife's diagnosis of terminal cancer and J.W.'s escalating sexual behaviors. There was no response to his request and J.W. remained in the Hann home.

A June 16, 2005, report from Child & Family Connections, the lead agency for community based-care in Palm Beach County, described J.W.'s personality and behavior, the high risk of

sexual behavior problems and increasing aggression, his excessive masturbation, rubbing up against Theresa Hann, seeking out younger children, lies, and refusal to take responsibility for his actions. The report noted that the Hanns "[had] been told that it is not a matter of will J.W. perpetrate on their son again, but a matter of when.....[J.W. was] in need of a more restrictive setting with intensive services specializing in sexual specific treatment." Additionally, it was noted that J.W.'s previous therapist, current therapist, and a psychosexual evaluation all recommended a full-time group home facility specializing in sexual specific treatment. The report concluded that J.W.'s condition was "so severe and the situation so urgent that treatment [could not] be safely attempted in the community."

On July 29, 2005, after a physical altercation between J.W. and Theresa Hann, C.M.H., then ten years old, disclosed to his parents that approximately two years prior J.W. had forced him to engage in a sex act while the boys were at a sleep over. Chris Hann called Girls & Boys Town and demanded that J.W. be removed from the home immediately. Later that same day, DCF finally removed J.W. from the Hann home.

LITIGATION HISTORY:

On April 14, 2006, Christopher and Theresa Hann, individually, and as natural parents and legal guardians of C.M.H., filed a negligence action against the Department of Children and Families, Father Flanagan's Boys' Home, Camelot Care Centers, Inc., and Camelot Community Care, Inc. in the 15th Judicial Circuit Court, in and for Palm Beach County, based upon the physical, sexual, and psychological abuse sustained by C.M.H. from a foster child, J.W., who was placed with the family in 2002 by the Department of Children and Families.

The parties litigated the action for nearly eight years during which time Theresa Hann succumbed to cancer. On August 14, 2013, shortly before trial, Christopher Hann and C.M.H. settled with Father Flanagan's Boys' Home for $340,000.

After a four week jury trial in October of 2013, the jury found that the Department of Children and Families and Christopher and Theresa Hann were each negligent and that such negligence was a legal cause of injury to Christopher Hann and C.M.H. The jury assessed 50% of the fault to Christopher Hann and Theresa Hann and 50% of the fault to DCF.

The jury determined that total damages to Christopher Hann were $0 and that total damages to C.M.H. were as follows:

Future Medical Expenses	$	250,000.00
Lost Earning Ability	$	250,000.00

Past Pain & Suffering	$ 6,000,000.00
Future Pain & Suffering	$ 3,500,000.00
TOTAL DAMAGES	$ 10,000,000.00

Reduced to reflect the Department of Children and Families proportionate share of liability, a final judgment was entered against DCF in the amount of $5,000,000 (including post judgment interest at the rate of 4.75% per annum[11]) on November 8, 2013. On January 2, 2014, the court entered a final cost judgment in the amount $176,543.08.

The jury found no negligence on the part of Camelot Community Care, Inc. or Father Flanagan's Boys' Home.

On January 31, 2014, DCF appealed the Final Cost Judgment to the Fourth District Court of Appeal. The appeal was dismissed on March 10, 2014, due to a filing error. No further appeals have been taken and the time for review has expired.

DCF has paid $100,000.00 of the final judgment pursuant to the statutory cap on liability imposed by section 768.28, Florida Statutes.

CLAIMANT'S POSITION: Claimant asserts DCF was negligent and directly liable for the injuries suffered by C.M.H. as a result of the sexual abuse due to placing J.W., a known sexually aggressive child in the Hann home and failing to remove J.W. when DCF was aware placement was inappropriate and dangerous.

RESPONDENT'S POSITION: DCF agrees to not oppose the claim bill and request any amount awarded in the bill funded from the General Revenue Fund.

CONCLUSION OF LAW: Whether or not there is a jury verdict or a settlement agreement every claim bill against the State must be reviewed de novo against the four standard elements of negligence.

Duty

From a de novo review of the evidence, I find that DCF had a duty to maintain the safety of any child residing in a placement with J.W, a known sexually aggressive child.

Specifically, DCF had a duty to exercise reasonable care when placing child aggressors involved in child-on-child sexual abuse or sexual assault in substitute care; to provide caregivers of child sexual aggressors with written, detailed and complete information of the child's history to help prevent the reoccurrence of child-on-child sexual abuse; to establish

[11] Since the Department of Children and Families cannot pay this claim until the claim bill successfully becomes a law, it has been legislative polity not to award post-judgment interest.

appropriate safeguards and strategies to provide a safe living environment for all children living in the foster home with a child sexual aggressor; to ensure that the foster family of a child sexual aggressor is properly trained and equipped to meet the serious needs of the child; and to generally exercise reasonable care under the circumstances.

Breach

A preponderance of the evidence establishes that DCF breached its duty by:

- Placing J.W., a known sexually aggressive child in the Hann home without legal authority and in contravention of recommendations by DCF providers that J.W. not have access to young children;
- Failing to ensure the Hanns were duly licensed and trained as required by department rule, thus ensuring they were capable of safely caring for a child with J.W.'s needs;
- Failing to fully and completely inform the Hanns of J.W.'s history, risk, and the danger he posed to C.M.H. as required by department rule;
- Failing to ensure that adequate safety precautions were in place to prevent the reoccurrence of child-on-child sexual abuse as required by department rule; and
- Failing to remove J.W. from the Hann home when it became clear that the placement was inappropriate and dangerous to C.M.H.

Causation

The sexual, physical, and emotional abuse suffered by C.M.H. was the direct and proximate result of DCF's failure to fulfill its duties regarding the foster placement of a known sexually aggressive child.

Damages

Damages in the amount of $5,000,000 are reasonable under the circumstances and fully supported by the weight of the evidence.

C.M.H. was initially diagnosed with Post Traumatic Stress Disorder in 2005. Thomas N. Dikel, Ph.D. reaffirmed the diagnosis in 2010, and found that C.M.H.'s severe PTSD was caused by his "experiences of child-on-child sexual abuse, exacerbated and magnified by his mother's diagnosis of stage 4, metastatic colon cancer".

He was re-evaluated by Dr. Stephen Alexander in October 2014 who found that C.M.H. continued to suffer from PTSD and major depression, but had become more dysfunctional since his initial evaluation due to lack of services. Dr. Alexander attributed the majority of C.M.H.'s psychological trauma to the illness and death of his mother but noted that due to J.W.'s

presence in the home during this time, the two events have become inextricably intertwined in his psyche.

A life care continuum was formulated by Darlene M. Carruthers of Comprehensive Rehabilitation Consultants, Inc., to determine the funds necessary to provide for the counseling and support needed by C.M.H. as a direct consequence of the sexual abuse he experienced. It was determined that the cost for medical care, psycho-therapies, educational and support services, as well as transportation and housing, would be $2,237,399.72 over C.M.H.'s life.

ATTORNEY'S/ LOBBYING FEES: Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total $731.47.

RECOMMENDATIONS: Accordingly, I recommend that House Bill 6525 be reported **FAVORABLY.**

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Grant, House Sponsor
Senator Braynon, Senate Sponsor
Barbara Crosier, Senate Special Master

AFFIDAVIT OF FEES AND COSTS

BEFORE ME, the undersigned authority, duly authorized to take oaths and acknowledgments, personally appeared Howard M. Talenfeld ("Affiant"), who, being first duly sworn upon oath, deposes and states as follows:

1. My name is Howard M. Talenfeld, and this affidavit is based upon my personal knowledge.

2. I am now Managing Partner in the law firm of Talenfeld Law Group, PLLC d/b/a Talenfeld Law, and was previously a shareholder at Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb, P.A., now Colodny Fass, P.A., from 1982 until October 31, 2014.

3. Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb, P.A. was co-counsel in the case of CHRISTOPHER HANN, individually and C.M.H., individually and in his own capacity, vs. CAMELOT COMMUNITY CARE, INC., AND FLORIDA DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Circuit Case No.: 502006CA003727XXXXMB AN, in Palm Beach County, Florida.

4. The total attorneys fees for representation of CMH in the Circuit Court proceedings as well as for lobbying was 25% of any recovery.

5. The Claimant and the counsel involved in the case have agreed that any attorneys fees shall be divided as follows:

   a. Forty percent (40%) - Babbitt, Johnson, Osborne & Leclainche, P.A.;

   b. Forty percent (40%) - Talenfeld Law Group, PLLC d/b/a Talenfeld Law; and

   c. Twenty percent (20%) - Colodny Fass, P.A.

6. Lobbying services have been and will be provided by the law firm of Corcoran and Johnston, Igniting Florida, LLC, and any other lobbyist who may become involved on a *pro bono* basis.

7. Lobbying services have been provided *pro bono* and are therefore not being billed or included in the attorneys fees listed above.

8. The only remaining outstanding costs total $731.47 and are payable to Comprehensive Rehabilitation Consultants, Inc., for updated evaluations. These costs will be paid from the funds remaining in claimant's trust.

9. The following are the costs which were paid from the statutory cap payment:

   a. A total amount of $54,234.30 was paid as follows:

      i. $9,739.52 to Babbitt, Johnson, Osborne & Leclainche, P.A.;

      ii. $44,494.78 to Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb, P.A. (The actual amount of costs totaled $46,891.66, however, the Claimant received a credit in the amount of $2,396.88)

   b. An additional amount of $20,765.70 was held in trust by Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb, P.A., as a cost reserve for future expenses for the claimant. As of today, a total of $17,605.25 has been disbursed and the balance remaining is $3,160.45. (This balance will be further reduced by the payment of the outstanding costs listed above, $731.47 as well as by a payment of $606.87 as reimbursement to Talenfeld Law for advanced costs. The balance in the cost reserve after said payments will be $1,822.11.

10. Regarding the above accounting of costs, there was a total of $6,101.62 in internal costs and $65,737.93 in external costs, as follows:

   a. Of the $9,739.52 paid to Babbitt, Johnson, Osborne & Leclainche, P.A., $3,005.69 were internal costs and $6,733.83 were external costs, for court reporting fees, travel expenses, process servers, shipping, filing fees, photocopying by external vendors, and other payments to third-party vendors.

   b. Of the $44,494.78 paid to Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb, P.A., $3,008.55 were internal costs and $41,486.23 ($46,891.66 actual costs paid minus the credit of $2,396.88) were external costs for expert fees, court reporting fees, travel expenses, audio/visual trial services, shipping, and other payments to third-party vendors.

   c. Of the $17,605.25 which were paid from the $20,765.70, held in trust by Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb, P.A., $87.38 were internal costs and $17,517.87 were external costs for expert fees, travel expenses, lobbying costs, and other payments to third-party vendors.

FURTHER AFFIANT SAYETH NOT.

Howard M. Talenfeld

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

The foregoing was subscribed and sworn to before me this 28 day of February 2017, by Howard M. Talenfeld, who is personally known to me.

My Commission Expires:

Signature of Acknowledger

Sharon Herman

Printed Name of Acknowledger

NOTARY PUBLIC, STATE OF FLORIDA

SHARON HERMAN
MY COMMISSION # FF232733
EXPIRES May 20, 2019
FloridaNotaryService.com

FURTHER AFFIANT SAYETH NOT.

Matthew Blair

STATE OF Florida)
)
COUNTY OF Pasco)

Paragraphs 4, 5, 6, and 7 of the foregoing were subscribed and sworn to before me this 2 day of March 2017, by Matthew Blair, who is personally known to me.

My Commission Expires:

MICHELLE A. KAZOURIS
MY COMMISSION # FF 038908
EXPIRES: August 7, 2017
Bonded Thru Budget Notary Services

Signature of Acknowledger

Michelle A. KAZOURIS
Printed Name of Acknowledger
NOTARY PUBLIC, STATE OF FLORIDA

FURTHER AFFIANT SAYETH NOT.

Nicole Fried

STATE OF Florida)
)
COUNTY OF Brevard)

Paragraphs 4, 5, 6, and 7 of the foregoing were subscribed and sworn to before me this 1 day of March 2017, by Nicole Fried, who personally known to me.

My Commission Expires:

Signature of Acknowledger

SHARON HERMAN
MY COMMISSION # FF232733
EXPIRES May 20, 2019
FloridaNotaryService.com

Printed Name of Acknowledger
NOTARY PUBLIC, STATE OF FLORIDA

A bill to be entitled

An act for the relief of C.M.H.; providing an appropriation to compensate C.M.H. for injuries and damages sustained as a result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services; requiring certain funds to be placed into an irrevocable trust; providing a limitation on attorney and lobbying fees; providing an effective date.

WHEREAS, beginning at a very young age, J.W. was subjected to incidents of physical and sexual abuse, which caused him to become sexually aggressive, and

WHEREAS, on September 5, 2002, J.W., then in the custody of the Department of Children and Families (DCF), formerly known as the Department of Children and Family Services, was placed into the home of C.M.H., whose parents volunteered to have J.W. live in their home, and

WHEREAS, prior to the placement of J.W. with the family, DCF obtained a comprehensive behavioral health assessment that stated that J.W. was sexually aggressive and that recommended specific precautions and training for potential foster parents, which C.M.H.'s parents did not receive, and

WHEREAS, the testimony of the DCF caseworker confirmed that DCF was aware that then-10-year-old J.W. and then-8-year-old

C.M.H. were sharing a bedroom, and

WHEREAS, on October 31, 2002, J.W. sexually assaulted a 4-year-old child who was visiting C.M.H.'s home, and

WHEREAS, although DCF knew that J.W. was sexually aggressive, the agency did not remove him from the home, and

WHEREAS, after November 2002, J.W.'s behavioral problems escalated, and he deliberately squeezed C.M.H.'s pet mouse to death in front of C.M.H. and made physical threats toward C.M.H., and

WHEREAS, C.M.H.'s parents began to discuss adopting J.W., whom they considered a part of their family, and

WHEREAS, in January 2004, the family began taking therapeutic parenting classes to better meet J.W.'s needs, and

WHEREAS, in March 2004, after C.M.H.'s mother was diagnosed with Stage 4, terminal, metastatic colon cancer, which had spread to her liver, C.M.H.'s father requested that DCF stop the process of having the family designated as "long-term nonrelative caregivers," and

WHEREAS, in April 2004, DCF closed out J.W.'s dependency file, leaving J.W. in the custody of the family, and

WHEREAS, in April 2005, C.M.H.'s father wrote DCF and the juvenile judge assigned to the case to request help in placing J.W. in a residential treatment facility, and

WHEREAS, on July 28, 2005, after a physical altercation between J.W. and C.M.H., C.M.H. disclosed to his parents that

J.W. had sexually assaulted him, and J.W. was immediately removed from the home, and

WHEREAS, C.M.H. sustained severe and permanent psychiatric injuries, including posttraumatic stress disorder, as a result of the sexual and emotional abuse perpetrated by J.W., and

WHEREAS, the sexual assault of C.M.H. by J.W. was predictable and preventable, and

WHEREAS, on April 14, 2006, a lawsuit, Case No. 2006 CA 003727, was filed in the 15th Judicial Circuit in and for Palm Beach County on behalf of C.M.H., by and through his parents, alleging negligence on the part of DCF and its providers which allowed the perpetration of sexual abuse against and the victimization of C.M.H. by J.W., and

WHEREAS, a mutually agreeable settlement could not be reached, and a jury trial was held in Palm Beach County, and

WHEREAS, on January 2, 2014, after a jury trial and verdict, the court entered a judgment against DCF for $5,176,543.08, including costs, and

WHEREAS, the Division of Risk Management of the Department of Financial Services paid the family of C.M.H. $100,000, the statutory limit at that time under s. 768.28, Florida Statutes, and

WHEREAS, C.M.H., now a young adult, is at a vulnerable stage in his life and urgently needs to recover the balance of the judgment awarded him so that his psychiatric injuries may be

addressed and he may lead a normal life, and

WHEREAS, the balance of the judgment is to be paid into an irrevocable trust through the passage of this claim bill in the amount of $5,076,543.08, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. There is appropriated from the General Revenue Fund to the Department of Children and Families the sum of $5,076,543.08 for the relief of C.M.H. for the personal injuries and damages he sustained. After payment of attorney fees and costs, lobbying fees, and other similar expenses relating to this claim, the remaining funds shall be placed into an irrevocable trust created for C.M.H. for his exclusive use and benefit.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of C.M.H. in the sum of $5,076,543.08 upon funds of the Department of Children and Families in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury not otherwise appropriated.

Section 4. The amount paid by the Department of Children and Families pursuant to s. 768.28, Florida Statutes, and the

amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the personal injuries and damages to C.M.H. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $1,269,135.77, no amount may be paid for lobbying fees, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $731.47.

Section 5. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Health Care Appropriations Subcommittee

Representative Brodeur offered the following:

Amendment

Remove lines 97-98 and insert:

the same out of such funds in the State Treasury.

STORAGE NAME: h6535.CJC
DATE: 3/10/2017

March 9, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6535 - Representative Jenne
Relief/Vonshelle Brothers/Department of Health

THIS IS AN UNCONTESTED CLAIM FOR $1,000,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN VONSHELLE BROTHERS, AS THE NATURAL PARENT AND LEGAL GUARDIAN ON IYONNA HUGHEY, AND THE DEPARTMENT OF HEALTH AFTER IYONNA SUFFERED INJURIES FROM THE DEPARTMENT'S NEGLIGENCE. THE DEPARTMENT HAS PAID THE STATUTORY LIMITS OF $200,000.

FINDING OF FACT:

On March 16, 2010, twenty-three year old Vonshelle Brothers visited the Brevard County Health Department (BCHD) for her initial pre-natal visit. Vonshelle was nine-weeks pregnant with Iyonna Hughey, her third child. Nurse Elena Cruz-Hunter conducted a Pap test[1] on Vonshelle and sent the test to Quest Diagnostics for analysis.

Quest Diagnostics analyzed the Pap test and returned the test results to the BCHD. In the test results, Quest Diagnostics had the following intepretations:

- Negative for intraepithelial lesion or malignancy.

[1] A Pap test, also known as a Pap smear, is a procedure to test for cervical cancer in women. It involves collecting cells from the cervix, the lower, narrow end of the uterus that is at the top of the vagina. Mayo Clinic, http://www.mayoclinic.org/tests-procedures/pap-smear/basics/definition/prc-20013038.

- Cellular changes consistent with Herpes simplex virus
- Shift in vaginal flora suggestive of bacterial vaginosis.

Additionally, the test result stated "Queued for Alerts call."

The BCHD had a policy in place in how to handle lab slips from entities such as Quest Diagnostic. The policy provides that lab slips will be reviewed by a nurse and initialed. Specifically, negative lab slips should be filed in the client's medical records. Positive lab slips should be pulled and given greater scrutiny. BCHD's policy also provided that any abnormal results needed to be signed by a clinician.

The BCHD received Vonshelle's test results and placed them in her file. There is proof that someone at the health department read the report as there is a check mark adjacent to the interpretations. Nothing from the records show that anyone from Quest Diagnostics called the BCHD or vice versa. The test results were added to Vonshelle's files but no further action was taken regarding the test results. The BCHD did not do any follow up tests to confirm whether Vonshelle had herpes. The BCHD never disclosed the test results to Vonshelle. In fact, Vonshelle returned 15 times during her pregnancy for follow-up appointments, prenatal visits, and ultra sounds. At none of these visits was she told about the herpes results nor were evasive actions taken by her doctor.

On October 14, 2010, at only 36 weeks in to the pregnancy, Vonshelle gave birth to Iyonna Hughey via vaginal delivery at Wuesthoff Medical Center. Vonshelle and Iyonna were discharged from the hospital in good condition on October 16, 2010.

Two weeks later, on the night of October 31, 2010, Vonshelle noticed Iyonna was running a fever. She took Iyonna to a Holmes Regional Medical Center but left after waiting for thirty minutes. She reported that a nurse instructed her to place a wet cloth on Iyonna. It is unconfirmed what was said to her or why Vonshelle left without receiving further medical attention for her daughter.

The next day, November 1, 2010, Vonshelle returned to Wuesthoff Medical Center's Emergency Department with Iyonna, whose condition had only gotten worse. Iyonna was lethargic, not eating, and was continuing to run a fever. A lumbar puncture was performed in which cerebral spinal fluid was collected. Initial diagnosis of Iyonna was that she had meningitis and she was transferred to Arnold Palmer Hospital for further evaluation. However, on November 3, 2010, the final results of the cerebral spinal fluid were reported and indicated Iyonna tested positive for herpes simplex virus type 2.

There are two types of the herpes virus. Herpes simplex virus

type 1 ("HSV-1") is mainly transmitted by oral contact and can cause cold sores and fever blisters around the mouth. Herpes simplex virus type 2 ("HSV-2") is a sexually transmitted infection that causes genital herpes. HSV-2 can be spread through sexual contact or skin-to-skin contact, and in rare circumstances, can be transmitted from a mother to her infant during delivery.[2] If a person with either HSV-1 or HSV-2 is pregnant, their physician may consider a delivery by cesarean section. Both of these viruses remain in the body throughout a person's life, even when they are not showing signs of infection.[3]

Not only was it discovered through the lumbar puncture that Iyonna had HSV-2, it was clear that she had herpes meningoencephalitis. Essentially, the HSV-2 had infected Iyonna's brain. She stayed at the Arnold Palmer Hospital for over a month receiving treatment, including being placed on Acyclovir to help suppress the infection.

As a result of the HSV-2, Iyonna has suffered significant and long lasting developmental delays in both her cognitive and executive functions. Iyonna is now six years-old and cannot speak but a few words. She cannot fully walk on her own. She relies upon others to use the restroom. Dr. Daniel Adler, M.D., who examined Iyonna, states she has a chronic and permanent neurological disability.

Iyonna is now in elementary school but has no wheel chair or walker. She's in a special needs program at Palm Bay Elementary. She resides with her mother and her four sisters in a second floor apartment, in which her mother must carry Iyonna up and down the stairs every day to catch the bus.

LITIGATION HISTORY:

On October 9, 2012, Vonshelle Brothers, individually, and as natural parent of Iyonna Hughey, filed a complaint in Circuit Court of the Eighteenth Judicial Circuit in Brevard County alleging negligence against the BCHD, a department of the Florida Department of Health (DOH). On April 25, 2016, a week before the scheduled jury trial was to begin, the parties entered into a settlement agreement in the amount of $3,200,000. As a term of the settlement agreement, DOH reserved the right to contest a claim bill. DOH paid the $200,000 statutory cap, of which $50,000 went towards the purchase of an annuity which will begin payments when Iyonna turns 18 years-old.

Following the filing of the claim bill in January 2017, the parties reached another settlement. This settlement provides that the

[2] World Health Organization, "Herpes simplex virus" http://www.who.int/mediacentre/factsheets/fs400/en/ .
[3] Johns Hopkins Medicine, "Herpes Meningoencephalitis" http://www.hopkinsmedicine.org/healthlibrary/conditions/nervous_system_disorders/herpes_meningoencephalitis_134,27/ .

amount requested in the claim bill will only be $1,000,000 and DOH will not contest enactment of the claim bill.

CLAIMANT'S POSITION: Vonshelle, as parent and guardian of Iyonna Hughey, (Claimant) argues the BCHD was negligent when they failed to conduct further testing and analysis when they received the results of the Pap test. The standard of care required the BCHD to have conducted more tests and take further precautions in the pregnancy, such as starting anti-viral medication or delivering Iyonna via cesarean section. If these precautions were followed, then Iyonna would not have suffered irreparable brain damage.

RESPONDENT'S POSITION: DOH does not contest the claim bill and requests the Legislature provide an additional appropriation from General Revenue Fund to DOH to pay the claim.

CONCLUSION OF LAW: Whether or not there is a jury verdict or a settlement agreement, as there is here, every claims bill must be based on facts sufficient to meet the preponderance of evidence standard.

Duty
In Florida, to prevail on a medical malpractice claim, a claimant must show what standard of care was owed by the defendant, how the defendant breached that standard of care, and that the breach was the proximate cause of damages.[4] The professional standard of care is the level of care, skill, and treatment which, in light of all surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.[5] "Generally, expert testimony is required to establish the standard of care prevalent in a particular medical field. Thus, from a professional standpoint, the services rendered by a physician are scrutinized by other physicians in order to determine whether there was a failure to adhere to the requisite standard of care."[6]

Claimant has presented several different experts that testified the BCHD deviated from the standard of care. Sharon Hall, a registered nurse and expert on labor and delivery, stated that the standard of care required the nurses at the BCHD to report any abnormal results in the Pap test and failure to do so was a deviation from the standard of care. Additionally, Dr. Berto Lopez, a practicing medical doctor certified in Obstetrics and Gynecology, provided that the standard of care for ordering tests on patient's samples requires the physician to follow up and be responsible for knowing those test results. Under Dr. Lopez's view of the standard of care, the nurse reviewing the test results and being the arbitrator of what is important falls

[4] *Gooding v. Univ. Hosp. Bldg., Inc.*, 445 So. 2d 1015, 1018 (Fla. 1984).
[5] s. 766.102(1), F.S.
[6] *Moisan v. Frank K. Kriz, J.K., M.D., P.A.*, 531 So. 2d 398, 399 (Fla. 2d DCA 1988).

below the standard of care. The failure of the treating physician to not review the lab results deviates below the standard of care.

From the expert testimony provided, I find the BCHD had a duty to review the lab results and to follow up with further diagnostic testing.

Breach
If the standard of care required the BCHD to follow up on any abnormal reports, then the BCHD clearly breached their duty. From the BCHD's own policy regarding lab results, the BCHD failed to have a clinician review any abnormal test results.

Causation
In order for a defendant to be liable to a claimant, the claimant must show the defendant's actions were the proximate cause of claimant's injuries.[7] In this case, causation was the most contentious issue prior to settlement. the BCHD failed to notice the abnormal test and failed to follow up with any further diagnostic testing. It is clear Iyonna has HSV-2 and herpes encephalitis. At contention in litigation was how Iyonna contracted HSV-2?

The lab results from Quest Diagnostics stated that Vonshelle's Pap test showed "cellular change consistent with Herpes simplex virus." She was not given a more extensive test while pregnant with Iyonna. In the midst of litigation, Vonshelle was tested three times for HSV-2. In two of the tests, which analyzed her blood, Vonshelle tested negative for HSV-2. In a more thorough test, in which Vonshelle's DNA was analyzed, she tested positive for HSV-1 and indeterminate for HSV-2. Dr. Lopez testified that Vonshelle's negative test results for HSV-2 do not preclude her from actually having HSV-2. According to Dr. Lopez, Vonshelle's viral load may not have been sufficient at the time the tests were performed to trigger a positive test result. Vonshelle stated that she had two boils during her pregnancy with Iyonna, one under her arm and another near her genitals. It is unclear whether or not these boils were lesions consistent with HSV-2.

Claimant's attorney argues that despite the inconclusive test results of Vonshelle, based on the timing of the onset of symptoms, it is more likely than not that Iyonna contracted HSV-2 from Vonshelle via vaginal delivery. Nurse Hall, an expert on labor and delivery, stated symptoms of HSV-2 will show up 12 to 14 days after exposure. Dr. Carl Barr, DOH's own medical expert, testified that the most common cause of exposure for infants with HSV-2 was through vertical transmission from mother to child during birth. Dr. Catherine Lamprecht, a pediatric infectious disease specialist, stated the

[7] *Y.H. Invs. v. Godales*, 690 So. 2d 1273, 1279 (Fla. 1997).

timing of Iyonna's symptoms in late October is consistent with exposure to HSV-2 during labor and delivery. She even stated that 98% of the time a baby contracts neonatal herpes, it is from exposure in labor and delivery. Dr. Daniel Adler, an expert on neonatal herpes simplex encephalitis and how newborns contract HSV, stated it was more likely than not an acquisition of HSV-2 occurred during delivery via the birth canal.

Based on the onset of symptoms and the experts presented, I find Iyonna contracted HSV-2 through vaginal delivery. Dr. Lopez testified that if further testing was done of Vonshelle following the Pap test, Iyonna may have never contracted HSV-2. Specifically, a doctor could have started Vonshelle on antiviral therapy which would have lessened the chances of an active lesion and exposure to Iyonna. If there was an acute outbreak of herpes, Vonshelle could have undergone a cesarean section to prevent the transmission of herpes to her child.

Comparative Negligence
One of the questions that would have been presented to a jury is whether anyone else is responsible for Iyonna's injuries besides the BCHD? Certainly Quest Diagnostics knew of an abnormal result and there is no evidence anyone from Quest Diagnostics called the BCHD. Claimant's attorneys stated at the special master hearing that they looked into any claim of liability against Quest Diagnostics and it was seen to be without merit. Their own experts stated the lab company owed no duty to Vonshelle or Iyonna, only to inform the clinician ordering the tests. Additionally, Claimant's attorneys pursued a claim against Wuesthoff Medical Center, the hospital that delivered Iyonna, on whether they should have thoroughly reviewed Vonshelle's medical history and charts before delivery. Again, Claimant's attorney's experts stated that the hospital did not deviate from the standard of care.

Certainly one may choose to blame Vonshelle for contracting HSV-2 and transferring it to her daughter. It is unclear whether Iyonna's father has HSV-2 and gave it to Vonshelle. It is unclear when or how Vonshelle contracted HSV-2. She reported boils on her skin but it is not clear whether they were associated with HSV-2. On October 31, 2010, she left the hospital without letting Iyonna see a doctor, but later returned the next day. It is unclear whether those hours may have altered Iyonna's condition in anyway. It is uncertain if a jury would hold Iyonna responsible for the actions of her mother and reduce any award to Iyonna. What is clear is that Vonshelle's entire claim against DOH has been satisfied and any amount awarded in a claim bill will go to Iyonna's claims and her future care.

Damages
Iyonna's damages are severe and lifelong. Her neurological development is stunted and may never meet that of her peers. She is dependent on others to use the restroom, to bathe, and to walk. Dr. Paul Deutsch, a certified life care planner, opined that Iyonna will remain dependent throughout the remainder of her life. She is receiving therapy at her school but is currently not enrolled in any form of speech therapy. Claimant's attorneys submitted a life care plan which estimates Iyonna's total economic loss at $10,062,029. Even if this life care plan overestimates the cost of her future care, Iyonna will be dependent and require care for the rest of her life. The settlement amount awarded in the bill of $1,000,000, in addition to the $50,000 annuity purchased, is a fair and appropriate amount to compensate Iyonna for her injuries.

ATTORNEY'S/
LOBBYING FEES:

Claimant's attorney has an agreement with Claimant to take a fee of 15% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 15% fee. Outstanding costs total $2,214.

LEGISLATIVE HISTORY:

This is the first time this instant claim has been presented to the Legislature

RECOMMENDATIONS:

The bill needs to be amended to reduce the total amount awarded in the bill to $1,000,000 and to provide that the award will be paid to a special needs trust for the care and benefit of Iyonna Hughey with an institutional trustee.

Accordingly, I respectfully recommend that House Bill 6535 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Jenne, House Sponsor
Senator Rodriguez, Senate Sponsor
Eva Davis, Senate Special Master

AFFIDAVIT

COMES NOW, RONALD S. GILBERT, ESQUIRE, who was sworn and declares the following:

1. Affiant was retained by Claimant, Vonshelle Brothers, Individually and as Natural Parent and Guardian of Iyonna Hughey, a Minor, for representation regarding the birth related injury/medical malpractice claim involving her daughter.

2. The representation agreement was pursuant to a contingency fee contract, which has been approved by the Florida Supreme Court.

3. Notwithstanding the representation agreement, Affiant has agreed to represent Claimant through the Claims Bill process for a total amount of fifteen percent (15%) of the Claims Bill for attorney's fees, lobbyist fees, and costs.

4. It has been agreed between Affiant, Claimant, and Lobbyist that fifteen percent (15%) of the Claims Bill will be paid for full satisfaction of the contingency fee, lobbyist fees, and all costs.

5. The total attorney's fees, lobbyist fees, and costs shall be fifteen percent (15%) of the total approved Claims Bill.

6. The lobbyist fees shall be five percent (5%) of the total approved Claims Bill.

7. The attorney's fees shall not exceed ten percent (10%) less any accrued costs. The current accrued costs total Three Hundred Eighty-Eight Dollars and Thirty-Four Cents ($388.34) for actual costs incurred and paid by Claimants' law firm and One Thousand, Eight Hundred Twenty-Five Dollars and Sixty-Six Cents ($1,825.66) for internal costs accrued by Claimants' law firm. Additional costs will be taken as a reduction in the amount of attorney's fees to Claimants' law firm.

8. Claimants' law firm has already received reimbursement of Ninety-Five Thousand, Three Hundred Ninety-Two Dollars and Ninety-Four Cents ($95,392.94) for actual costs incurred and paid by Claimants' law firm and Six Thousand, Four Hundred Nineteen Dollars and Sixty-Six Cents ($6,419.66) for internal costs accrued by Claimants' law firm. No attorney's fees have been received by Claimants' law firm from the statutory cap payment of Two Hundred Thousand Dollars ($200,000.00).

9. The Senate and House Bills shall be amended to reflect the amount sought for this Claims Bill is One Million Dollars ($1,000,000.00).

Further Affiant Sayeth Naught.

RONALD S. GILBERT, ESQUIRE
Colling Gilbert Wright & Carter

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing Affidavit was acknowledged before me this 16TH day of March, 2017, by Ronald S. Gilbert, Esquire, who is personally known to me.

Signature of Notary Public

RACHAEL FLANAGAN
Printed Name of Notary Public

R. FLANAGAN
Notary Public - State of Florida
My Comm. Expires Jun 12, 2017
Commission # FF 026772

COMES NOW, MATTHEW BLAIR, who was sworn and declares the following:

1. Ronald S. Gilbert, Esquire was retained by Claimant, Vonshelle Brothers, Individually and as Natural Parent and Guardian of Iyonna Hughey, a Minor, for representation regarding the birth related injury/medical malpractice claim involving her daughter.

2. The representation agreement was pursuant to a contingency fee contract, which has been approved by the Florida Supreme Court.

3. Notwithstanding the representation agreement, Ronald S. Gilbert, Esquire has agreed to represent Claimant through the Claims Bill process for a total amount of fifteen percent (15%) of the Claims Bill for attorney's fees, lobbyist fees, and costs.

4. It has been agreed between Affiant, Claimant, and Attorney that fifteen percent (15%) of the Claims Bill will be paid for full satisfaction of the contingency fee, lobbyist fees, and all costs.

5. The total attorney's fees, lobbyist fees, and costs shall be fifteen percent (15%) of the total approved Claims Bill.

6. The lobbyist fees shall be five percent (5%) of the total approved Claims Bill.

7. The attorney's fees shall not exceed ten percent (10%) less any accrued costs. The current accrued costs total Three Hundred Eighty-Eight Dollars and Thirty-Four Cents ($388.34) for actual costs incurred and paid by Claimants' law firm and One Thousand, Eight Hundred Twenty-Five Dollars and Sixty-Six Cents ($1,825.66) for internal costs accrued by Claimants' law firm. Additional costs will be taken as a reduction in the amount of attorney's fees to Claimants' law firm.

8. Claimants' law firm has already received reimbursement of Ninety-Five Thousand, Three Hundred Ninety-Two Dollars and Ninety-Four Cents ($95,392.94) for actual costs incurred and paid by Claimants' law firm and Six Thousand, Four Hundred Nineteen Dollars and Sixty-Six Cents ($6,419.66) for internal costs accrued by Claimants' law firm. No attorney's fees have been received by Claimants' law firm from the statutory cap payment of Two Hundred Thousand Dollars ($200,000.00).

9. The Senate and House Bills shall be amended to reflect the amount sought for this Claims Bill is One Million Dollars ($1,000,000.00).

Further Affiant Sayeth Naught.

MATTHEW BLAIR
Corcoran & Johnston

STATE OF FLORIDA
COUNTY OF Pasco

The foregoing Affidavit was acknowledged before me this 6th day of March, 2017, by Matthew Blair, who is personally known to me.

Signature of Notary Public

MICHELLE A. KAZOURIS
MY COMMISSION # FF 038908
EXPIRES: August 7, 2017
Bonded Thru Budget Notary Services

Michelle A. KAZOURIS
Printed Name of Notary Public

A bill to be entitled

An act for the relief of Vonshelle Brothers, as the natural parent and legal guardian of Iyonna Hughey; providing an appropriation to compensate her daughter for injuries and damages sustained as a result of the alleged negligence of the Brevard County Health Department, an agency of the Department of Health; providing that certain payments and the appropriation satisfy all present and future claims related to the alleged negligent acts; providing a limitation on the payment of compensation, fees, and costs; providing an effective date.

WHEREAS, on March 16, 2010, Vonshelle Brothers visited a location of the Brevard County Health Department for her initial prenatal visit, during which a complete obstetrical and gynecological exam was conducted, including a Pap smear, and

WHEREAS, the lab results of the exam were reported to be within normal limits with the exception of the Pap smear, which had tested negative for intraepithelial lesion or malignancy, but showed cellular changes consistent with herpes simplex virus and bacterial vaginosis, and

WHEREAS, despite the results of the Pap smear, the Brevard County Health Department did not report the results to Vonshelle Brothers, and

WHEREAS, Vonshelle Brothers continued to receive treatment from the Brevard County Health Department through the duration of her pregnancy until the birth of her daughter, Iyonna Hughey, on October 14, 2010, at the Wuesthoff Medical Center, and both were discharged from the hospital 2 days later in good condition, and

WHEREAS, on November 1, 2010, Vonshelle Brothers brought Iyonna to the emergency room at Wuesthoff Medical Center citing Iyonna's lack of eating, weak condition, and fever, and

WHEREAS, a lumbar puncture was performed and cerebral spinal fluid was collected which initially suggested that Iyonna had meningitis, which prompted her transfer to the Arnold Palmer Hospital for Children for further evaluation and management, and

WHEREAS, on November 3, 2010, the final results of the cerebral spinal fluid collection were reported, and the fluid had tested positive for herpes simplex type 2, and

WHEREAS, as a result of her diagnosis, Iyonna continues to experience significant developmental delay and neurologic impairment related to the herpes meningoencephalitis and has required continued treatment, including physical therapy, occupational and speech therapy, and neurologic and ophthalmologic care, and

WHEREAS, Iyonna's condition requires her to be under the constant care and supervision of Vonshelle Brothers, and

WHEREAS, the Brevard County Health Department had a duty to

provide a reasonable level of care to Vonshelle Brothers and Iyonna Hughey but that duty was allegedly breached by the department failing to disclose the presence of the herpes simplex virus in Vonshelle Brothers and to order proper treatment of the virus, which eventually resulted in Iyonna's diagnosis, and

WHEREAS, in June 2016, a final order was entered approving a settlement in the sum of $3.2 million between Vonshelle Brothers, individually, and as natural parent and legal guardian of Iyonna Hughey, and the Brevard County Health Department to settle all claims arising out of the factual situation described in this act, and

WHEREAS, the Department of Health has paid $200,000 to Ms. Brothers under the statutory limits of liability set forth in s. 768.28, Florida Statutes, and the parties have agreed to a reduced settlement in the amount of $1 million, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $1 million is appropriated from the General Revenue Fund to the Department of Health for the relief of Vonshelle Brothers, as natural parent and legal guardian of Iyonna Hughey, to compensate Iyonna Hughey for injuries and

damages sustained.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of the Supplemental Care Trust for the Benefit of Iyonna Hughey or other special needs trust for the exclusive use and benefit of Iyonna Hughey, in the sum of $1 million upon funds of the Department of Health in the State Treasury and to pay the same out of such funds in the State Treasury.

Section 4. The amount paid by the Department of Health pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Vonshelle Brothers and Iyonna Hughey. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $100,000, the total amount paid for lobbying fees may not exceed $50,000, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $2,214.

Section 5. This act shall take effect upon becoming a law.

STORAGE NAME: h6539.CJC
DATE: 3/10/2017

March 9, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6539 - Representative Byrd
Relief/Eddie Weekley and Charlotte Williams/Agency for Persons with Disabilities

THIS IS AN UNCONTESTED CLAIM FOR $1,000,000 BASED ON A SETTLEMENT AGREEMENT ENTERED INTO BETWEEN EDDIE L. WEEKLEY AND CHARLOTTE WILLIAMS, AS CO-PERSONAL REPRESENTATIVES OF THE ESTATE OF FRANKLIN W. WEEKLEY, DECEASED, AND THE AGENCY FOR PERSONS WITH DISABILITIES, AS OPERATORS OF THE MARIANNA SUNLAND CENTER, BASED ON THE NEGLIGENCE OF THE AGENCY, WHO FAILED TO PROVIDE FRANKLIN WEEKLEY WITH A SAFE AND SECURE ENVIRONMENT, PROTECTION, AND REASONABLE SUPERVISION WHILE IN DEPARTMENTAL CUSTODY.

FINDING OF FACT:

Early Life and Commitment

Franklin W. Weekley ("Franklin"), born August 14, 1984, was raised along with two siblings by his parents, Eddie Weekley and Charlotte Williams, in the town of Milton, Florida.

Early in life, Franklin began displaying developmental delays, prompting his parents to enroll him in the exceptional students program at his elementary school. When assessed, Franklin was diagnosed with mild mental retardation, a seizure disorder, schizoaffective disorder, and major depression with psychotic

features. Franklin's IQ was determined to be 52 by an adolescent psychiatrist.

In 1999, Franklin was detained by juvenile authorities for allegedly starting a fire in a bedroom of his family's home, and declared incompetent to proceed to trial due to his diminished mental capacity. Consequently, Franklin was committed to the Florida Department of Children and Family Services (DCF) in an effort to place him in an appropriate treatment and living setting.

2001 Transfer to Marianna Sunland Center

Initially transferred to group homes in Orlando and Fort Walton Beach, Florida, Franklin was deemed an elopement risk following several successful attempts at running away from each group home. This precipitated his transfer in November, 2001 to the Marianna Sunland Center (Sunland), a developmental services institution then operated by DCF. Here, Franklin was assigned to the "Hayes House", a cottage style house on Sunland premises occupied by 22 other adult male residents.

Sunland was chosen as the appropriate residential setting for Franklin in part because of assurances made by the department that it was a safe and secure facility equipped to handle a resident with the behavior and elopement issues Franklin had previously exhibited. However, within three weeks of his arrival at the facility, a Sunland behavioral analysis committee reviewing Franklin's placement concluded that Sunland was not an appropriate placement for Franklin, noting "[Franklin] would be more appropriately place in a younger adults program than at Sunland."

Despite this assessment, no transfer was initiated. Instead, staff was instructed to maintain "strict visual one-on-one observation at all times [for Franklin[, as he has a history of elopement and has made threats since admission." In fact, during Franklin's first nine months at Sunland, staff documented 29 acts of physical aggression, 6 suicide threats, 4 self-injurious incidents, and 8 elopement attempts.

Notwithstanding these incidents, and despite Sunland's own behavioral analysis committee's belief that Sunland was not the appropriate setting for Franklin, a representative for DCF testified at a November, 2002 involuntary commitment hearing that Sunland was a safe and secure environment for Franklin, noting, "[t]he positive things that we have going on with him, we can provide all the security needed ... [w]e have all the staff on board that needs to provide him with the services that I feel he needs."

Confrontations with Facility Staff

Although Franklin's individualized Support Plan noted that

"quick confrontation, too many demands, complex instructions, ultimatums and loud voices" were ineffective behavioral modification tools for the youth. Numerous times during his residency at Sunland, Franklin engaged in physical and violent confrontations with facility staff. Frequently, these confrontations necessitated the use of manual restraints in a process where Franklin would be "taken to the mat" by staff, despite staff's apparent lack of Professional Crisis Management training. Additionally, Franklin was often committed to solitary confinement during his stay at Sunland – sometimes overnight, and sometimes for periods of several days.

Disappearance from Sunland

During the early morning hours of December 5, 2002, Franklin declined breakfast, complaining of respiratory and stomach illnesses. Staff's efforts to force him to drink prompted a very aggressive physical altercation with staff, during which Franklin suffered a laceration to the back of his ear. Later in the day, Franklin engaged in three separate altercations with staff, each requiring staff to take him "to the mat" by their own admission. The last log entry noted by the staff indicated that Franklin was apprehended while attempting to elope through a bathroom window.

When the third shift at Sunland began that night, direct care staff correctly reviewed the daily log notes, but both staff members later testified that they were unaware of the incredibly stressful events endured by Franklin earlier in the day. In fact, the house supervisor, Gertrude Sims, testified that she had a complete lack of knowledge regarding Franklin's aggressive tendencies and propensity for elopement.

The staff-on-duty reported that their actions during the third shift that night consisted primarily of mopping floors and washing clothes, and that the exit doors located across the hall from Franklin's room remained unlocked at all times during the shift. Although Sims testified that there were several instances throughout the night shift where both she and the other staff member, James Duncan, were performing duties that would prevent constant monitoring of the unlocked doors, Duncan testified that there was continuous observation of the unlocked doors.

During questioning, Duncan had no explanation for how Franklin successfully eloped during what he represented was staff's constant observation of the Hayes House doors. Highlighting this inconsistency, Sims additionally testified that no precautions were ever made to prevent Franklin from eloping during the night in question.

Around 5:30 a.m. on the morning of December 6, 2002, it was discovered that Franklin Weekley was no longer in his room at the Hayes House.

The Ensuing Search for Franklin Weekley

Following the revelation that Franklin had gone missing, staff members Sims and Duncan began a search of the premises immediately surrounding the Hayes House. Around 9:15 a.m., Superintendent Tracy Clemmons directed Sims and Duncan to submit a written statement of the night's events and to leave for the day.

Nearly three hours went by following Franklin's disappearance before Franklin's parents were notified that their son had gone missing from Sunland. They immediately made the more than two-hour drive to Sunland to assist in the search efforts, but were informed by Clemmons that they were not permitted to participate in the search of Sunland grounds. Instead, they were instructed to conduct their own search outside of the perimeter fence if they wished to participate.

The search officially continued for the next 11 days, and was ultimately expanded to include searches of off-premises businesses and stores in the area. Shortly thereafter, the department discharged Franklin from Sunland and participated in an order holding Franklin in contempt of court for violating the order committing him to Sunland.

Skeletal Remains Discovered

On October 28, 2004, an independent contractor was hired to demolish an old building (known as "Brunner B Building) located approximately 500 yards from the Hayes House on Sunland premises. During the demolition process, one of the workers found skeletal remains located in the basement of the building.

The building where Franklin's remains were discovered was an old boiler room that was abandoned and locked by Sunland maintenance staff. At the time of Franklin's disappearance, however, the building would have been dilapidated to the point where the front entrance was secured by only a chain and padlock. Staff testified that it would be possible to gain entrance to the building by shimmying through the space found between the door and its frame.

The Superintendent of Maintenance later testified that at the time Franklin disappeared in 2002, he considered the building to have been extremely dangerous to anyone who attempted entrance.

The only clothing found at the scene of discovery were partially-deteriorated underpants and an undershirt bearing Franklin's initials on the label. An entire search of the basement area was conducted, and no evidence of shoes, socks, jeans, shirt or jacket was found.

Despite the presence of Franklin's initials on the articles of clothing found in the boiler room basement, the department refused to admit the skeletal remains were Franklin's for several years.

The medical examiner, a forensic anthropologist, and a forensic odontologist hired by the State all agreed that their examination of the remains were consistent with being Franklin's. Despite its own experts' conclusions, however, the department insisted on obtaining DNA evidence before it would admit that the remains were Franklin's. Without objection from his parents, DNA samples were obtained and compared to the skeletal remains at the FDLE laboratory in Jacksonville. Short Tandem Repeat (STR) testing was performed, but rendered inconclusive results due to the degradation of the skeletal sample. These samples were then transferred to the FBI DNA laboratory in Quantico, Virginia, where they underwent mitochondrial DNA testing which, in April 2007, once again resulted in inconclusive results due to the remains' degradation.

In June, 2007, however, the state finally admitted that the remains located were indeed Franklin Weekley's, and requested mediation.

LITIGATION HISTORY:

On March 1, 2004, the parents of Franklin Weekley filed a five-count complaint against the Department of Children and Family Services and Tracy Clemmons, Gertrude Sims and James Duncan individually for writ of habeus corpus, determination of presumptive death, negligence, civil rights violations under 42 USC §1983, and neglect of a vulnerable adult under s. 415.1111, F. S.

As the lawsuit was filed approximately eight months before the youth's skeletal remains were discovered, the primary focus at that time was to compel the department to resume or at least fund a comprehensive search of the Sunland premises and surrounding properties.

When the skeletal remains were found on October 28, 2004, the complaint was amended so that wrongful death and survival claims were substituted for the habeus corpus claim.

In June, 2007, the claimants and the department entered into a Settlement Agreement, whereby the department agreed to pay the claimants $1.3 million. Of this amount, $300,000 has already been paid pursuant to the statutory cap on liability imposed by s. 768.28, F.S.

The Agency for Persons with Disabilities, the successor agency to the Department of Children and Family Services in this matter, fully supports passage of this claims bill, concluding "the Agency had not properly fulfilled its duty to

care for Mr. Weekley and that the failure was a proximate cause of his disappearance and death."

Additionally, then Governor Crist issued an Order requiring the Florida Department of Law Enforcement to launch a full-scale criminal investigation into the events surrounding the disappearance and death of Franklin Weekley.

CONCLUSION OF LAW:

Whether or not there is a jury verdict or a settlement agreement, as there is here, every claims bill must be based on facts sufficient to meet the preponderance of evidence standard.

Duty

From my review of the evidence, I find that the State had a duty to Franklin Weekley, following his commitment and custody with the Department, to provide the youth with a safe and secure environment, protection, and 24-hour supervision.

Specifically, once Sunland was selected as an appropriate residential and treatment destination for Weekley following his elopement attempts at other group homes – in part because of the Department's representation during Weekley's commitment reviews that Sunland amounted to a safe and secure living arrangement for a youth exhibiting the elopement tendencies and behavioral issues that Weekly had repeatedly demonstrated – the Department had a duty to, in fact, provide Weekley with the safe and secure environment it assured to him and his family.

Moreover, after Sunland's own "Temporary Behavior Management Procedures" identified that Weekley needed "strict visual one-on-one observation at all times as he has a history of elopement and has made threats since admission," staff at Sunland assumed a duty to provide this sort of close visual attention. Consistent with this notion, an Order Continuing Involuntary Admission to Residential Services was issued by a circuit court judge roughly two weeks before his disappearance. This Order indicated that Weekley, "lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and, if not provided, would result in a real and present threat of substantial harm to [Weekley's] well-being; and because of [Weekley's] degree of mental retardation, he is likely to physically injure others if allowed to remain at liberty."

Breach

A preponderance of the evidence establishes that the Department breached their duty to provide Franklin Weekley with a safe and secure environment, protection, and 24-hour supervision.

Franklin was housed with 22 other adult males in his residence

at the Hayes House, despite Sunland's own recommendation that a young adults program would provide a more appropriate living arrangement for the child. Moreover, despite the facility's knowledge of the flight risk posed by Franklin, and frequent threats made by Franklin, the youth was apparently successful in escaping unnoticed through an unlocked and unmonitored exit, in contravention of both the Court's and the facility's instructions to maintain strict, visual one-on-one observation of the youth during his time at Sunland.

Finally, staff at Sunland breached its duty to provide a safe and secure environment to Franklin by permitting an abandoned boiler room located nearby the Hayes House to fall into a state of disrepair, and failing to properly secure such premises to dissuade resident elopement attempts in the building.

Causation

The negligence of the Department and staff at the Marianna Sunland Center were the legal (proximate) cause of the damages suffered by Franklin Weekley and his parents.

Damages

Franklin's parents' pain and suffering claims, outlined in their wrongful death suit against the State, are both tragic and this settlement contemplates their loss.

Franklin's parents initially contested his commitment to the State, and at all times thereafter wanted the child to remain at home with them. Sunland's records are replete with observations of the various behavioral and placement committees regarding the close-knit structure of Franklin's family, and how it was both his parents' and Franklin's goal to have the youth returned home with them as soon as possible.

When the State announced that it was canceling all efforts to search for Franklin after only 11 days, Franklin's parents continued tirelessly for months to search for their son. They passed out hundreds of leaflets, contacted various missing persons and children's bureaus, hospitals and morgues.

With the parents languishing in uncertainty for almost two full years, in October 2004 the skeletal remains were discovered with dilapidated underwear bearing Franklin's name. The medical examiner, a forensic anthropologist, and a forensic odontologist hired by the State all agreed that their examination of the remains were consistent with being Franklin's. Despite its own experts' conclusions, however, the department insisted on obtaining DNA evidence before it would admit that the remains were Franklin's.

It took until June 2007, a full four-and-a-half years after Franklin's disappearance, for the State to acknowledge that the remains were indeed the remains of Franklin Weekley

ATTORNEY'S/ LOBBYING FEES: Claimant's attorney has an agreement with Claimant to take a fee of 25% of Claimant's total recovery. Claimant's attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total $221.38

RECOMMENDATIONS: The bill should be amended to reflect any amount awarded will be placed in a special needs trust.

Accordingly, I respectfully recommend House Bill 6539 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Byrd, House Sponsor
Senator Gibson, Senate Sponsor
Barbara Crosier, Senate Special Master

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME personally appeared Arthur A. Shimek and Mark Pinto and stated under oath as follows:

1. Our names are Arthur A. Shimek and Mark Pinto. We are over 21 years of age and otherwise competent to make this statement set forth herein.

2. We have personal knowledge of all matters and opinions expressed in this affidavit.

3. Arthur A. Shimek is a member of the Florida Bar, Florida Bar No. 436844 practicing at Arthur A. Shimek, P.A., 423 North Baylen Street, Pensacola, Escambia County, Florida.

4. Arthur A. Shimek has been a member of the Florida Bar in good standing for approximately 33 years. Arthur A. Shimek and Karen Gievers represent the Estate of Franklin W. Weekley, and Eddie Weekley and Charlotte Williams as a result of claims arising from the death of Franklin W. Weekley. With regard to attorney's fees, the claimants attorneys are in full compliance with the prohibition in Section 768.28(8), Florida Statutes.

5. The claimants have hired The Fiorentino Group as lobbyists to assist in the claims bill process. A copy of the contract is attached.

6. Attorney's fees that may be awarded by the Legislature, that the claimant has agreed to pay for legal services are 25%.

7. Lobbyist fees that the claimant has agreed to pay for lobbying services are 5%.

8. Attorney's fees specified in paragraph 6 include the lobbyist fees specified in paragraph 7.

9. Outstanding costs that will be paid from any amount that may be awarded by the Legislature are $221.03. None of these costs are internal costs.

10. Costs that were paid from the statutory cap payment were $75,325.70. $74,881.85 were external costs and $443.85 were internal costs.

FURTHER the Affiants sayeth naught.

Arthur A. Shimek

The foregoing instrument was acknowledged before me this 1st day of March, 2017, by Arthur A. Shimek, who is personally known to me.

KRISTINA C. PORTER MY COMMISSION EXPIRES 08-14-2017 NOTARY PUBLIC # FF 115540 STATE OF FLORIDA

Notary Public, State of Florida
My Commission Exp: 8-14-17

Mark Pinto

The foregoing instrument was acknowledged before me this 1st day of March, 2017, by Mark Pinto, who is personally known to me.

Notary Public, State of Florida
My Commission Exp: 2/14/19

TAMMY S. LEMASTER MY COMMISSION # FF 192018 EXPIRES: February 14, 2019 Bonded Thru Budget Notary Services

A bill to be entitled

An act for the relief of Eddie Weekley and Charlotte Williams, individually and as co-personal representatives of the Estate of Franklin Weekley, their deceased son, for the disappearance and death of their son while he was in the care of the Marianna Sunland Center, currently operated by the Agency for Persons with Disabilities; providing an appropriation to compensate them for the disappearance and death of Franklin Weekley, which were due to the negligence of the Department of Children and Families; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, in November of 2001, Franklin Weekley was diagnosed with mental retardation and a seizure disorder and was admitted to the Marianna Sunland Center, which at the time was operated by the Department of Children and Family Services, now known as Department of Children and Families, and

WHEREAS, on December 6, 2002, Franklin Weekley disappeared from the center and, following a search of the premises by employees of the center, was deemed by the center to have run away, and the case was closed, and

WHEREAS, on October 28, 2004, a demolition crew found the skeletal remains of Franklin Weekley in the basement of a

building adjacent to the premises of the Marianna Sunland Center where Franklin had resided, and

WHEREAS, legal action was filed on behalf of Franklin Weekly's parents against the Department of Children and Family Services and its employees or agents raising negligence, tort, statutory, and civil rights claims concerning the disappearance and death of their son, and

WHEREAS, the parties and the Agency for Persons with Disabilities, which currently operates the Marianna Sunland Center, mediated and reached a settlement of all claims, and

WHEREAS, the plaintiffs and the Agency for Persons with Disabilities entered into a compromise and settlement agreement in which they agreed to a claim bill under which the agency will pay $1 million in addition to the $300,000 it previously paid to settle claims arising out of this matter, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $1 million is appropriated from the General Revenue Fund to the Agency for Persons with Disabilities, as successor to the Department of Children and Family Services, to be paid for the relief of Eddie Weekley and Charlotte Williams, individually and as co-personal

representatives of the Estate of Franklin Weekley, deceased.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of Eddie Weekley and Charlotte Williams, individually and as co-personal representatives of the Estate of Franklin Weekley, deceased, in the sum of $1 million upon funds of the Agency for Persons with Disabilities in the State Treasury, and to pay the same out of such funds in the State Treasury. Pursuant to the settlement agreement approved by the court in 2007, the funds are to be paid into a Medicaid-compliant special needs trust account established on behalf of Eddie Weekley and Charlotte Williams.

Section 4. The amount paid by the Agency for Persons with Disabilities pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act resulting in the disappearance and death of Franklin Weekley. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $200,000, the total amount paid for lobbying fees may not exceed $50,000, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $221.03.

Section 5. This act shall take effect upon becoming a law.

STORAGE NAME: h6553.CJC
DATE: 3/16/2017

March 16, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6553 - Representative Toledo
Relief/Cristina Alvarez and George Patnode/Department of Health

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $2,400,000 BASED ON A JURY VERDICT IN THE AMOUNT OF $2,600,000 AGAINST THE MARTIN COUNTY HEALTH DEPARTMENT/DEPARTMENT OF HEALTH TO COMPENSATE CRISTINA ALVAREZ AND GEORGE PATNODE FOR THE WRONGFUL DEATH OF THEIR 5 MONTH-OLD SON, NICHOLAS. THE DEPARTMENT HAS PAID THE STATUTORY LIMIT OF $200,000.

FINDING OF FACT:

Nicolas Patnode was born on August 8, 1997. On December 26, 1997, his mother brought him to the Martin County Health Department – Indiantown Clinic due to a fever. At that time, Nicolas was diagnosed with an ear infection by Dr. Williams, Nicolas' regular pediatrician. Dr. Williams prescribed an antibiotic, and asked Cristina Alvarez to bring him back in 10 days. Nicolas completed the antibiotic, and went in for the follow up appointment on January 6, 1998. At the follow-up appointment, Dr. Williams found that Nicolas had recovered from the ear infection. Two days later, on Thursday, January 8, Nicolas again ran a fever causing his mother to bring him back to the Indiantown Clinic. Dr. Williams again saw Nicolas, who then had a fever of 103.7° F. Dr. Williams ordered a CBC (complete blood count) and a urine test, prescribed Tylenol,

asked his mother to keep cool clothes on him, and to watch for a rash. Dr. Williams then told her that if there was a rash or if the fever persisted or got worse, she should take Nicolas immediately to the emergency room.

The next day, January 9, 1998, Cristina Alvarez stated that she checked his temperature every 4 hours, and that his temperature was normal throughout the day. At about 4:30 p.m. Nicolas felt hot and had a fever of 100°F. His mother gave him a dose of Tylenol and checked his temperature again, and it was up to 101°F. At about the same time, George Patnode, Nicolas's father, and her husband at the time, arrived home from working on a friend's car. They proceeded directly to Martin Memorial Hospital South.

They arrived at Martin Memorial Hospital at 6:50 p.m. A CBC test was ordered, which showed an abnormal white blood count. While waiting for tests, Cristina noticed that Nicolas was getting limp and whining, and was starting to get blotches on his lips. A lumbar puncture indicated that Nicolas had pneumoccoccal meningitis. Nicolas was given intravenous antibiotics, and transferred by ambulance to St. Mary's pediatric intensive care unit.

Nicolas arrived at St. Mary's at 1:57 a.m. on January 10th. At this point Nicolas went into septic shock, and was removed from life support later that morning and died.

The Lab Results at Martin County Health Department
When Cristina Alvarez brought Nicolas back to the lab on January 8, 1998, Dr. Williams correctly noted that he was running a fever without a focus (meaning there was no apparent cause for the fever). In order to rule out a dangerous bacterial infection, he ordered a regular CBC.

The Indiantown Clinic did not have lab facilities. Samples were sent by courier to the Martin Memorial Medical Center, Inc., lab, and the lab would fax the results back to the clinic. On the January 8 visit, Dr. Williams ordered a routine CBC. Once the blood is drawn, various tests are performed and reported back to the ordering physician. The tests were completed at 11:30 p.m. on January 8, 1998, and showed a white blood cell count of 24,900.[1] The printed lab results showed that they were faxed to the Indiantown Clinic at 12:17 p.m. on January 9. Had Dr. Williams ordered the CBC 'stat', the results would have been ready by 5:30 p.m. that day. Expert testimony revealed that because this child had a fever without a focus, in order to meet the standard of care, Dr. Williams should have ordered the CBC stat.

At the time, the Martin County Health Department had a policy

[1] A normal white blood cell count for an infant is between 5,000 to 10,000.

regarding review of lab results. The policy specifically required lab results to be date stamped upon receipt and routed to the appropriate physician. The policy further required abnormal lab results to be followed-up within 24 hours of receipt. Expert testimony revealed that the normal white blood count for a six-month old baby is no greater than 15,000. Nicolas' white blood count was 24,900. However, Dr. Williams did not review Nicolas' lab report until January 14, 1998, four days after he passed away.

The Martin County Health Department also had a policy with the lab, that the lab would call them immediately if any lab results revealed results that exceeded 'panic values' that were set by the Health Department. The Martin County Health Department had set the 'panic value' on white blood counts at 25,000, 100 more than Nicolas' results of 24,900, thus not qualifying for an immediate call from the lab. The claimant's expert opined that the 'panic value' should have been set at 15,000, which was the reference range published by the American Academy of Pediatrics Red Book.

The claimant's expert ultimately opined that had the CBC test been ordered stat, or if the regular and actual results had been reviewed and acted upon according to policy, then a course of intravenous antibiotics could have been administered in time to save Nicolas' life.

The Parents

Cristina and George Patnode had been married for approximately 10 years and had two children prior to Nicolas, George IV, who is now 18 and Christopher, who is now 17. George IV is emotionally handicapped, has ADHD, and has pervasive developmental disorder. Christopher Patnode has ADHD.

George Patnode is a disabled veteran, who also has other non-military disabilities and is a recovering alcoholic. He testified that he has been 10 years without a drink and is a staunch member of Alcoholics Anonymous. He is currently unemployed, and has been on Social Security disability since 1998.

Cristina is also unemployed and has moved to Mesa, Arizona. She receives Social Security disability for all three of her children.

Cristina and George separated four days after Nicolas' death, and divorced in 2000. Both have remarried. Cristina had another child, Jordan, who is eight. George had another two children, Jade and Stone.

LITIGATION HISTORY:

Cristina Alvarez and George Patnode filed suit in 2000 in the Martin County Circuit Court, against Dr. Williams; the

Department of Children and Family Services; Martin County Health Department; Dr. Polsky (ER doctor); Nurse Andrew Walker (ER nurse); and Martin Memorial Health Systems. Martin Memorial Health Systems settled with the claimants for $35,000, and was dismissed with prejudice. Dr. Polsky and Nurse Walker were also released from the suit. The Department of Health was substituted for the Department of Children and Family Services. Personnel of county health departments are employed by the Department of Health pursuant to s. 154.04(2), F.S. Prior to trial, claimant's offered to settle the case for $200,000, which offer the Department of Health declined.

The case went to trial in February of 2002. The trial judge granted a directed verdict in favor of George Patnode on the affirmative defense of comparative negligence. The jury had the opportunity to apportion liability to the Department of Health (Martin County Health Department) , Cristina Alvarez, and the Martin Memorial Medical Center Laboratory. The jury found 100% liability on the Martin County Health Department, and awarded the following: for Cristina Alvarez, $1,000,000 for past pain and suffering and $600,000 for future pain and suffering (for a total of $1.6 million); for George Patnode, $750,000 for past pain and suffering and $250,000 for future pain and suffering (for a total of $1 million), for a total award of $2,600,000.

The Department's Motion for a New Trial was denied. The Department then appealed to the Fourth District Court of Appeal, arguing that the trial court erred by granting a directed verdict in favor of George Patnode on the affirmative defense of comparative negligence, and that the trial court erred by not allowing the Department to use a specific deposition for impeachment purposes. The Fourth District Court of Appeal issued a per curiam affirmance. The Department has paid the initial $200,000 as allowed by s. 768.28, F.S.

CLAIMANT'S POSITION: Claimant argues the jury verdict is supported by the evidence and should be given full effect.

RESPONDENT'S POSITION: The Department argues the following:

- Cristina Patnode should be comparatively negligent for not taking Nicolas to the emergency room sooner, and for not telling the emergency room nurse about seeing Dr. Williams the day before.
- There was no evidence that the lab transmitted the lab results at the time marked on the lab results.
- Because many labs don't choose to establish 'panic values' at all, Martin County Health Department's establishment of these particular 'panic values' did not fall below the standard of care.

CONCLUSION OF LAW:

Rather than the subjective, traditional "shock the conscience" standard used by courts, for purposes of a claim bill, a respondent that assails a jury verdict as being excessive should have the burden of showing the Legislature that the verdict was unsupported by sufficient credible evidence; that it was influenced by corruption, passion, prejudice, or other improper motives; that it has not reasonable relation to the damages shown; that it imposes an overwhelming hardship on the respondent out of proportion to the injuries suffered; that it obviously and grossly exceeds the maximum limit of a reasonable range within which a jury may properly operate; or that there are post-judgment considerations that were not known at the time of the jury verdict. The Department of Health failed to demonstrate any of these factors.

I find that there was substantial, competent evidence to show that the medical care provided by Dr. Williams at the Indiantown Clinic of the Martin County Health Department fell below the prevailing professional standard of care, and that as an employee of the Department of Health, the Department is vicariously liable for Dr. Williams' negligence. I further find that Nicolas' death was caused by such negligence, and that the damages are appropriate.

ATTORNEY'S/ LOBBYING FEES:

Claimants' attorney has an agreement with Claimants to take a fee of 25% of Claimants' total recovery. Claimants' attorney has hired a lobbyist and has agreed to pay 5% of any amount of the claim bill in lobbying fees; such payment is included in the attorney's 25% fee. Outstanding costs total $2,080.64.

LEGISLATIVE HISTORY:

This is the seventh session this claim has been presented to the Legislature. It was initially filed in 2004 as House Bill 235 by Representative Kottkamp and Senate Bill 26 by Senator Campbell. The House Bill passed both the Claims Subcommittee and the Judiciary Committee, but died in the Subcommittee on Health Appropriations. The Senate Bill was never considered by any Senate committee.

In the years following, this claim has been filed in both chambers but never heard in a committee.

RECOMMENDATIONS:

Based on the foregoing, I recommend that House Bill 6553 be reported **FAVORABLY**.

Respectfully submitted,

PARKER AZIZ

House Special Master

cc: Representative Toldeo, House Sponsor
Senator Rodriguez, Senate Sponsor
Tom Cibula, Senate Special Master

AFFIDAVIT

COMES NOW, RONALD S. GILBERT, ESQUIRE, who was sworn and declares the following:

1. Affiant was retained by Claimants, Cristina Alvarez f/k/a Cristina Patnode, and George Patnode, Co-Personal Representatives of the Estate of Nicholas Patnode, deceased, for representation regarding the wrongful death/medical malpractice claim involving the death of their son.

2. The representation agreement was pursuant to a contingency fee contract, which has been approved by the Florida Supreme Court.

3. Notwithstanding the representation agreement, Affiant has agreed to represent Claimants through the Claims Bill process for a total amount of twenty-five percent (25%) of the Claims Bill for attorney's fees, lobbyist fees, and costs.

4. It has been agreed between Affiant, Claimants, and Lobbyist that twenty-five percent (25%) of the Claims Bill will be paid for full satisfaction of the contingency fee, lobbyist fee, and all costs.

5. The total amount of attorney's fees, lobbyist fees, and costs will be twenty-five percent (25%) of the amount of the approved Claims Bill.

6. The lobbyist fee is five percent (5%) of the amount of the approved Claims Bill.

7. The attorney's fees and costs will be twenty percent (20%), less the amount of any accrued costs, which is currently Two Thousand, Eighty Dollars and Sixty-Four Cents ($2,080.64). One Thousand, Nine Hundred Three Dollars and Thirty-Five Cents ($1,903.35) represents the amount of costs paid by Claimants' law firm in the prosecution of this matter. One Hundred Seventy-Seven Dollars and Twenty-Nine Cents ($177.29) represents the internal costs accrued by Claimants' law firm in the prosecution of this matter.

Further Affiant Sayeth Naught.

RONALD S. GILBERT, ESQUIRE
Colling Gilbert Wright & Carter

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing Affidavit was acknowledged before me this 1st day of March, 2017, by Ronald S. Gilbert, Esquire, who is personally known to me.

Audrey D. Haun
Signature of Notary Public

Audrey D. Haun
Printed Name of Notary Public

Notary Public State of Florida
Audrey D Haun
My Commission FF 951433
Expires 01/19/2020

AFFIDAVIT

COMES NOW, MATTHEW BLAIR, who was sworn and declares the following:

1. Ronald S. Gilbert, Esquire was retained by Claimants, Cristina Alvarez f/k/a Cristina Patnode, and George Patnode, Co-Personal Representatives of the Estate of Nicholas Patnode, deceased, for representation regarding the wrongful death/medical malpractice claim involving the death of their son.

2. The representation agreement was pursuant to a contingency fee contract, which has been approved by the Florida Supreme Court.

3. Notwithstanding the representation agreement, Ronald S. Gilbert, Esquire has agreed to represent Claimants through the Claims Bill process for a total amount of twenty-five percent (25%) of the Claims Bill for attorney's fees, lobbyist fees, and costs.

4. It has been agreed between Affiant, Claimants, and Attorney that twenty-five percent (25%) of the Claims Bill will be paid for full satisfaction of the contingency fee, lobbyist fee, and all costs.

5. The total amount of attorney's fees, lobbyist fees, and costs will be twenty-five percent (25%) of the amount of the approved Claims Bill.

6. The lobbyist fee is five percent (5%) of the amount of the approved Claims Bill.

7. The attorney's fees and costs will be twenty percent (20%), less the amount of any accrued costs, which is currently Two Thousand, Eighty Dollars and Sixty-Four Cents ($2,080.64). One Thousand, Nine Hundred Three Dollars and Thirty-Five Cents ($1,903.35) represents the amount of costs paid by Claimants' law firm in the prosecution of this matter. One Hundred Seventy-Seven Dollars and Twenty-Nine Cents ($177.29) represents the internal costs accrued by Claimants' law firm in the prosecution of this matter.

Further Affiant Sayeth Naught.

MATTHEW BLAIR
Corcoran & Johnston

STATE OF FLORIDA
COUNTY OF Pasco

The foregoing Affidavit was acknowledged before me this 2 day of March, 2017, by Matthew Blair, who is personally known to me.

Signature of Notary Public

MICHELLE A. KAZOURIS
MY COMMISSION # FF 038908
EXPIRES: August 7, 2017
Bonded Thru Budget Notary Services

A bill to be entitled

An act for the relief of Cristina Alvarez and George Patnode; providing appropriations to compensate them for the death of their son, Nicholas Patnode, a minor, due to the negligence of the Department of Health; providing for the repayment of Medicaid liens; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on January 8, 1998, Nicholas Patnode, 5 months of age, was seen for a fever at the Martin County Health Department - Indiantown Clinic, and

WHEREAS, a blood test was ordered, the results of which were abnormal and consistent with bacteremia, a condition that requires immediate administration of antibiotics, and

WHEREAS, the results of the blood test were printed that day but not picked up from the printer at the clinic, and as a result, treatment was not begun and Nicholas Patnode's condition deteriorated, and

WHEREAS, several hours later, Nicholas Patnode's parents took him to Martin Memorial Medical Center, where a spinal tap confirmed a diagnosis of bacterial meningitis, and Nicholas Patnode was transferred to St. Mary's Hospital in critical condition, and

WHEREAS, a decision was made to discontinue life support

due to irreversible brain damage, and Nicholas Patnode died on January 10, 1998, and

WHEREAS, Nicholas Patnode is survived by his parents, Cristina Alvarez and George Patnode, and

WHEREAS, the actions of the Martin County Health Department demonstrated the failure to adhere to a reasonable level of care for Nicholas Patnode and resulted in his death, and

WHEREAS, after an unsuccessful attempt by Nicholas Patnode's parents to settle this claim, it proceeded to litigation, resulting in a judgment in favor of the parents in the amount of $2.6 million, and

WHEREAS, the Department of Health has paid $200,000 to Cristina Alvarez and George Patnode under the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The sum of $1.5 million is appropriated from the General Revenue Fund to the Department of Health for the relief of Cristina Alvarez as compensation for the death of her son, Nicholas Patnode, a minor, due to the negligence of the Martin County Health Department.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of Cristina Alvarez in the sum of $1.5 million upon funds of the Department of Health in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 4. The sum of $900,000 is appropriated from the General Revenue Fund to the Department of Health for the relief of George Patnode as compensation for the death of his son, Nicholas Patnode, a minor, due to the negligence of the Martin County Health Department.

Section 5. The Chief Financial Officer is directed to draw a warrant in favor of George Patnode in the sum of $900,000 upon funds of the Department of Health in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 6. The governmental entity responsible for payment of the warrant shall pay to the Agency for Health Care Administration the amount due under s. 409.910, Florida Statutes, before disbursing any funds to the claimants. The amount due to the agency shall be equal to all unreimbursed medical payments paid by Medicaid up to the date on which this act becomes a law. Such amounts shall be deducted in equal amounts from the award to each parent.

Section 7. The amount paid by the Department of Health pursuant to s. 768.28, Florida Statutes, and the amounts awarded

under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Nicholas Patnode. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $300,000, the total amount paid for lobbying fees may not exceed $75,000, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $2,080.64.

Section 8. This act shall take effect upon becoming a law.