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# **Children, Families & Seniors Subcommittee**

**Monday, March 20, 2017  
3:30 PM – 6:30 PM  
12 HOB**

**Richard Corcoran  
Speaker**

**Gayle Harrell  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Children, Families & Seniors Subcommittee

**Start Date and Time:** Monday, March 20, 2017 03:30 pm  
**End Date and Time:** Monday, March 20, 2017 06:30 pm  
**Location:** 12 HOB  
**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

HB 313 Child Support by Daniels  
HB 1183 Admission of Children and Adolescents to Mental Health Facilities by Silvers  
HB 1383 Human Trafficking by Nuñez

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00p.m., Friday, March 17, 2017.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00p.m., Friday, March 17, 2017.

**NOTICE FINALIZED on 03/16/2017 4:05PM by Ellerkamp.Donna**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 313 Child Support  
**SPONSOR(S):** Daniels  
**TIED BILLS:** IDEN./SIM. BILLS: SB 552

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Roth	Brazzell
2) Ways & Means Committee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Child support is a parent's legal obligation to contribute to the economic maintenance and education of a child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education. The obligation is enforceable both civilly and criminally.

Civil remedies include suspension of the driver license and motor vehicle registration of an individual who owes child support (the obligor), and an order for him or her to seek employment or job training. An example of a criminal remedy is that a court can hold the obligor in contempt for having the ability to pay support and subsequently failing to pay.

The bill amends s. 61.13106, F.S. to include additional ways for an obligor to respond to the notice provided by the Department of Revenue within 20 days to stop the suspension of his or her driver license by the Department of Highway Safety and Motor Vehicles. The additional responses by the obligor include demonstration that he or she:

- Is unable to pay support due to an act of God.
- Is unable to pay support due to a medical emergency involving him or her.
- Is unable to pay support due to sudden involuntary unemployment beyond his or her control.
- Has been ordered by the court to be placed in a work release program or under supervised home confinement without electronic monitoring for failure to pay support.

The bill amends s. 61.14(5)(a), F.S. to require the court to find that an obligor is not in contempt for failure to pay child support if he or she demonstrates inability to pay child support due to:

- An act of God.
- A medical emergency involving him or her.
- Sudden involuntary unemployment beyond his or her control.

The bill requires the Department of Economic Opportunity (DEO) to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring. The bill requires DEO to adopt rules to implement such a program.

The bill appears to have an indeterminate, but likely, insignificant fiscal impact on state and local government. See fiscal comments.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Child Support

Child support is a parent's legal obligation to contribute to the economic maintenance and education of a child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education.<sup>1</sup> This obligation arises since each parent has a duty to support<sup>2</sup> his or her minor or legally dependent child.<sup>3</sup> Child support can be entered into voluntarily, by court order, or by an administrative agency. Child support is an important source of income for millions of children in the United States. Child support payments represent on average, 40 percent of income for poor custodial families who receive them; such payments lifted one million people above poverty in 2008.<sup>4</sup>

##### *Establishment of Child Support Obligation*

When parents live apart due to divorce or separation, the court may order a parent who owes a duty of support to a child, to pay support to the other parent, or in the case of both parents, to a third party who has custody, in accordance with the guidelines schedule in s. 61.30, F.S.<sup>5</sup> Section 61.30, F.S., sets forth guidelines to determine the appropriate amount of child support to be provided based on each parents' income. The judicial officer is permitted to deviate from the guideline amount plus or minus 5 percent after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent.<sup>6</sup> The judicial officer is also permitted to deviate from the guideline amount more than plus or minus 5 percent, but he or she must include a written finding in the support order explaining why the guideline amount is unjust or inappropriate.<sup>7</sup>

##### *Department of Revenue Child Support Program*

The federal Department of Health and Human Services (HHS) coordinates with child support enforcement programs administered in each state, which perform collection and enforcement services.<sup>8</sup> Each state's child support enforcement agency operates under an approved state plan based on the program standards and policy set by the federal government.<sup>9</sup> In Florida, the department administering the child support program is the Department of Revenue (DOR).<sup>10 11</sup> Child support payments may be handled through private attorneys; these payments separate from state child support programs.<sup>12</sup>

<sup>1</sup> Black's Law Dictionary 100 (3<sup>rd</sup> pocket ed. 2006).

<sup>2</sup> S. 61.046(22), F.S., defines "support" as child support when the Department of Revenue is not enforcing the support obligation and it includes spousal support or alimony for the person with whom the child is living when the Department of Revenue is enforcing the support obligation. The definition applies to the use of the term throughout ch. 61, F.S.

<sup>3</sup> S. 61.29, F.S. See generally ss. 744.301 and 744.361, F.S.

<sup>4</sup> National Conference of State Legislatures, *Child Support Overview*, March 15, 2016, available at <http://www.ncsl.org/research/human-services/child-support-homepage.aspx> (last viewed March 16, 2017).

<sup>5</sup> S. 61.13(1)(a), F.S.

<sup>6</sup> S. 61.30(1)(a), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> National Conference of State Legislatures, *Child Support 101: State Administration*, April 2013, available at <http://www.ncsl.org/research/human-services/child-support-administration.aspx> (last viewed March 17, 2017).

<sup>9</sup> *Id.*

<sup>10</sup> S. 409.2557(1), F.S.

<sup>11</sup> Department of Revenue, *About the Child Support Program*, 2016, available at [http://floridarevenue.com/dor/childsupport/about\\_us.html](http://floridarevenue.com/dor/childsupport/about_us.html) (last viewed March 17, 2017).

<sup>12</sup> *Supra*, at FN 8.

Child support program structures vary widely from state to state, but at a minimum, services offered in all child support programs include:

- Locating noncustodial parents;
- Establishing paternity;
- Establishing and modifying support orders;
- Collecting support payments and enforcing child support orders; and
- Referring noncustodial parents to employment services.<sup>13</sup>

Any parent or person with custody of a child who needs help to establish a child support order or to collect support payments may apply for services. Individuals receiving public assistance from the state are required to participate in the state child support program.<sup>14</sup> IV-D cases are cases in which a state provides child support services through the state or tribal IV-D program to a custodial parent. The program is funded under Title IV-D of the Social Security Act. There are three subtypes of state IV-D cases:

- **Public or Current Assistance Cases:** Parents who receive public assistance under the state's Temporary Assistance for Needy Families (TANF) program are required to assign their rights to child support payments to the state. The state automatically refers these cases to OCSE in order to attempt to collect child support directly from the noncustodial parent.
- **Non-Public Assistance Cases:** Non-public assistance cases are those in which the family is not currently or is no longer receiving cash assistance or Medicaid but the state child support agency is providing collection services.
- **Foster Care and Adoption Assistance (IV-E Cases):** Cases where the state currently provides benefits or services for foster care maintenance to a child that meets IV-E eligibility guidelines. In these cases, someone other than a parent is caring for a child or children—this could include a relative caregiver or the foster care system. These cases are also automatically referred to the child support agency in order to attempt to recoup costs from the noncustodial parent(s).<sup>15</sup>

Non IV-D cases are cases where child support is established and maintained privately, most often following a divorce where support orders are determined as part of the divorce proceedings. Any family is eligible for support enforcement services from the state. Some private cases become state IV-D cases when they are referred to help collect outstanding, unpaid child support.<sup>16</sup>

During the 2015 fiscal year, approximately \$32.4 billion in child support was collected on behalf of the 15.9 million children served by child support enforcement programs across the country.<sup>17</sup> In fiscal year 2015, Florida had a total caseload of 650,421 cases and collected approximately \$1.4 billion in child support collections. However, the total amount of arrearages was approximately \$5.7 billion.<sup>18</sup> In fiscal year 2015-2016, Florida DOR IV-D child support enforcement hearing officers held 131,474 hearings and signed 139,817 orders for child support establishment, modification, and enforcement.<sup>19</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> National Conference of State Legislatures, *2015 State by State Data on Child Support Collections*, April 25, 2016, available at <http://www.ncsl.org/research/human-services/2015-state-by-state-data-on-child-support-collections.aspx#5> (last viewed March 17, 2017).

<sup>18</sup> *Id.*

<sup>19</sup> Florida Courts, *Uniform Data Reporting, Child Support FY2015-16, 2017*, available at <http://www.flcourts.org/publications-reports-stats/statistics/uniform-data-reporting.shtml#Support> (last viewed March 17, 2017).

## Enforcement

As the state agency designated as the agency responsible for the administration of the child support enforcement program,<sup>20</sup> DOR has the authority to take actions necessary to ensure that children are maintained from the resources of their parents.<sup>21</sup> If a parent ordered to pay child support fails to pay, there are several options to enforce a support order, including both civil and criminal remedies. Civil remedies include garnishment of the obligor's<sup>22</sup> wages,<sup>23</sup> an order for income deduction,<sup>24</sup> suspension or denial of certain business and professional licenses and certificates,<sup>25</sup> suspension of the person's driver license and motor vehicle registration,<sup>26</sup> and an order to seek employment or job training.<sup>27</sup>

### *Driver License Suspension*

If an obligor is 15 days delinquent in making a support payment, DOR in Title IV-D cases, and the clerk of the court, in non-IV-D cases, will provide notice to the obligor of the delinquency.<sup>28</sup> The notice must state that DOR or the clerk of the court will request the Department of Highway Safety and Motor Vehicles (DHSMV) to suspend the obligor's driver license within 20 days after the date that the notice is mailed.<sup>29</sup> The notice<sup>30</sup> lists several ways for an obligor to stop suspension of his or her license, including:

- Paying the delinquency in full;
- Entering into a written agreement for payment (with the obligee<sup>31</sup> or DOR);
- Contesting the delinquency notice;
- Demonstrating that he or she is on reemployment assistance (unemployment compensation);
- Demonstrating that he or she is disabled and incapable of self-support;
- Demonstrating that he or she receives temporary cash assistance; or
- Demonstrating that he or she is making bankruptcy payments.<sup>32</sup>

In addition, the notice states that DOR will consider the obligor's current situation and ability to pay, and that if the obligor enters into a written agreement with DOR, DOR will not have the obligor's license suspended as long as the agreed-upon payments are made. The notice also states that an obligor may contest the notice if he or she does not have the ability to make payments.<sup>33</sup>

If an obligor's driver license is suspended, the obligor can choose to petition the court to direct DHSMV to issue a license for driving privileges restricted to business purposes only.<sup>34</sup> In Fiscal Year 2015-2016, DHSMV received 170,332 requests for driver license suspensions from DOR for failure to pay child support.<sup>35</sup>

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<sup>20</sup> S. 409.2557(1), F.S.

<sup>21</sup> S. 409.2557(2), F.S.

<sup>22</sup> S. 61.046, F.S. defines "obligor" as a person responsible for making payments pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.

<sup>23</sup> S. 61.12, F.S.

<sup>24</sup> S. 61.1301, F.S.

<sup>25</sup> S. 61.13015, F.S.

<sup>26</sup> S. 61.13016, F.S.

<sup>27</sup> S. 61.14(5)(b), F.S.

<sup>28</sup> S. 61.13016(1), F.S.

<sup>29</sup> S. 61.13016(1)(c), F.S.

<sup>30</sup> Email from Debbie Longman, Director of Office of Legislative and Cabinet Services, Department of Revenue, RE: Notice of Intent to Suspend Driver's License (March 11, 2017) on file with the Children, Families, and Seniors Subcommittee staff.

<sup>31</sup> S. 61.046, F.S. defines "obligee" as the person to whom payments are made pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.

<sup>32</sup> S. 61.13016(1)(c)1., F.S.

<sup>33</sup> *Supra*, at FN 30.

<sup>34</sup> S. 61.13016(2), F.S. The term "a driving privilege restricted to business purposes only" means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes. Section 322.271(1)(c)1., F.S.

<sup>35</sup> Department of Highway Safety and Motor Vehicles, *2017 Agency Legislative Bill Analysis*, February 2017, p. 3 (on file with the Children, Families, and Seniors Subcommittee staff).

In Fiscal Year 2012-2103, approximately 65 percent of the licenses suspended for failure to pay child support were reinstated within one year of the suspension. DOR officials believe that the threat of losing a driver license is one of the best compliance tools it has to enforce child support orders. In Fiscal Year 2012-2103, DOR collected approximately \$101.8 million in delinquent child support payments from parents who received a notice of suspension or whose license was suspended.<sup>36</sup>

### *Contempt of Court*

The original order for the payment of support creates a presumption that the obligor has the ability to pay the support. A court may hold the obligor in contempt<sup>37</sup> for having the ability to pay support and subsequently failing to pay.<sup>38</sup> At the contempt hearing, the obligor has the burden of proof to show that he or she lacks the ability to purge<sup>39</sup> himself or herself from the contempt (pay what he or she is able to pay towards what he or she owes).<sup>40</sup> If the obligor is unemployed or underemployed, or has no income, but is able to work, the court may order the obligor to:

- Seek employment.
- File reports with the court or DOR, detailing the obligor's efforts to seek and obtain employment.
- Notify the court or DOR, upon obtaining employment, income, or property.
- Participate in job training, job placement, work experience, or other work programs that are available.<sup>41</sup>

If the obligor willfully fails to comply with a court order to seek work or participate in work-related activities, he or she may be held in contempt of court.<sup>42</sup> Once an obligor is held in contempt, the court may impose sanctions to obtain compliance with the order including incarceration, suit money and costs, compensatory or coercive fines, or attorneys' fees.<sup>43</sup>

### *Civil and Criminal Contempt Incarceration*

Civil and criminal contempt hearings for failure to pay support can both result in incarceration of an obligor, but their purposes are different:

[T]he purpose of a civil contempt proceeding is to obtain compliance on the part of a person subject to an order of the court. Because incarceration is utilized solely to obtain compliance, it must be used only when the contemnor<sup>44</sup> has the ability to comply. This ability to comply is the contemnor's "key to his cell." The purpose of criminal contempt, on the other hand, is to punish. Criminal contempt proceedings are utilized to vindicate the authority of the court or to punish for an intentional violation of an order of the court.<sup>45</sup>

Incarceration for civil contempt may only be imposed if the court makes a finding that the obligor has the "ability to purge himself of contempt." The ability exists if the obligor is earning a paycheck or if he or she has other assets available to him or her that could be

<sup>36</sup> Office of Program Policy Analysis and Government Accountability, *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, February 2014, p. 8, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1407rpt.pdf> (last viewed March 18, 2017).

<sup>37</sup> S. 38.23, F.S. "Contempt" is a refusal to obey an order of the court.

<sup>38</sup> S. 61.14(5)(a), F.S.

<sup>39</sup> The Department of Revenue defines "purge" as the ability to remedy a delinquent support payment.

<sup>40</sup> S. 61.14(5)(a), F.S.

<sup>41</sup> S. 61.14(5)(b), F.S.

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

<sup>43</sup> Fla. Fam. L. R. P. 12.615(d)(2). "Once the court finds that a civil contempt has occurred, it must determine what alternatives are appropriate to obtain compliance with the court order." *Bowen v. Bowen*, 471 So. 2d 1274, 1279 (Fla. 1985).

<sup>44</sup> Black's Law Dictionary 140 (3<sup>rd</sup> pocket ed. 2006). A "contemnor" is a person who is guilty of contempt before a governmental body, such as a court or legislature.

<sup>45</sup> *Bowen v. Bowen*, 471 So. 2d 1274, 1277 (Fla. 1985).



used to pay the support.<sup>46</sup> In calendar year 2016, there were 511 arrests for non-payment of child support; this is a reduction of 77 arrests from calendar year 2015.<sup>47</sup>

### *Work Release*

Work release allows certain inmates to work at paid employment in the community during confinement. They must return to the custody of the Department of Corrections or the county facility at the end of each work period.<sup>48</sup> The inmate is required to set up a plan for the disbursement of his or her earnings, and such plan must include a provision that no less than 10 percent of net income will go toward the support of any dependents the inmate may have.<sup>49</sup>

Additionally, under county programs, wages or salary earned may be distributed by the sheriff for support pursuant to a court order.<sup>50</sup>

### *Home Confinement*

Home confinement, or community control, is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays.<sup>51</sup> It is an individualized program where the offender's freedom is restricted within the community, home, or noninstitutionalized residential placement. The court determines the specific sanctions, such as electronic monitoring, imposed on the offender. Home confinement allows an offender to work while serving his or her sentence.<sup>52</sup>

### Tax Credits

The Florida Constitution permits the state to levy a tax pursuant to law, and the local governments to levy ad valorem taxes and any other tax that is provided by law.<sup>53</sup> The Legislature has enacted numerous taxes and fees and has granted the local governments authority to raise revenues for specific purposes. The Legislature has also enacted numerous laws that provide for exemptions and credits to the revenue sources.<sup>54</sup>

DOR is responsible for tax collection as well as enforcement and audits related to such taxes collected.<sup>55</sup> Some tax credits are administered by DOR, while others are administered by another agency. For example, the Department of Economic Opportunity (DEO) administers the rural job tax credit. The statute for the rural job tax credit sets forth specific criteria, such as eligible applicants and tax credit award amounts.<sup>56</sup> DEO accepts applications for the tax credit, reviews the application to determine if it meets the requirements and criteria for the tax credit, and then notifies DOR of approved applicants. DOR ensures that anyone claiming the credit on a tax return is eligible to take the credit. There is currently no tax credit for businesses employing child support obligors.

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<sup>46</sup> The court is "not limited to the amount of cash immediately available to the contemnor; rather, the court may look to all assets from which the amount might be obtained." *Bowen v. Bowen*, 471 So. 2d 1274, 1279 (Fla. 1985).

<sup>47</sup> Florida Department of Law Enforcement, *Child Support Statistics, 2017* (on file with the Children, Families, and Seniors Subcommittee staff).

<sup>48</sup> S. 945.091(1)(b) and 951.24, F.S. See Department of Corrections, *Frequently Asked Questions Regarding Work Release*, available at <http://www.dc.state.fl.us/oth/inmates/wr.html> (last visited March 14, 2017).

<sup>49</sup> Rule 33-601.602 (11)(c) and (j), F.A.C.

<sup>50</sup> S. 951.24(3)(a), F.S.

<sup>51</sup> S. 948.001(3), F.S.

<sup>52</sup> *Id.* SS. 948.01 and 948.11, F.S.

<sup>53</sup> Article VII, s. 1, Fla. Const.

<sup>54</sup> *Id.*

<sup>55</sup> S. 20.21(2)(c) and (d), F.S.

<sup>56</sup> S. 212.098, F.S.

## Effect of Proposed Changes

The bill amends s. 61.13106, F.S., to include additional ways for an obligor to respond to the notice provided by DOR within 20 days to stop the suspension of his or her driver license by DHSMV. The additional responses by the obligor include demonstration that he or she:

- Is unable to pay support due to an act of God.
- Is unable to pay support due to a medical emergency involving him or her.
- Is unable to pay support due to sudden involuntary unemployment beyond his or her control.
- Has been ordered by the court to be placed in a work release program or under supervised home confinement without electronic monitoring for failure to pay support.

The additional responses provide obligor parents new options for demonstrating an inability to pay the child support owed. However, the responses may also limit the obligor from demonstrating an inability to pay that does not fall under one of the added purviews. Additionally, some of the terms used, such as “act of God” and “medical emergency” are vague.

The bill amends s. 61.14(5)(a), F.S., to require the court to find that an obligor is not in contempt for failure to pay child support if he or she demonstrates inability to pay child support due to:

- An act of God.
- A medical emergency involving him or her.
- Sudden involuntary unemployment beyond his or her control.

Additionally, the bill allows the court to order an obligor, whom the court finds demonstrated one of the above circumstances, to be placed in a work-release program or under supervised home confinement without electronic monitoring.

This bill may benefit the obligor parent, who may demonstrate one of the above circumstances, by keeping him or her from being placed in contempt. However, the bill requires the court to deny the contempt and allows it to order the obligor to be placed in a work-release program or under supervised home confinement if the obligor demonstrates one of the above circumstances. This is problematic for the court and for the obligor, and is discussed in “Constitutional Issues” below.

The bill requires DEO to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring. The bill requires DEO to adopt rules to implement such a program.

A tax credit to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring, would likely encourage businesses to employ obligors. Obligor, as well as their children, will benefit from the employment. However, the bill does not specify the amount of tax credits allowed or the taxes against which a credit is allowed. See “Drafting Comments”, below.

### B. SECTION DIRECTORY:

**Section 1:** Creates the “Florida Responsible Parent Act.”

**Section 2:** Amends s. 61.13016, F.S., relating to suspension of driver license and motor vehicle registrations.

**Section 3:** Amends s. 61.14, F.S., relating to enforcement and modification of support, maintenance, or alimony agreements or orders.

**Section 4:** Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

DHSMV may see a decrease in the number of nonrefundable service fee payments it receives from obligor parents when they apply for the return of their suspended license if more obligors respond to the driver license suspension notice, demonstrate one of the circumstances provided for in the bill, and avoid a driver license suspension. The required service fee payment is \$60.

#### 2. Expenditures:

DOR indicates that the bill will have an insignificant fiscal impact on state government expenditures; however, DOR and the court system may see an increase in filings by obligors in response to the notice of driver license suspension. DEO's fiscal impact to develop and administer the tax credit program is indeterminate.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

The bill facilitates a process for individuals who have an inability to pay a child support delinquency and helps them avoid suspension of their driver licenses. The bill will also help them avoid payment of a \$60 fee to reinstate those licenses.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill lacks detail regarding the tax credit program that it directs DEO to develop and administer. DEO would be unable to administer the program as the bill is drafted. Once the bill was amended to include this detail, a mandates analysis could be performed in regard to this element of the bill.

Other elements of the bill do not appear to affect county or municipal governments.

#### 2. Other:

Under current law, a court may order an obligor to be incarcerated after being found in contempt for failure to pay support. However, the bill appears to allow a court to order an obligor to be incarcerated

after being found *not* in contempt for failure to pay support for specified reasons. Allowing a court to order incarceration (even if it is work release or supervised home confinement without electronic monitoring) without a finding of contempt or violation of criminal law may violate the obligor's right not to be imprisoned for a debt under Art. I, s. 11 of the Florida Constitution and due process rights under the U.S. Constitution.

**B. RULE-MAKING AUTHORITY:**

The bill provides that DEO has rulemaking authority to implement its provisions.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The term "act of God" is not defined and may be subject to varying interpretations. The bill also lacks the detail needed for DEO to develop a program to administer tax credits for businesses employing child support obligors.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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A bill to be entitled  
 An act relating to child support; creating the  
 "Florida Responsible Parent Act"; amending s.  
 61.13016, F.S.; providing additional circumstances  
 under which an obligor who fails to pay child support  
 may avoid suspension of his or her driver license and  
 motor vehicle registration; amending s. 61.14, F.S.;  
 requiring a court to deny an order for contempt if an  
 obligor demonstrates that he or she is unable to pay  
 child support due to specified circumstances;  
 authorizing the court to order an obligor to be placed  
 in a work-release program or under supervised home  
 confinement without electronic monitoring for failure  
 to pay child support due to any of such circumstances;  
 requiring the Department of Economic Opportunity to  
 develop and administer a tax credit program for  
 business entities that employ such obligors; requiring  
 the department to adopt rules; providing an effective  
 date.

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

Section 1. This act may be cited as the "Florida  
 Responsible Parent Act."

Section 2. Paragraph (c) of subsection (1) and subsection

26 (3) of section 61.13016, Florida Statutes, are amended to read:  
 27 61.13016 Suspension of driver licenses and motor vehicle  
 28 registrations.-

29 (1) The driver license and motor vehicle registration of a  
 30 support obligor who is delinquent in payment or who has failed  
 31 to comply with subpoenas or a similar order to appear or show  
 32 cause relating to paternity or support proceedings may be  
 33 suspended. When an obligor is 15 days delinquent making a  
 34 payment in support or failure to comply with a subpoena, order  
 35 to appear, order to show cause, or similar order in IV-D cases,  
 36 the Title IV-D agency may provide notice to the obligor of the  
 37 delinquency or failure to comply with a subpoena, order to  
 38 appear, order to show cause, or similar order and the intent to  
 39 suspend by regular United States mail that is posted to the  
 40 obligor's last address of record with the Department of Highway  
 41 Safety and Motor Vehicles. When an obligor is 15 days delinquent  
 42 in making a payment in support in non-IV-D cases, and upon the  
 43 request of the obligee, the depository or the clerk of the court  
 44 must provide notice to the obligor of the delinquency and the  
 45 intent to suspend by regular United States mail that is posted  
 46 to the obligor's last address of record with the Department of  
 47 Highway Safety and Motor Vehicles. In either case, the notice  
 48 must state:

49 (c) That notification will be given to the Department of  
 50 Highway Safety and Motor Vehicles to suspend the obligor's

51 driver license and motor vehicle registration unless, within 20  
 52 days after the date that the notice is mailed, the obligor:

53 1.a. Pays the delinquency in full and any other costs and  
 54 fees accrued between the date of the notice and the date the  
 55 delinquency is paid;

56 b. Enters into a written agreement for payment with the  
 57 obligee in non-IV-D cases or with the Title IV-D agency in IV-D  
 58 cases; or in IV-D cases, complies with a subpoena or order to  
 59 appear, order to show cause, or a similar order;

60 c. Files a petition with the circuit court to contest the  
 61 delinquency action;

62 d. Demonstrates that he or she receives reemployment  
 63 assistance or unemployment compensation pursuant to chapter 443;

64 e. Demonstrates that he or she is disabled and incapable  
 65 of self-support or that he or she receives benefits under the  
 66 federal Supplemental Security Income program or Social Security  
 67 Disability Insurance program;

68 f. Demonstrates that he or she receives temporary cash  
 69 assistance pursuant to chapter 414; ~~or~~

70 g. Demonstrates that he or she is unable to pay support  
 71 due to an act of God, a medical emergency involving him or her,  
 72 or sudden involuntary unemployment beyond his or her control;

73 h. Demonstrates that he or she has been ordered by the  
 74 court to be placed in a work-release program or under supervised  
 75 home confinement without electronic monitoring for failure to



76 pay support pursuant to s. 61.14(5)(a); or  
 77 ~~i.g.~~ Demonstrates that he or she is making payments in  
 78 accordance with a confirmed bankruptcy plan under chapter 11,  
 79 chapter 12, or chapter 13 of the United States Bankruptcy Code,  
 80 11 U.S.C. ss. 101 et seq.; and

81 2. Pays any applicable delinquency fees.  
 82

83 If an obligor in a non-IV-D case enters into a written agreement  
 84 for payment before the expiration of the 20-day period, the  
 85 obligor must provide a copy of the signed written agreement to  
 86 the depository or the clerk of the court. If an obligor seeks to  
 87 satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-  
 88 subparagraph 1.f., ~~or~~ sub-subparagraph 1.g., sub-subparagraph  
 89 1.h., or sub-subparagraph 1.i. before expiration of the 20-day  
 90 period, the obligor must provide the applicable documentation or  
 91 proof to the depository or the clerk of the court.

92 (3) If the obligor does not, within 20 days after the  
 93 mailing date on the notice, pay the delinquency; enter into a  
 94 written agreement; comply with the subpoena, order to appear,  
 95 order to show cause, or other similar order; file a motion to  
 96 contest; or satisfy sub-subparagraph (1)(c)1.d., sub-  
 97 subparagraph (1)(c)1.e., sub-subparagraph (1)(c)1.f., ~~or~~ sub-  
 98 subparagraph (1)(c)1.g., sub-subparagraph (1)(c)1.h., or sub-  
 99 subparagraph (1)(c)1.i., the Title IV-D agency in IV-D cases, or  
 100 the depository or clerk of the court in non-IV-D cases, may file

101 the notice with the Department of Highway Safety and Motor  
 102 Vehicles and request the suspension of the obligor's driver  
 103 license and motor vehicle registration in accordance with s.  
 104 322.058.

105 Section 3. Paragraph (a) of subsection (5) of section  
 106 61.14, Florida Statutes, is amended to read:

107 61.14 Enforcement and modification of support,  
 108 maintenance, or alimony agreements or orders.-

109 (5) (a) When a court of competent jurisdiction enters an  
 110 order for the payment of alimony or child support or both, the  
 111 court shall make a finding of the obligor's imputed or actual  
 112 present ability to comply with the order. If the obligor  
 113 subsequently fails to pay alimony or support and a contempt  
 114 hearing is held, the original order of the court creates a  
 115 presumption that the obligor has the present ability to pay the  
 116 alimony or support and to purge himself or herself from the  
 117 contempt. At the contempt hearing, the obligor shall have the  
 118 burden of proof to show that he or she lacks the ability to  
 119 purge himself or herself from the contempt. This presumption is  
 120 adopted as a presumption under s. 90.302(2) to implement the  
 121 public policy of this state that children shall be maintained  
 122 from the resources of their parents and as provided for in s.  
 123 409.2551, and that spouses be maintained as provided for in s.  
 124 61.08. The court shall state in its order the reasons for  
 125 granting or denying the contempt. The court shall deny the

126 contempt if the obligor demonstrates that he or she is unable to  
 127 pay child support due to an act of God, a medical emergency  
 128 involving him or her, or sudden involuntary unemployment beyond  
 129 his or her control. If the court finds that the obligor has  
 130 failed to pay child support due to any of such circumstances,  
 131 the court may order the obligor to be placed in a work-release  
 132 program or under supervised home confinement without electronic  
 133 monitoring.

134       Section 4. The Department of Economic Opportunity shall  
 135 develop and administer a program to provide tax credits to any  
 136 business entity that employs an obligor who is ordered to be  
 137 placed in a work-release program or under supervised home  
 138 confinement without electronic monitoring pursuant to s.  
 139 61.14(5), Florida Statutes. The department shall adopt rules to  
 140 administer this section.

141       Section 5. 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	_____	

---

1 Committee/Subcommittee hearing bill: Children, Families &  
 2 Seniors Subcommittee  
 3 Representative Daniels offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

7 Section 1. This act may be cited as the "Florida  
 8 Responsible Parent Act."

9 Section 2. Section 61.13016, Florida Statutes, is amended  
 10 to read:

11 61.13016 Suspension of driver licenses and motor vehicle  
 12 registrations.-

13 (1) The driver license and motor vehicle registration of a  
 14 support obligor who is delinquent in payment or who has failed  
 15 to comply with subpoenas or a similar order to appear or show  
 16 cause relating to paternity or support proceedings may be



Amendment No.

17 suspended. When an obligor is 15 days delinquent making a  
18 payment in support or failure to comply with a subpoena, order  
19 to appear, order to show cause, or similar order in IV-D cases,  
20 the Title IV-D agency may provide notice to the obligor of the  
21 delinquency or failure to comply with a subpoena, order to  
22 appear, order to show cause, or similar order and the intent to  
23 suspend by regular United States mail that is posted to the  
24 obligor's last address of record with the Department of Highway  
25 Safety and Motor Vehicles. When an obligor is 15 days delinquent  
26 in making a payment in support in non-IV-D cases, and upon the  
27 request of the obligee, the depository or the clerk of the court  
28 must provide notice to the obligor of the delinquency and the  
29 intent to suspend by regular United States mail that is posted  
30 to the obligor's last address of record with the Department of  
31 Highway Safety and Motor Vehicles. In either case, the notice  
32 must state:

33 (a) The terms of the order creating the support  
34 obligation;

35 (b) The period of the delinquency and the total amount of  
36 the delinquency as of the date of the notice or describe the  
37 subpoena, order to appear, order to show cause, or other similar  
38 order that has not been complied with;

39 (c) That notification will be given to the Department of  
40 Highway Safety and Motor Vehicles to suspend the obligor's



Amendment No.

41 driver license and motor vehicle registration unless, within 20  
42 days after the date that the notice is mailed, the obligor:

43 1.a. Pays the delinquency in full and any other costs and  
44 fees accrued between the date of the notice and the date the  
45 delinquency is paid;

46 b. Enters into a written agreement for payment with the  
47 obligee in non-IV-D cases or with the Title IV-D agency in IV-D  
48 cases; or in IV-D cases, complies with a subpoena or order to  
49 appear, order to show cause, or a similar order;

50 c. Files a petition with the circuit court to contest the  
51 delinquency action as provided in subsection (4);

52 d. Demonstrates that he or she receives reemployment  
53 assistance or unemployment compensation pursuant to chapter 443;

54 e. Demonstrates that he or she is disabled and incapable  
55 of self-support or that he or she receives benefits under the  
56 federal Supplemental Security Income program or Social Security  
57 Disability Insurance program;

58 f. Demonstrates that he or she receives temporary cash  
59 assistance pursuant to chapter 414; or

60 g. Demonstrates that he or she is making payments in  
61 accordance with a confirmed bankruptcy plan under chapter 11,  
62 chapter 12, or chapter 13 of the United States Bankruptcy Code,  
63 11 U.S.C. ss. 101 et seq.; and

64 2. Pays any applicable delinquency fees.  
65

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66 If an obligor in a non-IV-D case enters into a written agreement  
67 for payment before the expiration of the 20-day period, the  
68 obligor must provide a copy of the signed written agreement to  
69 the depository or the clerk of the court. If an obligor seeks to  
70 satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-  
71 subparagraph 1.f., or sub-subparagraph 1.g. before expiration of  
72 the 20-day period, the obligor must provide the applicable  
73 documentation or proof to the depository or the clerk of the  
74 court.

75 (2)(a) Upon petition filed by the obligor in the circuit  
76 court within 20 days after the mailing date of the notice, the  
77 court may, in its discretion, direct the department to issue a  
78 license for driving privilege restricted to business purposes  
79 only, as defined by s. 322.271, if the person is otherwise  
80 qualified for such a license. As a condition for the court to  
81 exercise its discretion under this subsection, the obligor must  
82 agree to a schedule of payment on any child support arrearages  
83 and to maintain current child support obligations. If the  
84 obligor fails to comply with the schedule of payment, the court  
85 shall direct the Department of Highway Safety and Motor Vehicles  
86 to suspend the obligor's driver license.

87 (b) The obligor must serve a copy of the petition on the  
88 Title IV-D agency in IV-D cases or on the depository or the  
89 clerk of the court in non-IV-D cases. When an obligor timely  
90 files a petition to set aside a suspension, the court must hear

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91 the matter within 15 days after the petition is filed. The court  
92 must enter an order resolving the matter within 10 days after  
93 the hearing, and a copy of the order must be served on the  
94 parties. The timely filing of a petition under this subsection  
95 stays the intent to suspend until the entry of a court order  
96 resolving the matter.

97 (3) If the obligor does not, within 20 days after the  
98 mailing date on the notice, pay the delinquency; enter into a  
99 written agreement; comply with the subpoena, order to appear,  
100 order to show cause, or other similar order; file a motion to  
101 contest; or satisfy sub-subparagraph (1)(c)1.d., sub-  
102 subparagraph (1)(c)1.e., sub-subparagraph (1)(c)1.f., or sub-  
103 subparagraph (1)(c)1.g., the Title IV-D agency in IV-D cases, or  
104 the depository or clerk of the court in non-IV-D cases, may file  
105 the notice with the Department of Highway Safety and Motor  
106 Vehicles and request the suspension of the obligor's driver  
107 license and motor vehicle registration in accordance with s.  
108 322.058.

109 (4) (a) The obligor may, within 20 days after the mailing  
110 date on the notice of delinquency or noncompliance and intent to  
111 suspend, file in the circuit court a petition to contest the  
112 notice of delinquency or noncompliance and intent to suspend on  
113 the ground of:

114 1. Mistake of fact regarding the existence of a  
115 delinquency; ~~or~~

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116 2. Mistake of fact regarding the identity of the obligor;  
117 or

118 3. No ability to make payments toward the delinquency due  
119 to circumstances including, but not limited to, temporary  
120 interruption in employment as the result of a natural disaster;  
121 incapacitation as the result of an illness or temporary medical  
122 condition; or temporary unexpected involuntary unemployment.

123 (b) The obligor must serve a copy of the petition on the  
124 Title IV-D agency in IV-D cases or depository or clerk of the  
125 court in non-IV-D cases. When an obligor timely files a petition  
126 to contest, the court must hear the matter within 15 days after  
127 the petition is filed. The court must enter an order resolving  
128 the matter within 10 days after the hearing, and a copy of the  
129 order must be served on the parties. The timely filing of a  
130 petition to contest stays the notice of delinquency and intent  
131 to suspend until the entry of a court order resolving the  
132 matter.

133 (5) The procedures prescribed in this section and s.  
134 322.058 may be used to enforce compliance with an order to  
135 appear for genetic testing.

136  
137 -----

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

139 Remove everything before the enacting clause and insert:



Amendment No.

140 An act relating to child support; creating the "Florida  
141 Responsible Parent Act"; amending s. 61.13016, F.S.; providing  
142 additional circumstances under which an obligor who fails to pay  
143 child support may avoid suspension of his or her driver license  
144 and motor vehicle registration; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1183 Admission of Children and Adolescents to Mental Health Facilities  
**SPONSOR(S):** Silvers  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1580

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee		Siples	Brazzell
2) Judiciary Committee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address the mental health needs of individuals in the state. The Baker Act allows for voluntary and, under certain circumstances, involuntary, examinations of individuals suspected of having a mental illness and presenting a threat of harm to themselves or others. The Baker Act also establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations and then act in response to the findings.

During calendar year 2015, 32,882 involuntary examinations were initiated under the Baker Act for individuals under the age of 18. These examinations occur in receiving facilities such as crisis stabilization units and hospitals and must conclude within 72 hours under most circumstances. Residential treatment centers generally provide longer-term assessment and treatment services.

HB 1183 requires that receiving facilities, crisis stabilization units, and residential treatment centers providing involuntary services to a minor notify the clerk of courts for the appointment of a public defender within 24 hours of the minor's arrival or admission to the facility. The child's attorney must have access to all records relevant for representation of the child in a judicial hearing. All hearings for a minor must be in person and may not be held by electronic or video means. Any person who violates the provisions of the bill commits a misdemeanor in the first degree.

The bill will have an indeterminate but significant negative fiscal impact on the State Court System and no 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

##### Mental Illness

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 contribute to his or her community.<sup>1</sup> The primary indicators used to evaluate an individual's mental health are:<sup>2</sup>

- **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.<sup>3</sup> Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being.

Mental illness affects millions of people in the United States each year. Only about 17% of adults in the United States are considered to be in a state of optimal mental health.<sup>4</sup> One in five adults (43.8 million people) experiences mental illness in a given year,<sup>5</sup> and one in five children ages 13-18 have or will have a serious mental illness.<sup>6</sup>

##### Florida Mental Health Act

The Florida Mental Health Act, otherwise known as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.<sup>7</sup> The Act provides legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.<sup>8</sup>

##### *Involuntary Examination and Receiving Facilities*

Individuals in acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a

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<sup>1</sup> Centers for Disease Control and Prevention, *Mental Health Basics*, (Oct. 4, 2013), available at <http://www.cdc.gov/mentalhealth/basics.htm> (last visited March 17, 2017).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> 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. National Institute of Mental Health, *Any Mental Illness (AMI) Among Adults*, available at <http://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-adults.shtml> (last viewed on March 17, 2017).

<sup>5</sup> National Alliance on Mental Illness, *Mental Health Facts in America*, available at <http://www.nami.org/NAMI/media/NAMI-Media/Infographics/GeneralMHFacts.pdf> (last visited March 17, 2017).

<sup>6</sup> National Alliance on Mental Illness *Mental Health Facts: Children & Teens*, available at <http://www.nami.org/NAMI/media/NAMI-Media/Infographics/Children-MH-Facts-NAMI.pdf> (last visited March 17, 2017).

<sup>7</sup> Sections 394.451-394.47892, F.S.

<sup>8</sup> Section 394.459, F.S.

voluntary or involuntary basis.<sup>9</sup> An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness<sup>10</sup>:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; **and**
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; **or**
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

Involuntary patients must be taken to either a public or a private facility that has been designated by the Department of Children and Families (DCF) as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.<sup>11</sup> A public receiving facility is a facility that has contracted with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.<sup>12</sup> Funds appropriated for Baker Act services may only be used to pay for services to diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.<sup>13</sup>

Within the 72-hour examination period, or if the 72 hours end on a weekend or holiday, no later than the next business day, one of the following must happen:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will assume custody;
- The patient must be released for voluntary outpatient treatment;
- The patient, unless charged with a crime, must give express and informed consent to a placement as a voluntary and admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in circuit court for involuntary outpatient or inpatient treatment.<sup>14</sup>

Receiving facilities must give prompt notice<sup>15</sup> of the whereabouts of a patient who is being involuntarily held for examination to the patient's guardian,<sup>16</sup> guardian advocate,<sup>17</sup> health care surrogate or proxy, attorney, and representative.<sup>18</sup> If the patient is a minor, the receiving facility must give prompt notice to the minor's parent, guardian, caregiver, or guardian advocate. Notice for an adult may be provided within 24 hours of arrival; however, notice for a minor must be provided immediately after the minor's arrival at the facility. The facility may delay the notification for a minor for up to 24 hours if it has submitted a report to the central abuse hotline. The receiving facility must attempt to notify the minor's parent, guardian, caregiver, or guardian advocate until it receives confirmation that the notice has been received. Attempts must be repeated at least once every hour during the first 12 hours after the minor's

<sup>9</sup> Sections 394.4625 and 394.463, F.S.

<sup>10</sup> Section 394.463(1), F.S.

<sup>11</sup> Section 394.455(39), F.S. This term does not include a county jail.

<sup>12</sup> Section 394.455(37), F.S.

<sup>13</sup> Rule 65E-5.400(2), F.A.C.

<sup>14</sup> Section 394.463(2)(g), F.S.

<sup>15</sup> Notice may be provided in person or by telephone; however, in the case of a minor, notice may also be provided by other electronic means. Section 394.455(2), F.S.

<sup>16</sup> "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated. Section 394.455(17), F.S.

<sup>17</sup> "Guardian advocate" means a person appointed by a court to make decisions regarding mental health treatment on behalf of a patient who has been found incompetent to consent to treatment. Section 394.455 (18), F.S.

<sup>18</sup> Section 394.4599(2)(b), F.S.

arrival and then once every 24 hours thereafter until confirmation is received, the minor is released, or a petition for involuntary services is filed with the court.<sup>19</sup>

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding to provide services to individuals showing acute mental health disorders. CSUs screen, assess, and admit for stabilization individuals who voluntarily present themselves to the unit, as well as individuals who are brought to the unit on an involuntary basis.<sup>20</sup> CSUs provide patients with 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services.<sup>21</sup> The purpose of a crisis stabilization unit is to stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs.<sup>22</sup> Individuals often enter the public mental health system through CSUs.<sup>23</sup> For this reason, crisis services are a part of the comprehensive, integrated, community mental health and substance abuse services established by Legislature in the 1970s to ensure continuity of care for individuals.<sup>24</sup>

As of November 2015, there are 122 Baker Act receiving facilities in this state, including 53 public receiving facilities and 69 private receiving facilities.<sup>25</sup> Of the 53 public receiving facilities, 39 are also contracted to provide CSU services.<sup>26</sup> There were 193,410 involuntary examinations initiated at hospitals and CSUs in calendar year 2015 (most recent report). Of those, 32,882 involuntary examinations were initiated for individuals under the age of 18.<sup>27</sup>

#### *Residential Treatment Centers for Children and Adolescents*

Section 394.467, F.S., defines "residential treatment center for children and adolescents" as a 24-hour residential program, including a therapeutic group home, which provides mental health services to emotionally disturbed children or adolescents and which is a private for-profit or not-for-profit corporation licensed by the agency which offers a variety of treatment modalities in a more restrictive setting. Residential treatment centers provide longer-term treatment services. The purpose of a residential treatment center for children and adolescents is to provide mental health assessment and treatment services to children and adolescents who are experiencing an acute mental or emotional crisis, have a serious emotional disturbance or mental illness, or have an emotional disturbance. The treatment center must provide the least restrictive available treatment that is appropriate to the individual needs of the child or adolescent.<sup>28</sup>

Section 39.407, F.S., details procedures for placing a child who is in the legal custody of the Department of Children and Families due to involvement in the child welfare system in a residential treatment center. Such procedures include an assessment by a qualified evaluator, mandatory appointment of a guardian ad litem, regular reporting by the center to the court on the child's progress, and court review hearings. There are no similar statutory provisions for child who is not in the legal custody of the Department of Children and Families.

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<sup>19</sup> Section 394.4599(c), F.S.

<sup>20</sup> Section 394.875(1)(a), F.S.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Florida Senate, Budget Subcommittee on Health and Human Services Appropriations, *Crisis Stabilization Units*, (Interim Report 2012-109) (Sept. 2011), available at <https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-109bha.pdf> (last visited March 17, 2017).

<sup>24</sup> Id. Sections 394.65-394.9085, F.S.

<sup>25</sup> Department of Children and Families, *Crisis Stabilization Services Utilization Data Implementation Status Report*, (Feb. 29, 2016), available at <http://www.dcf.state.fl.us/programs/samh/publications/CSSUReport.pdf> (last visited March 17, 2017).

<sup>26</sup> Id.

<sup>27</sup> Christy, A. & Guenther, C. (2016). *Report of 2015 Baker Act Data*. Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute, available at [https://ahca.myflorida.com/MCHQ/Health\\_Facility\\_Regulation/Hospital\\_Outpatient/reports/BA\\_Annual\\_2015\\_Final.pdf](https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Hospital_Outpatient/reports/BA_Annual_2015_Final.pdf) (last visited March 17, 2017).

<sup>28</sup> Section 394.4785(2), F.S.

## Public Defenders

The public defender is elected for a term of four years during a general election by the electors in his or her judicial circuit.<sup>29</sup> The public defender in each judicial circuit may employ, as authorized by the General Appropriations Act, assistant public defenders and other staff needed to fulfill the duties of office.<sup>30</sup>

Under s. 27.51, a public defender must represent, without additional compensation, any person determined to be indigent<sup>31</sup> and:

- Is under arrest for or charged with:
  - A felony;
  - Certain misdemeanors;
  - Certain traffic violations punishable by imprisonment;
  - A violation of a special law or county or municipal ordinance ancillary to a state charge;
- Alleged to be a delinquent child pursuant to a petition filed before the circuit court;
- Sought by petition filed in such court to be
  - Involuntarily placed as a mentally ill person under part I ch. 394, F.S.,
  - Involuntarily committed as a sexually violent predator under part V of ch. 394, F.S., or
  - Involuntarily admitted to residential services as a person with developmental disabilities under ch. 393, F.S.;
- Is convicted or sentenced to death, for purposes of handing an appeal to the Supreme Court; or
- Is appealing a matter for which a public defender may be appointed.

## Remote Hearings

In September 2016, the 2<sup>nd</sup> District Court of Appeal issued a ruling in response to a suit brought by 14 patients in Lee County regarding conducting Baker Act hearings via videoconference. The judge and magistrate presiding over Baker Act hearings in that county had decided they would no longer travel to receiving facilities to hold commitment hearings in person. Instead, the judge and magistrate would remain in the courthouse and hold hearings via videoconference while the patients, witnesses, and attorneys would continue to be physically present at the receiving facility. The 2<sup>nd</sup> DCA ruled that “there is simply no duty ‘clearly and certainly established in the law’ requiring the judicial officer to be in the physical presence of the patient, attorneys, and witnesses while presiding over the hearing” and concluded that it was within the court’s authority to hold Baker Act hearings through videoconferencing. However, the 2<sup>nd</sup> DCA certified as a question of great public importance, “Does a judicial officer have an indisputable legal duty to preside over section 394.467 hearings in person?”<sup>32</sup> In December 2016 the Supreme Court initially refused to grant a stay and thus allowed the hearings to continue. However, in February 2017 the Supreme Court vacated that ruling and instead issued a stay.<sup>33</sup> The Supreme Court indicated it will issue an opinion in the future.

## Effect of Proposed Changes

HB 1183 requires that within 24 hours after a minor arrives at a receiving facility for an involuntary examination under the Baker Act, or is admitted to a crisis stabilization unit or a residential treatment center, the facility must refer the case to the clerk of court for the appointment of a public defender for a

<sup>29</sup> Section 27.50, F.S.

<sup>30</sup> Section 27.53, F.S.

<sup>31</sup> Under s. 27.52, F.S., a person seeking a determination of indigency must file an application with the clerk of courts, detailing income, assets, and all liabilities and debt. A clerk will deem an applicant indigent if his or her family household income is equal to or below 200 percent of the federal poverty guidelines or if the person is receiving certain public financial assistance Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans’ benefits, or Supplemental Security Income (SSI).

<sup>32</sup> Doe v. State, 41 Fla. L. Weekly D2220a (Fla. 2d DCA 2016).

<sup>33</sup> Doe v. State, SC16-1852.



potential judicial review hearing. The attorney representing the child must have access to all records relevant to the child's case. All hearings involving the child must be held in physical presence of the child and may not be conducted by an electronic or video means. A person who fails to comply with the requirements of the bill's provisions commits a misdemeanor of the first degree.<sup>34</sup>

As a receiving facility in most cases has only 72 hours before either releasing an individual, admitting the individual under voluntary status if competent, or filing a petition for involuntary placement, and given that a facility has 24 hours to refer a child to the clerk of court for appointment of a public defender, this leaves only 48 hours for the clerk to make the appointment of a public defender and for the public defender to make contact with the child and request a judicial review hearing prior to the child's release, move to voluntary status, or the facility's filing of a petition for involuntary placement.

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

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 394.4599, F.S.; regarding notice.

**Section 2:** Amends s. 394.4785, F.S.; regarding children and adolescents; admission and placement in mental facilities.

**Section 3:** 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:

The state court system will experience an indeterminate but significant negative fiscal impact associated with the additional duty assigned to public defenders to represent children under the age of 18. In 2015, there were 32,882 children under the age of 18 who were subject to an involuntary examination under the Baker Act.<sup>35</sup>

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

1. Revenues:

None.

2. Expenditures:

None.

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

If review hearings are scheduled in response to any motions by the appointed public defenders, there may be additional costs to facilities to transport minors to review hearings.

**D. FISCAL COMMENTS:**

None.

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<sup>34</sup> A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed 1 year and/or a fine not to exceed \$1,000 (ss. 775.082 and 775.083, F.S.).

<sup>35</sup> *Supra* note 27.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

It is well settled that the interest of parents in the care, custody, and control of their children is perhaps the oldest of the recognized fundamental liberty interests protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.<sup>36</sup> This fundamental liberty interest is rooted in the fundamental right of privacy from interference in making important decisions relating to things such as marriage, family relationships, and child rearing and education.<sup>37</sup> The United States Supreme Court has explained the fundamental nature of this right is rooted in history and tradition:

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.<sup>38</sup>

The Florida Supreme Court has likewise recognized that parents have a fundamental liberty interest in determining the care and upbringing of their children.<sup>39</sup> These rights may not be intruded upon absent a compelling state interest.<sup>40</sup> According to the Florida Supreme Court, when analyzing a statute that infringes on the fundamental right of privacy, the applicable standard of review requires that the statute survive the highest level of scrutiny:

The right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.<sup>41</sup>

When it comes to medical decisions, parents generally have the right to be informed about, and give consent for, proposed medical procedures on their children. However, the State also has an obligation to ensure that children receive reasonable medical treatment that is necessary for the preservation of life.<sup>42</sup> The state's interest diminishes as the severity of an affliction and the likelihood of death increase:

There is a substantial distinction in the State's insistence that human life be saved where the affliction is curable, as opposed to the State interest where . . . the issue is not whether, but when, for how long and at what cost to the individual . . . life may be briefly extended.<sup>43</sup>

<sup>36</sup> *Santosky v. Kramer*, 455 U.S. 745 (1982); *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

<sup>37</sup> See *Carey v. Population Svcs. Int'l*, 431 U.S. 678, 684-685 (1977)

<sup>38</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

<sup>39</sup> *Beagle v. Beagle*, 678 So. 2d 1271

<sup>40</sup> See, e.g., *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So.2d 633, 637 (Fla. 1980) and *Belair v. Drew*, 776 So.2d 1105, 1107 (Fla. 5th DCA 2001).

<sup>41</sup> *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation*, 477 So.2d 544, 547 (Fla. 1985)

<sup>42</sup> *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998).

<sup>43</sup> *M.N. v. S. Baptist Hosp.*, 648 So. 2d 769 (Fla. 1st DCA 1994)

A parent may reject medical treatment for a child and the state may not interfere with such decision if the evidence is not sufficiently compelling to establish the primacy of the state's interest, or that the child's own welfare would be best served by such treatment.<sup>44</sup>

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>44</sup>*Id.*

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A bill to be entitled  
 An act relating to admission of children and  
 adolescents to mental health facilities; amending ss.  
 394.4599 and 394.4785, F.S.; requiring a receiving  
 facility or a mental health treatment facility to  
 refer the case of certain minors admitted to such  
 facility for mental health assessment to the clerk of  
 the court for the appointment of a public defender  
 within a specified timeframe; granting access to  
 pertinent records to the minor's attorney; requiring  
 hearings involving children under a specified age to  
 be conducted in the physical presence of the child;  
 providing penalties; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section  
 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(2) INVOLUNTARY ADMISSION.—

(c)1.a. A receiving facility shall give notice of the  
 whereabouts of a minor who is being involuntarily held for  
 examination pursuant to s. 394.463 to the minor's parent,  
 guardian, caregiver, or guardian advocate, in person or by  
 telephone or other form of electronic communication, immediately

26 after the minor's arrival at the facility. The facility may  
 27 delay notification for no more than 24 hours after the minor's  
 28 arrival if the facility has submitted a report to the central  
 29 abuse hotline, pursuant to s. 39.201, based upon knowledge or  
 30 suspicion of abuse, abandonment, or neglect and if the facility  
 31 deems a delay in notification to be in the minor's best  
 32 interest.

33 b. If the minor is under the age of 18, the receiving  
 34 facility shall refer the case to the clerk of the court for the  
 35 appointment of a public defender within the first 24 hours after  
 36 the minor's arrival for potential initiation of a judicial  
 37 review hearing. An attorney who represents the minor shall have  
 38 access to all records relevant to the presentation of the  
 39 minor's case. All hearings involving children under the age of  
 40 18 shall be conducted in the physical presence of the child and  
 41 not by electronic or video means. A person who violates this  
 42 sub-subparagraph commits a misdemeanor of the first degree,  
 43 punishable as provided in s. 775.082 or s. 775.083.

44 2. The receiving facility shall attempt to notify the  
 45 minor's parent, guardian, caregiver, or guardian advocate until  
 46 the receiving facility receives confirmation from the parent,  
 47 guardian, caregiver, or guardian advocate, verbally, by  
 48 telephone or other form of electronic communication, or by  
 49 recorded message, that notification has been received. Attempts  
 50 to notify the parent, guardian, caregiver, or guardian advocate

51 must be repeated at least once every hour during the first 12  
 52 hours after the minor's arrival and once every 24 hours  
 53 thereafter and must continue until such confirmation is  
 54 received, unless the minor is released at the end of the 72-hour  
 55 examination period, or until a petition for involuntary services  
 56 is filed with the court pursuant to s. 394.463(2)(g). The  
 57 receiving facility may seek assistance from a law enforcement  
 58 agency to notify the minor's parent, guardian, caregiver, or  
 59 guardian advocate if the facility has not received within the  
 60 first 24 hours after the minor's arrival a confirmation by the  
 61 parent, guardian, caregiver, or guardian advocate that  
 62 notification has been received. The receiving facility must  
 63 document notification attempts in the minor's clinical record.

64 Section 2. Section 394.4785, Florida Statutes, is amended  
 65 to read:

66 394.4785 Children and Adolescents; admission and placement  
 67 in mental health facilities.—

68 (1) A child or adolescent as defined in s. 394.492 may not  
 69 be admitted to a state-owned or state-operated mental health  
 70 treatment facility. A child may be admitted pursuant to s.  
 71 394.4625 or s. 394.467 to a crisis stabilization unit or a  
 72 residential treatment center licensed under this chapter or a  
 73 hospital licensed under chapter 395. The treatment center, unit,  
 74 or hospital must provide the least restrictive available  
 75 treatment that is appropriate to the individual needs of the

76 child or adolescent and must adhere to the guiding principles,  
 77 system of care, and service planning provisions contained in  
 78 part III of this chapter.

79 (2) A person under the age of 14 who is admitted to any  
 80 hospital licensed pursuant to chapter 395 may not be admitted to  
 81 a bed in a room or ward with an adult patient in a mental health  
 82 unit or share common areas with an adult patient in a mental  
 83 health unit. However, a person 14 years of age or older may be  
 84 admitted to a bed in a room or ward in the mental health unit  
 85 with an adult if the admitting physician documents in the case  
 86 record that such placement is medically indicated or for reasons  
 87 of safety. Such placement shall be reviewed by the attending  
 88 physician or a designee or on-call physician each day and  
 89 documented in the case record.

90 (3) Within 24 hours after a person under the age of 18 is  
 91 admitted to a crisis stabilization unit or a residential  
 92 treatment center licensed under this chapter or a hospital  
 93 licensed under chapter 395, the facility administrator must  
 94 refer the case to the clerk of the court for the appointment of  
 95 a the public defender for potential initiation of a judicial  
 96 review hearing. An attorney who represents the minor shall have  
 97 access to all records relevant to the presentation of the  
 98 minor's case. All hearings involving children under the age of  
 99 18 shall be conducted in the physical presence of the child and  
 100 not by electronic or video means. A person who violates this

HB 1183

2017

101 | subsection commits a misdemeanor of the first degree, punishable  
102 | as provided in s. 775.082 or s. 775.083.

103 | Section 3. 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 \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Children, Families &  
 2 Seniors Subcommittee  
 3 Representative Silvers offered the following:  
 4

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

7 Section 1. Paragraphs (f), (g), and (h) of subsection (2)  
 8 of section 394.463, Florida Statutes, are amended to read:

9 394.463 Involuntary examination.-

10 (2) INVOLUNTARY EXAMINATION.-

11 (f) A patient shall be examined by a physician or a  
 12 clinical psychologist, or by a psychiatric nurse performing  
 13 within the framework of an established protocol with a  
 14 psychiatrist at a facility without unnecessary delay to  
 15 determine if the criteria for involuntary services are met.

16 However, if the patient is 10 years of age or younger, the



Amendment No.

17 examination must be initiated within 12 hours of arrival at the  
18 facility and completed within 24 hours of arrival at the  
19 facility. Emergency treatment may be provided upon the order of  
20 a physician if the physician determines that such treatment is  
21 necessary for the safety of the patient or others. The patient  
22 may not be released by the receiving facility or its contractor  
23 without the documented approval of a psychiatrist or a clinical  
24 psychologist or, if the receiving facility is owned or operated  
25 by a hospital or health system, the release may also be approved  
26 by a psychiatric nurse performing within the framework of an  
27 established protocol with a psychiatrist, or an attending  
28 emergency department physician with experience in the diagnosis  
29 and treatment of mental illness after completion of an  
30 involuntary examination pursuant to this subsection. A  
31 psychiatric nurse may not approve the release of a patient if  
32 the involuntary examination was initiated by a psychiatrist  
33 unless the release is approved by the initiating psychiatrist.

34 (g) Within the 72-hour examination period or 24-hour  
35 examination period for a patient that is 10 years of age or  
36 younger, or if the examination period ~~72-hours~~ ends on a weekend  
37 or holiday, no later than the next working day thereafter, one  
38 of the following actions must be taken, based on the individual  
39 needs of the patient:

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Amendment No.

40 1. The patient shall be released, unless he or she is  
41 charged with a crime, in which case the patient shall be  
42 returned to the custody of a law enforcement officer;

43 2. The patient shall be released, subject to the  
44 provisions of subparagraph 1., for voluntary outpatient  
45 treatment;

46 3. The patient, unless he or she is charged with a crime,  
47 shall be asked to give express and informed consent to placement  
48 as a voluntary patient and, if such consent is given, the  
49 patient shall be admitted as a voluntary patient; or

50 4. A petition for involuntary services shall be filed in  
51 the circuit court if inpatient treatment is deemed necessary or  
52 with the criminal county court, as defined in s. 394.4655(1), as  
53 applicable. When inpatient treatment is deemed necessary, the  
54 least restrictive treatment consistent with the optimum  
55 improvement of the patient's condition shall be made available.  
56 When a petition is to be filed for involuntary outpatient  
57 placement, it shall be filed by one of the petitioners specified  
58 in s. 394.4655(4)(a). A petition for involuntary inpatient  
59 placement shall be filed by the facility administrator.

60 (h) A person for whom an involuntary examination has been  
61 initiated who is being evaluated or treated at a hospital for an  
62 emergency medical condition specified in s. 395.002 must be  
63 examined by a facility within 72 hours, or 24 hours if the  
64 patient is 10 years of age or younger. The examination 72-hour

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65 period begins when the patient arrives at the hospital and  
66 ceases when the attending physician documents that the patient  
67 has an emergency medical condition. If the patient is examined  
68 at a hospital providing emergency medical services by a  
69 professional qualified to perform an involuntary examination and  
70 is found as a result of that examination not to meet the  
71 criteria for involuntary outpatient services pursuant to s.  
72 394.4655(2) or involuntary inpatient placement pursuant to s.  
73 394.467(1), the patient may be offered voluntary services or  
74 placement, if appropriate, or released directly from the  
75 hospital providing emergency medical services. The finding by  
76 the professional that the patient has been examined and does not  
77 meet the criteria for involuntary inpatient services or  
78 involuntary outpatient placement must be entered into the  
79 patient's clinical record. This paragraph is not intended to  
80 prevent a hospital providing emergency medical services from  
81 appropriately transferring a patient to another hospital before  
82 stabilization if the requirements of s. 395.1041(3)(c) have been  
83 met.

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

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

88 Remove lines 3-13 and insert:



Amendment No.

89 adolescents to mental health facilities; amending s. 394.463;  
90 requiring facility to initiate an involuntary examination of a  
91 patient who is 10 years of age or younger within 12 hours of  
92 arrival; requiring a facility to complete an examination of a  
93 patient 10 years of age or younger within 24 hours of  
94 examination; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1383 Human Trafficking  
**SPONSOR(S):** Nuñez  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 852

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

### SUMMARY ANALYSIS

Human trafficking is a form of modern-day slavery affecting young children, teenagers, and adults who are subjected to force, fraud, or coercion for sexual exploitation or forced labor. An estimated 300,000 children in the United States are at risk for commercial sexual exploitation (CSE).

The Department of Children and Families (DCF) is responsible for the child welfare needs of child human trafficking victims, including child CSE victims. In cases in which a child is alleged, suspected, or known to have been sexually exploited, DCF and community-based care lead agencies conduct multidisciplinary staffing to assess the services available to victims. DCF then provides services to CSE victims found to be dependent, including, in some instances, placing the child in a specialized residential program, such as a safe house or a safe foster home.

HB 1383 defines "commercial sexual exploitation" to mean the use of any person under the age of 18 for sexual purposes in exchange for, or promise of money, goods, or services and substitutes this term for the existing term "sexual exploitation."

The bill also revises procedures for conducting a multidisciplinary staffing for alleged or verified victims of CSE. It requires that the multidisciplinary staffing develop a service plan for all children suspected or verified as CSE victims, not just those who are dependent children. For CSE victims who are not involved in the child welfare system, the bill requires a voluntary service plan to be developed and provided to the family. DCF or the sheriff's offices conducting child protective investigations must follow up with all verified CSE victims, not just those who are dependent, within six months to determine if the child received services, if these services assisted the child and his or her family, and whether the child has been victimized again.

The bill changes the date of the annual report by DCF on commercial sex trafficking of minors from December 1st of each year to October 1st.

The bill adds the crime of human trafficking involving commercial sexual activity to the list of crimes where the defendant's confession is admissible during specified situations in trial, without the state proving the fact that a crime has actually been committed, and prohibits the court from granting nonmonetary pretrial release at first appearance for human trafficking crimes.

The bill will have an insignificant negative fiscal impact on DCF and the six sheriff's offices that conduct child protective services through a contract with DCF.

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

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

STORAGE NAME: h1383.CFS

DATE: 3/18/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Human Trafficking

Human trafficking is a form of modern-day slavery affecting young children, teenagers, and adults, who are subjected to force, fraud, or coercion for sexual exploitation or forced labor.<sup>1</sup> In 2004, the Florida Legislature criminalized human trafficking and unlawfully obtaining labor or services.<sup>2</sup> Florida statute defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person."<sup>3</sup> Under current law, any person who knowingly engages in human trafficking commits a first-degree felony.<sup>4</sup>

##### *Commercial Sexual Exploitation*

Commercial sexual exploitation is a form of human trafficking; commercial sex acts include, but are not limited to, prostitution and pornography as a means for the perpetrator to make money.<sup>5</sup> Both adults and children can be victims of these acts.<sup>6</sup> The U.S. Department of Justice estimates that as many as 300,000 children in the United States are at risk for commercial sexual exploitation.<sup>7</sup>

In cases of commercial sex trafficking of minors, pimps often operate as the primary domestic sex traffickers and target particularly vulnerable youth, such as runaway and homeless youth.<sup>8</sup> Pimps may engage in a "grooming" process where a child is showered with gifts, treats, and compliments in order to earn his or her trust.<sup>9</sup> Often the children have low self-esteem and may come from broken families or have past childhood trauma which may include sexual or physical abuse.<sup>10</sup> This makes the children easier targets because they are emotionally vulnerable, looking for someone to love and care for them. After the pimp earns the child's trust, the pimp may engage in physical, sexual, and emotional abuse of the child.<sup>11</sup> The effect is to psychologically and emotionally break the child so that he or she becomes completely dependent on the pimp.<sup>12</sup> Psychologists and clinicians call this phenomenon "traumatic bonding."<sup>13</sup> This occurs where a person has dysfunctional attachment that occurs in the presence of danger, shame, or exploitation. These situations often include seduction, deception, or betrayal, and some form of danger or risk is always present.<sup>14</sup> While this is a common way that commercial sexual exploitation occurs, some children are commercially sexually exploited by family members or organized networks.<sup>15</sup>

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<sup>1</sup> Id.

<sup>2</sup> S. 787.06, F.S.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> The federal Trafficking Victims Protection Act defines "commercial sex act" as any sex act on account of which anything of value is given to or received by any person. 22 U.S.C. s. 7102(4).

<sup>6</sup> S. 787.06, F.S.

<sup>7</sup> U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (Dec. 2011), [http://ojp.gov/newsroom/factsheets/ojpfs\\_humantrafficking.html](http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html) (last visited March 16, 2017).

<sup>8</sup> The Polaris Project, *Sex Trafficking of Children in the United States*, available at: <http://www.polarisproject.org/what-we-do/policy-advocacy/prosecuting-traffickers/895-sex-trafficking-of-minors> (last accessed March 17, 2017).

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.



## *Forced Labor*

Forced labor occurs when an individual knowingly provides or obtains the labor or services of a person by means of:

- Force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
- Serious harm or threats of serious harm to that person or another person;
- Abuse or threatened abuse of law or legal process; or
- Any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.<sup>16</sup>

Forced labor can exist in domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.<sup>17</sup>

## Department of Children and Families

### *Child Welfare System*

Chapter 39, F.S., creates Florida's child welfare system that aims to protect children and prevent abuse, abandonment, and neglect.<sup>18</sup> The Department of Children and Families (DCF) Office of Child Welfare works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children. DCF's practice model is based on preserving and strengthening the child's family ties whenever possible, removing the child from his or her home only when his or her welfare and safety cannot be adequately safeguarded otherwise.<sup>19</sup>

The Florida Abuse Hotline serves as the central reporting center for allegations of abuse, neglect, and exploitation for all children in Florida, including allegations of human trafficking. A child protective investigation begins with a report by any person to the hotline. When a call is received by the hotline, an investigation is opened, with the report of maltreatment being sent out to a child protective investigator (CPI) to investigate. CPIs must respond to all reports accepted by the Florida Abuse Hotline within 24 hours; however, some reports must be responded to as soon as possible but no later than four hours after received.<sup>20</sup>

CPIs are most commonly DCF employees, but in six counties, the local sheriff performs the investigative function.<sup>21</sup> The DCF child protective services are delivered through six regional offices, using approximately 1,300 investigators and 300 supervisors.<sup>22</sup> The sheriff's offices employ 387 CPIs and 70 supervisors. CPIs assess the immediate and overall safety of children as well as the risk of future maltreatment.<sup>23</sup> When a child is determined to be unsafe, CPIs initially consider the implementation of an in-home safety plan and the initiation of in-home services to protect the child and

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<sup>16</sup> 18 U.S.C. s. 1589

<sup>17</sup> S. 787.06, F.S.

<sup>18</sup> S. 39.001(8), F.S.

<sup>19</sup> S. 39.001(4), F.S.

<sup>20</sup> Rule 65C-30, F.A.C.

<sup>21</sup> As authorized under s. 39.3065, F.S., and the General Appropriations Act, sheriffs in Broward, Hillsborough, Manatee, Pasco, Pinellas and Seminole counties investigate child abuse and neglect reported to the abuse hotline rather than the DCF.

<sup>22</sup> Department of Children and Families, *Child Protective Investigator and Child Protective Investigator Supervisor Educational Qualifications, Turnover, and Working Conditions Status Report*, (Oct. 2016), available at, <http://www.dcf.state.fl.us/programs/childwelfare/docs/2016LMRs/CPI%20CPI%20Supv%20Workforce%20Report.pdf> (last visited March 18, 2017).

<sup>23</sup> *Id.*

stabilize the family.<sup>24</sup> In the most serious situations, CPs remove the child from the home and place the child with another parent, relative, or non-relative or in licensed shelter care.<sup>25</sup>

When child welfare necessitates that DCF remove a child from his or her home, a series of dependency court proceedings must occur to adjudicate the child dependent and place him or her in out-of-home care; throughout this process, multiple child welfare stakeholders, including case managers, Guardians ad Litem, service providers, and the court monitor a child's well-being and safety.

For children in the child welfare system, DCF must develop a case plan with input from all parties to the dependency case that details the problems being addressed as well as the goals, tasks, services, and responsibilities required to ameliorate the concerns of the state.<sup>26</sup> The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights.<sup>27</sup> Once a child is found dependent, a judge reviews the case plan, and if the judge accepts the case plan as drafted, orders the case plan to be followed.<sup>28</sup> Section 39.6011, F.S., details the development of the case plan and who must be involved, such as the parent, guardian ad litem, and if appropriate, the child. This section also details what must be in the case plan, such as descriptions of the identified problems, the permanency goal, timelines, and notice requirements.

#### *Prevalence of Child Sexual Exploitation in Florida*

It is difficult to obtain an accurate count of commercial sexual exploitation (CSE) victims who are children because these victims are not readily identifiable.<sup>29</sup> CSE victims do not have immediately recognizable characteristics, many do not have identification, and they are often physically or psychologically controlled by adult traffickers, as such they rarely disclose or provide information on exploitation.<sup>30</sup>

A "sexually exploited child"<sup>31</sup> is a child who has suffered sexual exploitation as defined in s. 39.01(70)(g), F.S.,<sup>32</sup> and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act.<sup>33</sup> For calendar year (CY) 2015, DCF verified 264 child victims of CSE from 1,279 reports alleging CSE made to the hotline.<sup>34</sup> CPs investigated 889 (or 70 percent) of those reports. DCF hotline staff did not refer cases for investigation if the allegation did not rise to the level of reasonable, there were no means to locate the victim, or the alleged perpetrator was not the child's caregiver.<sup>35</sup> Of the reports that were referred for investigation, most came from the Department of Juvenile Justice (DJJ), the Department of Corrections, or criminal justice personnel and law enforcement.<sup>36</sup> At the time

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<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Ss, 39.6011 and 39.6012, F.S.

<sup>27</sup> S. 39.01(11), F.S.

<sup>28</sup> S. 39.521, F.S.

<sup>29</sup> The Florida Legislature Office of Program Policy Analysis & Government Accountability, *Placement Challenges Persist for Child Victims of Commercial Sexual Exploitation; Questions Regarding Effective Interventions and Outcomes Remain*, (Jul. 2016), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1604rpt.pdf> (last visited February 2, 2017).

<sup>30</sup> Id.

<sup>31</sup> S. 409.1678(1)(c), F.S.,

<sup>32</sup> S. 39.01(70)(g), F.S., provides the definition for sexual abuse of a child, which includes, sexual exploitation of a child, defined as the act of a child offering to engage in or engaging in prostitution, or the act of allowing, encouraging, or forcing a child to solicit for or engage in prostitution; engage in a sexual performance, as defined by chapter 827; or participate in the trade of human trafficking as provided in s. 787.06(3)(g), F.S.

<sup>33</sup> 22 U.S.C. ss. 7101 et seq. The Act provides services to victims who have been trafficked from foreign countries.

<sup>34</sup> Id. To estimate the number of allegations and subsequently verified CSE cases, we relied on DCF's Florida Safe Families Network data on hotline intakes and child protective investigations during CY 2015.

<sup>35</sup> Id. The 10% of cases screened out based on caregiver status were screened out in error. For typical child welfare cases, the caregiver must be the alleged perpetrator for the report to be referred for a child protective investigation. DCF recently updated its operating procedures to specify that hotline staff should no longer screen out reports alleging CSE where the alleged perpetrator is not a caregiver.

<sup>36</sup> Id.

of the DCF investigation, 71 verified CSE children were in out-of-home care, including the care of relatives or in foster homes, residential group care, or residential treatment centers.<sup>37</sup>

The number of verified CSE cases increased from 170 for the period July 2013 through December 2014 to 264 in CY 2015; however, this increase may have resulted from improvements in DCF data quality, improved surveillance, or increased public awareness, rather than an increase in human trafficking victims.<sup>38</sup>

### *Services for Human Trafficking Victims*

DCF is responsible for the child welfare needs of human trafficking victims.<sup>39</sup> To work toward ensuring that services needed by CSE victims are available in each community, each DCF region and each community-based care lead agency must jointly assess local service capacity to meet the specialized service needs of sexually exploited children and establish a plan to develop the necessary capacity.<sup>40</sup>

In cases in which a child is alleged, suspected, or known to have been sexually exploited, DCF and community-based care lead agencies conduct multidisciplinary staffings in order to begin the process of providing services.<sup>41</sup> The staffing includes local experts in child protection, child welfare, medical professionals, and law enforcement to assess the needs of the child and determine whether the child needs to be placed and served in a specialized residential program, such as a safe house or a safe foster home.<sup>42</sup>

However, DCF does not track a child's progress, beyond the initial staffing, if the child is not part of the child welfare system. In CY 2015, total of 141 CSE children were not involved in the child welfare system beyond their investigation; as a result, these children were not offered placements or CSE services.<sup>43</sup>

### *Safe Houses and Safe Foster Homes*

A safe house is a group residential placement certified by DCF to care for sexually exploited children,<sup>44</sup> while a safe foster home is a foster home that has been certified by DCF to care for sexually exploited children.<sup>45</sup> Statute outlines a certification process to ensure that these specialized homes provide the environment and services most conducive to a victim's recovery. To be certified, a safe home or safe foster home must provide certain services, including:

- Victim-witness counseling;
- Family counseling;
- Behavioral health care;
- Treatment and intervention for sexual assault;
- Education tailored to the child's individual needs, including remedial education if necessary;
- Life skills training;
- Mentoring by a survivor of sexual exploitation, if available and appropriate for the child;

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<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> S. 409.996, F.S.

<sup>40</sup> Each region of the Department and each community-based care lead agency must establish local protocols and procedures for working with sexually exploited children which are responsive to the individual circumstances of each child. The protocols and procedures shall take into account the varying types and levels of trauma endured; whether the sexual exploitation is actively occurring, occurred in the past, or is inactive but likely to recur; and the differing community resources and degrees of familial support that are available. Child protective investigators and case managers must use these protocols and procedures when working with a sexually exploited child. S. 409.1754(2), F.S.

<sup>41</sup> S. 409.1754(2), F.S.

<sup>42</sup> S. 39.524, F.S.

<sup>43</sup> *Supra*, note 29.

<sup>44</sup> S. 409.1678(1)(b), F.S.

<sup>45</sup> S. 409.1678(1)(a), F.S.

- Substance abuse screening and, when necessary, access to treatment;
- Planning services for the successful transition of each child back to the community; and
- Activities structured in a manner that provides child victims of sexual exploitation with a full schedule.<sup>46</sup>

By December 1 of each year, DCF must report to the Legislature on the placement of children in safe houses and safe foster homes, including:

- The criteria used to determine the placement of children;
- The number of children who were evaluated for placement;
- The number of children who were placed based upon the evaluation; and
- The number of children who were not placed.<sup>47</sup>

In addition, DCF must also include in the report data on the number of children who were referred to a safe house or safe foster home for whom placement was unavailable and information about the counties in which such placement was unavailable.

In the most recent report, for federal fiscal year (FFY) 2015-16, four safe houses were available with a total of 20 beds, all serving only females.<sup>48</sup> Additionally, there were two residential campus settings that have specialized CSE treatment for child victims of commercial sexual exploitation which were able to serve female, male, and transgender children.<sup>49</sup> However, the number of beds available on these campuses fluctuates based on the total number of residents in all programs offered.<sup>50</sup>

There were also 15 safe foster home beds available in one program in Miami-Dade County.<sup>51</sup> Additionally, there is one safe foster home bed available in the Central Region, which will be able to serve a male, female or transgender child.<sup>52</sup>

All specialized placements, at this time, exist in DCF's Central, Suncoast, Southeast and Southern Regions. No CSE programs exist in that department's Northeast or Northwest Regions.<sup>53</sup>

### Shared Hope International

Shared Hope International is a nonprofit organization dedicated to restoring and bringing justice to sex trafficking victims. The organization's Protected Innocence Challenge, a comprehensive study of state laws on child sex trafficking, provides each state with practical recommendations for improvement.<sup>54</sup> Under the Challenge, the organization creates an annual Report Card grading each state on key legislative components that Shared Hope International believes must be addressed in a state's laws in order to effectively respond to the crime of domestic minor sex trafficking (or CSE):

- Criminalization of domestic minor sex trafficking;
- Criminal provisions addressing demand;
- Criminal provisions for traffickers;
- Protective provisions for the child victims;

<sup>46</sup> S. 409.1678(2), F.S.

<sup>47</sup> S. 39.524(3)(a), F.S.

<sup>48</sup> Florida Department of Children and Families, *Annual Human Trafficking Report 2015-2016 Federal Fiscal Year*, (Dec. 2016), available at, [http://www.dcf.state.fl.us/programs/childwelfare/docs/2016LMRs/S16-007444\\_LMR%20Human%20Trafficking.pdf](http://www.dcf.state.fl.us/programs/childwelfare/docs/2016LMRs/S16-007444_LMR%20Human%20Trafficking.pdf) (last visited March 18, 2017).

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> Shared Hope International, *2016 State Report Cards – Protected Innocence Challenge*, <https://sharedhope.org/what-we-do/bring-justice/reportcards/2016-reportcards/> (last visited March, 16, 2017).

- Criminal provisions for facilitators;
- Criminal justice tools for investigation and prosecution.<sup>55</sup>

In 2015, Florida received a grade of “B” and a final score of 86.5 out of 100.<sup>56</sup> In 2016, Shared Hope International found that Florida improved in the area of protective provisions for child victims, bringing the state up to a score of 94 and a final grade of “A.”<sup>57</sup>

### Annual Study of CSE Children

The Office of Program Policy Analysis & Government Accountability (OPPAGA) conducts an annual study on CSE of children in Florida as required by law.<sup>58</sup> The most recent report found there were 1,279 reports of human trafficking made to the Florida Abuse Hotline in 2015 in comparison to the 170 identified in their 2014 report.<sup>59</sup> In their follow-up of CSE victims identified in their 2014 report, OPPAGA found that many had since been re-victimized, involved with the criminal justice system, or only attended school intermittently.<sup>60</sup>

DCF has been working towards identifying appropriate outcomes for CSE child victims and has been doing so through an independent evaluation of one program for CSE children. However, OPPAGA is concerned that the results might not be generalizable to other CSE children.<sup>61</sup>

### **Effect of Proposed Changes**

#### Commercial Sexual Exploitation

Current law uses the term “sexual exploitation,” and “sexually exploited child” relating to sexual abuse. The term “commercial sexual exploitation” emphasizes the fact that sex is exchanged for money, goods, or services. The bill defines “commercial sexual exploitation” to mean the use of any person under the age of 18 for sexual purposes in exchange for, or promise of money, goods, or services and deletes use of the term “sexually exploited child” in several statutes relating to serving children who are victims of commercial sexual exploitation. This new term better defines the victims served by DCF, sheriff’s offices conducting child abuse investigations, and community-based care agencies.

#### Multidisciplinary Staffing

HB 1383 revises procedures for conducting a multidisciplinary staffing for alleged or verified victims of CSE, who are not eligible for relief or benefits under the federal Trafficking Victims Protection Act. The bill requires that the multidisciplinary staffing process include development of a service plan for any child victims suspected or verified as a victim of CSE, not just for dependent children. The bill directs DCF to update the case plan required under ch 39, F.S., for dependent children who are alleged or verified victims of commercial sexual exploitation.

For CSE victims that are not part of the child welfare system, the bill requires DCF or the sheriff’s office to provide a service plan to the victim’s family or legal guardian. Services provided in the service plan must be in the least restrictive environment. The bill identifies types of services that may be included in the service plan, including:

- Emergency shelter and runaway center services;

<sup>55</sup> Id.

<sup>56</sup> Shared Hope International, *Florida Report Card 2015*, available at [http://sharedhope.org/PICframe5/reportcards/PIC\\_RC\\_2015\\_FL.pdf](http://sharedhope.org/PICframe5/reportcards/PIC_RC_2015_FL.pdf) (last visited March 16, 2017).

<sup>57</sup> Id.

<sup>58</sup> S. 409.16791, F.S.

<sup>59</sup> *Supra*, note 29.

<sup>60</sup> Id.

<sup>61</sup> Id.

- Outpatient individual or group counseling for the victim and the victim's family or legal guardian;
- Substance use disorder treatment services;
- Drop-in centers or mentoring programs;
- Commercial sexual exploitation treatment programs;
- Child advocacy center services pursuant to s. 39.3035;
- Prevention services such as those provided by the Florida Network of Youth and Family Services and the PACE Center for Girls;
- Family foster care;
- Therapeutic foster care;
- Safe houses or safe foster homes;
- Residential treatment programs; and
- Employment or workforce training.

Compliance with the service plan is voluntary for CSE victims who have not been adjudicated dependent and are not part of the child welfare system.

#### Post-Staffing Follow Up

The bill requires DCF or the sheriff's office to follow up with all verified victims of commercial sexual exploitation, not just victims who are dependent, within six months to determine:

- Whether a referral was made for the services recommended in the service plan;
- Whether the services were received, and if not, why;
- Whether the services or treatments were completed and if not, why;
- Whether the victim has experienced CSE since the verified report;
- Whether the victim has run away since the verified report;
- The type and number of placements, if applicable;
- The educational status of the child;
- The employment status of the child; and
- Whether the child has been involved in the juvenile or criminal justice system.

Follow up for nondependent victims and their families is voluntary, and neither the victim nor his or her family or legal guardian is required to respond.

#### Annual Reporting Requirements

The bill changes the date of the annual report by DCF on commercial sex trafficking of minors from December 1st of each year to October 1st. Most of the state's child welfare reports are due October 1st of each year to allow the Legislature to consider the reports prior to the Legislative Session.

The bill requires DCF, with information from sheriff's offices conducting child abuse investigations and community-based care agencies, to report on the prevalence of exploitation in Florida, specialized services, local services, and the DCF's response to the recommendations from the annual report by the OPPAGA on commercial sexual exploitation of children.<sup>62</sup> DCF is required to maintain data specifying the number of children who were:

- Verified victims of commercial sexual exploitation.
- Referred to nonresidential services in the community.
- Placed in a safe house or safe foster home.
- Referred to a safe house or safe foster home for whom placement was unavailable.

<sup>62</sup> The report by OPPAGA is required each year pursuant to s. 409.16791, F.S.  
**STORAGE NAME:** h1383.CFS  
**DATE:** 3/18/2017

DCF must also identify which counties did not have the available placement in a safe house or safe foster home.

### Criminal Provisions

The bill adds the crime of human trafficking involving commercial sexual activity, s. 787.06(3), F.S., to the list of crimes where the defendant's confession is admissible during specified situations in trial, without the state proving the fact a crime has actually been committed. This could improve prosecution of persons engaged in commercial sexual exploitation of children.

It also amends s. 907.041, F.S., relating to pretrial detention, to add human trafficking to the list of crimes considered dangerous and for which the court may not grant nonmonetary pretrial release at first appearance.

The bill provides the bill is effective October 1, 2017.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 39.524, F.S., relating to safe harbor placement.

**Section 2:** Amends s. 92.565, F.S., relating to admissibility of confession in sexual abuse cases.

**Section 3:** Amends s. 409.016, F.S., relating to definitions.

**Section 4:** Amends s. 409.1678, F.S., relating specialized residential options of children who are victims of commercial sexual exploitation.

**Section 5:** Amends s. 409.1754, F.S.; relating to commercial sexual exploitation of children; screening and assessment; training; multidisciplinary staffings; service plans.

**Section 6:** Amends s. 907.041, F.S., relating to pretrial detention and release.

**Section 7:** Reenacts s. 790.065(2)(c), F.S., relating to the sale and delivery of firearms.

**Section 8:** Provides an effective date of October 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

The requirement for DCF to develop a service plan at the multidisciplinary staffings for all verified victims of commercial sex trafficking can be absorbed within existing resources.<sup>63</sup> The requirement for DCF to follow up with all victims of commercial sex trafficking within six months of a confirmed case can also be absorbed within existing resources.<sup>64</sup> DCF estimates a cost of \$11,000 to \$27,500 to make changes to the Florida Safe Families Network to collect new data required by the bill.<sup>65</sup>

<sup>63</sup> Department of Children and Families, Agency Analysis 2017 HB 1383, February 15, 2017, (on file with Children Families and Seniors Subcommittee staff).

<sup>64</sup> Id.

<sup>65</sup> Id.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Sheriff's offices in six counties conduct child protective services instead of DCF by law and through a contract with the DCF.<sup>66</sup> Under current law, these sheriff's offices must conduct multidisciplinary staffings along with the local community-based care agency. Sheriff's offices could see an increase in costs to prepare a service plan for victims and for following up with victims who are not dependent; however, the cost is not expected to be significant.<sup>67</sup>

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires the six sheriff's offices that have the contracted responsibility for conducting child abuse investigations to provide a service plan to and follow up with all verified victims; however, an exemption may apply due to its insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>66</sup> S. 39.3065, F.S.

<sup>67</sup> *Supra*, note **Error! Bookmark not defined.**





26 requiring a service plan for all victims of child  
 27 commercial sexual exploitation; requiring the  
 28 department or sheriff's office to follow up on all  
 29 victims of child commercial sexual exploitation within  
 30 a specified timeframe; amending s. 907.041, F.S.;

31 adding human trafficking to the list of crimes  
 32 requiring pretrial detention of the defendant;  
 33 reenacting s. 790.065(2)(c), F.S., relating to the  
 34 sale and delivery of firearms to incorporate the  
 35 amendment made to s. 907.041, F.S., in a reference  
 36 thereto; providing an effective date.

37

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

39

40 Section 1. Section 39.524, Florida Statutes, is amended to  
 41 read:

42 39.524 Safe-harbor placement.—

43 (1) Except as provided in s. 39.407 or s. 985.801, a  
 44 dependent child 6 years of age or older who is suspected of  
 45 being or has been found to be a victim of commercial sexual  
 46 exploitation as defined in s. 409.016 ~~s. 39.01(70)(g)~~ must be  
 47 assessed, and the department or a sheriff's office acting under  
 48 s. 39.3065 must conduct a multidisciplinary staffing pursuant to  
 49 s. 409.1754(2), to determine the child's need for services and  
 50 his or her need for placement in a safe house or safe foster

51 home as provided in s. 409.1678 using the initial screening and  
 52 assessment instruments provided in s. 409.1754(1). If such  
 53 placement is determined to be appropriate for the child as a  
 54 result of this assessment, the child may be placed in a safe  
 55 house or safe foster home, if one is available. However, the  
 56 child may be placed in another setting, if the other setting is  
 57 more appropriate to the child's needs or if a safe house or safe  
 58 foster home is unavailable, as long as the child's behaviors are  
 59 managed so as not to endanger other children served in that  
 60 setting.

61 (2) The results of the assessment described in s.  
 62 409.1754(1), the multidisciplinary staffing described in s.  
 63 409.1754(2), and the actions taken as a result of the assessment  
 64 must be included in the disposition hearing or next judicial  
 65 review of the child. At each subsequent judicial review, the  
 66 court must be advised in writing of the status of the child's  
 67 placement, with special reference regarding the stability of the  
 68 placement, any specialized services, and the permanency planning  
 69 for the child.

70 (3) (a) By October ~~December~~ 1 of each year, the department,  
 71 with information from community-based care agencies and certain  
 72 sheriff's offices acting under s. 39.3065, shall report to the  
 73 Legislature on the prevalence of child commercial sexual  
 74 exploitation; the specialized services provided and placement of  
 75 such children; the local service capacity assessed pursuant to

76 s. 409.1754; the placement of children in safe houses and safe  
 77 foster homes during the year, including the criteria used to  
 78 determine the placement of children;~~;~~ the number of children who  
 79 were evaluated for placement;~~;~~ the number of children who were  
 80 placed based upon the evaluation;~~;~~~~and~~ the number of children  
 81 who were not placed; and the department's response to the  
 82 findings and recommendations made by the Office of Program  
 83 Policy Analysis and Government Accountability in its annual  
 84 study on commercial sexual exploitation of children, as required  
 85 by s. 8 of chapter 2014-161, Laws of Florida.

86 (b) The department shall maintain data specifying the  
 87 number of children who were verified as victims of commercial  
 88 sexual exploitation, who were referred to nonresidential  
 89 services in the community, who were placed in a safe house or  
 90 safe foster home, and who were referred to a safe house or safe  
 91 foster home for whom placement was unavailable, and shall  
 92 identify the counties in which such placement was unavailable.  
 93 The department shall include this data in its report under this  
 94 subsection so that the Legislature may consider this information  
 95 in developing the General Appropriations Act.

96 Section 2. Subsection (2) of section 92.565, Florida  
 97 Statutes, is amended to read:

98 92.565 Admissibility of confession in sexual abuse cases.—

99 (2) In any criminal action in which the defendant is  
 100 charged with a crime against a victim under s. 787.06(3),

101 involving commercial sexual activity; s. 794.011; s. 794.05; s.  
 102 800.04; s. 826.04; s. 827.03, involving sexual abuse; s. 827.04,  
 103 involving sexual abuse; s. 827.071; or s. 847.0135(5), or any  
 104 other crime involving sexual abuse of another, or with any  
 105 attempt, solicitation, or conspiracy to commit any of these  
 106 crimes, the defendant's memorialized confession or admission is  
 107 admissible during trial without the state having to prove a  
 108 corpus delicti of the crime if the court finds in a hearing  
 109 conducted outside the presence of the jury that the state is  
 110 unable to show the existence of each element of the crime, and  
 111 having so found, further finds that the defendant's confession  
 112 or admission is trustworthy. Factors which may be relevant in  
 113 determining whether the state is unable to show the existence of  
 114 each element of the crime include, but are not limited to, the  
 115 fact that, at the time the crime was committed, the victim was:

- 116 (a) Physically helpless, mentally incapacitated, or
- 117 mentally defective, as those terms are defined in s. 794.011;
- 118 (b) Physically incapacitated due to age, infirmity, or any
- 119 other cause; or
- 120 (c) Less than 12 years of age.

121 Section 3. Present subsections (1), (2), and (3) of  
 122 section 409.016, Florida Statutes, are redesignated as  
 123 subsections (2), (3), and (4), respectively, and a new  
 124 subsection (1) is added to that section, to read:

125 409.016 Definitions.—As used in this chapter:

126           (1) "Commercial sexual exploitation" means the use of any  
 127 person under the age of 18 for sexual purposes in exchange for  
 128 money, goods, or services or the promise of money, goods, or  
 129 services.

130           Section 4. Section 409.1678, Florida Statutes, is amended  
 131 to read:

132           409.1678 Specialized residential options for children who  
 133 are victims of commercial sexual exploitation.—

134           (1) DEFINITIONS.—As used in this section, the term:

135           (a) "Safe foster home" means a foster home certified by  
 136 the department under this section to care for sexually exploited  
 137 children.

138           (b) "Safe house" means a group residential placement  
 139 certified by the department under this section to care for  
 140 sexually exploited children.

141           ~~(c) "Sexually exploited child" means a child who has~~  
 142 ~~suffered sexual exploitation as defined in s. 39.01(70)(g) and~~  
 143 ~~is ineligible for relief and benefits under the federal~~  
 144 ~~Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.~~

145           (2) CERTIFICATION OF SAFE HOUSES AND SAFE FOSTER HOMES.—

146           (a) A safe house and a safe foster home shall provide a  
 147 safe, separate, and therapeutic environment tailored to the  
 148 needs of commercially sexually exploited children who have  
 149 endured significant trauma and are not eligible for relief and  
 150 benefits under the federal Trafficking Victims Protection Act,

151 22 U.S.C. ss. 7101 et seq. Safe houses and safe foster homes  
 152 shall use a model of treatment that includes strength-based and  
 153 trauma-informed approaches.

154 (b) A safe house or a safe foster home must be certified  
 155 by the department. A residential facility accepting state funds  
 156 appropriated to provide services to ~~sexually exploited children~~  
 157 ~~or~~ child victims of commercial sexual exploitation ~~sex~~  
 158 ~~trafficking~~ must be certified by the department as a safe house  
 159 or a safe foster home. An entity may not use the designation  
 160 "safe house" or "safe foster home" and hold itself out as  
 161 serving child victims of commercial sexual exploitation ~~sexually~~  
 162 ~~exploited children~~ unless the entity is certified under this  
 163 section.

164 (c) To be certified, a safe house must hold a license as a  
 165 residential child-caring agency, as defined in s. 409.175, and a  
 166 safe foster home must hold a license as a family foster home, as  
 167 defined in s. 409.175. A safe house or safe foster home must  
 168 also:

- 169 1. Use strength-based and trauma-informed approaches to  
 170 care, to the extent possible and appropriate.
- 171 2. Serve exclusively one sex.
- 172 3. Group child victims of commercial sexual exploitation  
 173 ~~sexually exploited children~~ by age or maturity level.
- 174 4. Care for child victims of commercial sexual  
 175 exploitation ~~sexually exploited children~~ in a manner that

176 separates those children from children with other needs. Safe  
 177 houses and safe foster homes may care for other populations if  
 178 the children who have not experienced commercial sexual  
 179 exploitation do not interact with children who have experienced  
 180 commercial sexual exploitation.

181 5. Have awake staff members on duty 24 hours a day, if a  
 182 safe house.

183 6. Provide appropriate security through facility design,  
 184 hardware, technology, staffing, and siting, including, but not  
 185 limited to, external video monitoring or door exit alarms, a  
 186 high staff-to-client ratio, or being situated in a remote  
 187 location that is isolated from major transportation centers and  
 188 common trafficking areas.

189 7. Meet other criteria established by department rule,  
 190 which may include, but are not limited to, personnel  
 191 qualifications, staffing ratios, and types of services offered.

192 (d) Safe houses and safe foster homes shall provide  
 193 services tailored to the needs of child victims of commercial  
 194 sexual exploitation ~~sexually exploited children~~ and shall  
 195 conduct a comprehensive assessment of the service needs of each  
 196 resident. In addition to the services required to be provided by  
 197 residential child caring agencies and family foster homes, safe  
 198 houses and safe foster homes must provide, arrange for, or  
 199 coordinate, at a minimum, the following services:

200 1. Victim-witness counseling.



- 201           2. Family counseling.
- 202           3. Behavioral health care.
- 203           4. Treatment and intervention for sexual assault.
- 204           5. Education tailored to the child's individual needs,
- 205 including remedial education if necessary.
- 206           6. Life skills and workforce training.
- 207           7. Mentoring by a survivor of commercial sexual
- 208 exploitation, if available and appropriate for the child.
- 209           8. Substance abuse screening and, when necessary, access
- 210 to treatment.
- 211           9. Planning services for the successful transition of each
- 212 child back to the community.
- 213           10. Activities structured in a manner that provides child
- 214 victims of commercial sexual exploitation ~~sexually exploited~~
- 215 ~~children~~ with a full schedule.
- 216           (e) The community-based care lead agencies shall ensure
- 217 that foster parents of safe foster homes and staff of safe
- 218 houses complete intensive training regarding, at a minimum, the
- 219 needs of child victims of commercial sexual exploitation
- 220 ~~sexually exploited children~~, the effects of trauma and sexual
- 221 exploitation, and how to address those needs using strength-
- 222 based and trauma-informed approaches. The department shall
- 223 specify the contents of this training by rule and may develop or
- 224 contract for a standard curriculum. The department may establish
- 225 by rule additional criteria for the certification of safe houses

226 and safe foster homes that shall address the security,  
 227 therapeutic, social, health, and educational needs of child  
 228 victims of commercial sexual exploitation ~~sexually exploited~~  
 229 ~~children.~~

230 (f) The department shall inspect safe houses and safe  
 231 foster homes before certification and annually thereafter to  
 232 ensure compliance with the requirements of this section. The  
 233 department may place a moratorium on referrals and may revoke  
 234 the certification of a safe house or safe foster home that fails  
 235 at any time to meet the requirements of, or rules adopted under,  
 236 this section.

237 (g) The certification period for safe houses and safe  
 238 foster homes shall run concurrently with the terms of their  
 239 licenses.

240 (3) SERVICES WITHIN A RESIDENTIAL TREATMENT CENTER OR  
 241 HOSPITAL. ~~No later than July 1, 2015,~~ Residential treatment  
 242 centers licensed under s. 394.875, and hospitals licensed under  
 243 chapter 395 that provide residential mental health treatment,  
 244 shall provide specialized treatment for commercially sexually  
 245 exploited children in the custody of the department who are  
 246 placed in these facilities pursuant to s. 39.407(6), s.  
 247 394.4625, or s. 394.467. The specialized treatment must meet the  
 248 requirements of subparagraphs (2)(c)1. and 3.-7., paragraph  
 249 (2)(d), and the department's treatment standards adopted  
 250 pursuant to this section. The facilities shall ensure that

251 children are served in single-sex groups and that staff working  
 252 with such children are adequately trained in the effects of  
 253 trauma and sexual exploitation, the needs of child victims of  
 254 commercial sexual exploitation ~~sexually exploited children~~, and  
 255 how to address those needs using strength-based and trauma-  
 256 informed approaches.

257 (4) FUNDING FOR SERVICES; CASE MANAGEMENT.—

258 (a) This section does not prohibit any provider of  
 259 services for child victims of commercial sexual exploitation  
 260 ~~sexually exploited children~~ from appropriately billing Medicaid  
 261 for services rendered, from contracting with a local school  
 262 district for educational services, or from obtaining federal or  
 263 local funding for services provided, as long as two or more  
 264 funding sources do not pay for the same specific service that  
 265 has been provided to a child.

266 (b) The community-based care lead agency shall ensure that  
 267 all child victims of commercial sexual exploitation ~~sexually~~  
 268 ~~exploited children~~ residing in safe houses or safe foster homes  
 269 or served in residential treatment centers or hospitals pursuant  
 270 to subsection (3) have a case manager and a case plan, whether  
 271 or not the child is a dependent child.

272 (5) SCOPE OF AVAILABILITY OF SERVICES.—To the extent  
 273 possible provided by law and with authorized funding, the  
 274 services specified in this section may be available to all child  
 275 victims of commercial sexual exploitation who are not eligible

276 for relief and benefits under the federal Trafficking Victims  
 277 Protection Act, 22 U.S.C. ss. 7101 et seq., ~~sexually exploited~~  
 278 ~~children~~ whether such services are accessed voluntarily, as a  
 279 condition of probation, through a diversion program, through a  
 280 proceeding under chapter 39, or through a referral from a local  
 281 community-based care or social service agency.

282 (6) LOCATION INFORMATION.—

283 (a) Information about the location of a safe house, safe  
 284 foster home, or other residential facility serving child victims  
 285 of commercial sexual exploitation ~~victims of sexual~~  
 286 ~~exploitation~~, as defined in s. 409.016 ~~s. 39.01(70)(g)~~, which is  
 287 held by an agency, as defined in s. 119.011, is confidential and  
 288 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 289 Constitution. This exemption applies to such confidential and  
 290 exempt information held by an agency before, on, or after the  
 291 effective date of the exemption.

292 (b) Information about the location of a safe house, safe  
 293 foster home, or other residential facility serving child victims  
 294 of commercial sexual exploitation ~~victims of sexual~~  
 295 ~~exploitation~~, as defined in s. 409.016 ~~s. 39.01(70)(g)~~, may be  
 296 provided to an agency, as defined in s. 119.011, as necessary to  
 297 maintain health and safety standards and to address emergency  
 298 situations in the safe house, safe foster home, or other  
 299 residential facility.

300 (c) The exemptions from s. 119.07(1) and s. 24(a), Art. I

301 of the State Constitution provided in this subsection do not  
 302 apply to facilities licensed by the Agency for Health Care  
 303 Administration.

304 (d) This subsection is subject to the Open Government  
 305 Sunset Review Act in accordance with s. 119.15 and shall stand  
 306 repealed on October 2, 2020, unless reviewed and saved from  
 307 repeal through reenactment by the Legislature.

308 Section 5. Section 409.1754, Florida Statutes, is amended  
 309 to read:

310 409.1754 Commercial sexual exploitation of children  
 311 ~~Sexually exploited children~~; screening and assessment; training;  
 312 multidisciplinary staffings; service plans ~~case management; task~~  
 313 ~~forces.~~-

314 (1) SCREENING AND ASSESSMENT.-

315 (a) The department shall develop or adopt one or more  
 316 initial screening and assessment instruments to identify,  
 317 determine the needs of, plan services for, and determine the  
 318 appropriate placement for child victims of commercial sexual  
 319 exploitation who are not eligible for relief and benefits under  
 320 the federal Trafficking Victims Protection Act, 22 U.S.C. ss.  
 321 7101 et seq ~~sexually exploited children~~. The department shall  
 322 consult state and local agencies, organizations, and individuals  
 323 involved in the identification and care of such ~~sexually~~  
 324 ~~exploited~~ children when developing or adopting initial screening  
 325 and assessment instruments. Initial screening and assessment

326 instruments shall assess the appropriate placement of child  
 327 victims of commercial sexual exploitation ~~a sexually exploited~~  
 328 ~~child~~, including whether placement in a safe house or safe  
 329 foster home as provided in s. 409.1678 is appropriate, and shall  
 330 consider, at a minimum, the following factors:

- 331 1. Risk of the child running away.
- 332 2. Risk of the child recruiting other children into the  
 333 commercial sex trade.
- 334 3. Level of the child's attachment to his or her  
 335 exploiter.
- 336 4. Level and type of trauma that the child has endured.
- 337 5. Nature of the child's interactions with law  
 338 enforcement.
- 339 6. Length of time that the child was a victim of  
 340 commercial sexual exploitation ~~sexually exploited~~.
- 341 7. Extent of any substance abuse by the child.

342 (b) The initial screening and assessment instruments shall  
 343 be validated, if possible, and must be used by the department,  
 344 juvenile assessment centers as provided in s. 985.135, and  
 345 community-based care lead agencies.

346 (c) The department shall adopt rules that specify the  
 347 initial screening and assessment instruments to be used and  
 348 provide requirements for their use and for the reporting of data  
 349 collected through their use.

350 (d) The department, or a sheriff's office acting under s.

351 39.3065, the Department of Juvenile Justice, and community-based  
 352 care lead agencies may use additional assessment instruments in  
 353 the course of serving sexually exploited children.

354 (2) MULTIDISCIPLINARY STAFFINGS AND SERVICE PLANS.-

355 (a) The department, or a sheriff's office acting under s.  
 356 39.3065, shall conduct a multidisciplinary staffing for each  
 357 child that is a suspected or verified victim of commercial  
 358 sexual exploitation. The department or sheriff's office shall  
 359 coordinate the staffing and invite individuals involved in the  
 360 child's care, including, but not limited to, the child, if  
 361 appropriate; the child's family or legal guardian; the child's  
 362 guardian ad litem; Department of Juvenile Justice staff; school  
 363 district staff; local health and human service providers; victim  
 364 advocates; and any other persons who may be able to assist the  
 365 child.

366 (b) The staffing must use the assessment, local services,  
 367 and local protocols required by this section to develop a  
 368 service plan. The service plan must identify the needs of the  
 369 child and his or her family, the local services available to  
 370 meet those needs, and whether placement in a safe house or safe  
 371 foster home is needed. If the child is dependent, the case plan  
 372 required by s. 39.6011 may meet the requirement for a service  
 373 plan, but must be amended to incorporate the results of the  
 374 multidisciplinary staffing. If the child is not dependent, the  
 375 service plan is voluntary and the department or sheriff's office

376 shall provide the plan to the victim and his or her family or  
 377 legal guardian and offer to make any needed referrals to local  
 378 service providers.

379 (c) The services identified in the service plan should be  
 380 provided in the least restrictive environment and may include,  
 381 but need not be limited to, the following:

- 382 1. Emergency shelter and runaway center services;
- 383 2. Outpatient individual or group counseling for the  
 384 victim and the victim's family or legal guardian;
- 385 3. Substance use disorder treatment services;
- 386 4. Drop-in centers or mentoring programs;
- 387 5. Commercial sexual exploitation treatment programs;
- 388 6. Child advocacy center services pursuant to s. 39.3035;
- 389 7. Prevention services such as those provided by the  
 390 Florida Network of Youth and Family Services and the PACE Center  
 391 for Girls;
- 392 8. Family foster care;
- 393 9. Therapeutic foster care;
- 394 10. Safe houses or safe foster homes;
- 395 11. Residential treatment programs; and
- 396 12. Employment or workforce training.

397 (d) The department, or a sheriff's office acting under s.  
 398 39.3065, shall follow up with all verified victims of commercial  
 399 sexual exploitation who are dependent within 6 months of the  
 400 completion of the child abuse investigation, and such



401 information must be included in the report required under s.  
 402 39.524. The followup must determine the following:

403 1. Whether a referral was made for the services  
 404 recommended in the service plan;

405 2. Whether the services were received, and if not, the  
 406 reasons why;

407 3. Whether the services or treatments were completed and  
 408 if not, the reasons why;

409 4. Whether the victim has experienced commercial sexual  
 410 exploitation since the verified report;

411 5. Whether the victim has run away since the verified  
 412 report;

413 6. The type and number of placements, if applicable;

414 7. The educational status of the child;

415 8. The employment status of the child; and

416 9. Whether the child has been involved in the juvenile or  
 417 criminal justice system.

418 (e) The department, or a sheriff's office acting under s.  
 419 39.3065, shall follow up with all verified victims of commercial  
 420 sexual exploitation who are not dependent within 6 months after  
 421 the child abuse investigation is completed and the information  
 422 must be used in the report required under s. 39.524. The  
 423 followup for nondependent victims and their families is  
 424 voluntary and the victim, family, or legal guardian is not  
 425 required to respond. The followup must attempt to determine the

426 following:

427 1. Whether a referral was made for the services  
 428 recommended in the service plan;

429 2. Whether the services were received and, if not, the  
 430 reasons why;

431 3. Whether the services or treatments were completed and,  
 432 if not, the reasons why;

433 4. Whether the victim has experienced commercial sexual  
 434 exploitation since the verified report;

435 5. Whether the victim has run away since the verified  
 436 report;

437 6. The educational status of the child;

438 7. The employment status of the child; and

439 8. Whether the child has been involved in the juvenile or  
 440 criminal justice system.

441 (3)(2) TRAINING; LOCAL PROTOCOLS CASE MANAGEMENT; TASK  
 442 FORCES.-

443 (a)1. The department, or a sheriff's office acting under  
 444 s. 39.3065, and community-based care lead agencies shall ensure  
 445 that cases in which a child is alleged, suspected, or known to  
 446 be a victim of commercial sexual exploitation have been sexually  
 447 exploited are assigned to child protective investigators and  
 448 case managers who have specialized intensive training in  
 449 handling cases involving a sexually exploited child. The  
 450 department, sheriff's office, and lead agencies shall ensure

451 that child protective investigators and case managers receive  
 452 this training before accepting a case involving a commercially  
 453 sexually exploited child.

454 (b)2. The Department of Juvenile Justice shall ensure that  
 455 juvenile probation staff or contractors administering the  
 456 detention risk assessment instrument pursuant to s. 985.14  
 457 receive specialized intensive training in identifying and  
 458 serving commercially sexually exploited children.

459 ~~(b) The department and community-based care lead agencies~~  
 460 ~~shall conduct regular multidisciplinary staffings relating to~~  
 461 ~~services provided for sexually exploited children to ensure that~~  
 462 ~~all parties possess relevant information and services are~~  
 463 ~~coordinated across systems. The department or community-based~~  
 464 ~~care lead agency, as appropriate, shall coordinate these~~  
 465 ~~staffings and invite individuals involved in the child's care,~~  
 466 ~~including, but not limited to, the child's guardian ad litem,~~  
 467 ~~juvenile justice system staff, school district staff, service~~  
 468 ~~providers, and victim advocates.~~

469 (c)1. Each region of the department and each community-  
 470 based care lead agency shall jointly assess local service  
 471 capacity to meet the specialized service needs of commercially  
 472 sexually exploited children and establish a plan to develop the  
 473 necessary capacity. Each plan shall be developed in consultation  
 474 with community-based care lead agencies, local law enforcement  
 475 officials, local school officials, runaway and homeless youth

476 program providers, local probation departments, children's  
 477 advocacy centers, guardians ad litem, public defenders, state  
 478 attorneys' offices, safe houses, and child advocates and service  
 479 providers who work directly with commercially sexually exploited  
 480 children.

481 ~~(d)2-~~ Each region of the department and each community-  
 482 based care lead agency shall establish local protocols and  
 483 procedures for working with commercially sexually exploited  
 484 children which are responsive to the individual circumstances of  
 485 each child. The protocols and procedures shall take into account  
 486 the varying types and levels of trauma endured; whether the  
 487 commercial sexual exploitation is actively occurring, occurred  
 488 in the past, or is inactive but likely to recur; and the  
 489 differing community resources and degrees of familial support  
 490 that are available. Child protective investigators and case  
 491 managers must use these protocols and procedures when working  
 492 with a victim of commercial sexual exploitation ~~sexually~~  
 493 ~~exploited child~~.

494 ~~(4)(3)~~ LOCAL RESPONSE TO HUMAN TRAFFICKING; TRAINING; TASK  
 495 FORCE.—

496 (a) To the extent that funds are available, the local  
 497 regional director may provide training to local law enforcement  
 498 officials who are likely to encounter child victims of  
 499 commercial sexual exploitation ~~sexually exploited children~~ in  
 500 the course of their law enforcement duties. Training must ~~shall~~

501 address ~~the provisions of~~ this section and how to identify and  
 502 obtain appropriate services for such ~~sexually exploited~~  
 503 children. The local circuit administrator may contract with a  
 504 not-for-profit agency with experience working with commercially  
 505 sexually exploited children to provide the training. Circuits  
 506 may work cooperatively to provide training, which may be  
 507 provided on a regional basis. The department shall assist  
 508 circuits to obtain available funds for the purpose of conducting  
 509 law enforcement training from the Office of Juvenile Justice and  
 510 Delinquency Prevention of the United States Department of  
 511 Justice.

512 (b) Circuit administrators or their designees, chief  
 513 probation officers of the Department of Juvenile Justice or  
 514 their designees, and the chief operating officers of community-  
 515 based care lead agencies or their designees shall participate in  
 516 any task force, committee, council, advisory group, coalition,  
 517 or other entity in their service area that is involved in  
 518 coordinating responses to address human trafficking or  
 519 commercial sexual exploitation of children. If such entity does  
 520 not exist, the circuit administrator for the department shall  
 521 initiate one.

522 Section 6. Subsection (4) of section 907.041, Florida  
 523 Statutes, is amended to read:

524 907.041 Pretrial detention and release.—

525 (4) PRETRIAL DETENTION.—

- 526 (a) As used in this subsection, "dangerous crime" means  
 527 any of the following:
- 528 1. Arson;
  - 529 2. Aggravated assault;
  - 530 3. Aggravated battery;
  - 531 4. Illegal use of explosives;
  - 532 5. Child abuse or aggravated child abuse;
  - 533 6. Abuse of an elderly person or disabled adult, or  
 534 aggravated abuse of an elderly person or disabled adult;
  - 535 7. Aircraft piracy;
  - 536 8. Kidnapping;
  - 537 9. Homicide;
  - 538 10. Manslaughter;
  - 539 11. Sexual battery;
  - 540 12. Robbery;
  - 541 13. Carjacking;
  - 542 14. Lewd, lascivious, or indecent assault or act upon or  
 543 in presence of a child under the age of 16 years;
  - 544 15. Sexual activity with a child, who is 12 years of age  
 545 or older but less than 18 years of age, by or at solicitation of  
 546 person in familial or custodial authority;
  - 547 16. Burglary of a dwelling;
  - 548 17. Stalking and aggravated stalking;
  - 549 18. Act of domestic violence as defined in s. 741.28;
  - 550 19. Home invasion robbery;

- 551 20. Act of terrorism as defined in s. 775.30;  
 552 21. Manufacturing any substances in violation of chapter  
 553 893; ~~and~~  
 554 22. Attempting or conspiring to commit any such crime; and  
 555 23. Human trafficking.

556 (b) No person charged with a dangerous crime shall be  
 557 granted nonmonetary pretrial release at a first appearance  
 558 hearing; however, the court shall retain the discretion to  
 559 release an accused on electronic monitoring or on recognizance  
 560 bond if the findings on the record of facts and circumstances  
 561 warrant such a release.

562 (c) The court may order pretrial detention if it finds a  
 563 substantial probability, based on a defendant's past and present  
 564 patterns of behavior, the criteria in s. 903.046, and any other  
 565 relevant facts, that any of the following circumstances exist:

566 1. The defendant has previously violated conditions of  
 567 release and that no further conditions of release are reasonably  
 568 likely to assure the defendant's appearance at subsequent  
 569 proceedings;

570 2. The defendant, with the intent to obstruct the judicial  
 571 process, has threatened, intimidated, or injured any victim,  
 572 potential witness, juror, or judicial officer, or has attempted  
 573 or conspired to do so, and that no condition of release will  
 574 reasonably prevent the obstruction of the judicial process;

575 3. The defendant is charged with trafficking in controlled

576 substances as defined by s. 893.135, that there is a substantial  
 577 probability that the defendant has committed the offense, and  
 578 that no conditions of release will reasonably assure the  
 579 defendant's appearance at subsequent criminal proceedings;

580 4. The defendant is charged with DUI manslaughter, as  
 581 defined by s. 316.193, and that there is a substantial  
 582 probability that the defendant committed the crime and that the  
 583 defendant poses a threat of harm to the community; conditions  
 584 that would support a finding by the court pursuant to this  
 585 subparagraph that the defendant poses a threat of harm to the  
 586 community include, but are not limited to, any of the following:

587 a. The defendant has previously been convicted of any  
 588 crime under s. 316.193, or of any crime in any other state or  
 589 territory of the United States that is substantially similar to  
 590 any crime under s. 316.193;

591 b. The defendant was driving with a suspended driver  
 592 license when the charged crime was committed; or

593 c. The defendant has previously been found guilty of, or  
 594 has had adjudication of guilt withheld for, driving while the  
 595 defendant's driver license was suspended or revoked in violation  
 596 of s. 322.34;

597 5. The defendant poses the threat of harm to the  
 598 community. The court may so conclude, if it finds that the  
 599 defendant is presently charged with a dangerous crime, that  
 600 there is a substantial probability that the defendant committed



601 such crime, that the factual circumstances of the crime indicate  
 602 a disregard for the safety of the community, and that there are  
 603 no conditions of release reasonably sufficient to protect the  
 604 community from the risk of physical harm to persons;

605 6. The defendant was on probation, parole, or other  
 606 release pending completion of sentence or on pretrial release  
 607 for a dangerous crime at the time the current offense was  
 608 committed;

609 7. The defendant has violated one or more conditions of  
 610 pretrial release or bond for the offense currently before the  
 611 court and the violation, in the discretion of the court,  
 612 supports a finding that no conditions of release can reasonably  
 613 protect the community from risk of physical harm to persons or  
 614 assure the presence of the accused at trial; or

615 8.a. The defendant has ever been sentenced pursuant to s.  
 616 775.082(9) or s. 775.084 as a prison releasee reoffender,  
 617 habitual violent felony offender, three-time violent felony  
 618 offender, or violent career criminal, or the state attorney  
 619 files a notice seeking that the defendant be sentenced pursuant  
 620 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,  
 621 habitual violent felony offender, three-time violent felony  
 622 offender, or violent career criminal;

623 b. There is a substantial probability that the defendant  
 624 committed the offense; and

625 c. There are no conditions of release that can reasonably

626 protect the community from risk of physical harm or ensure the  
 627 presence of the accused at trial.

628 (d) When a person charged with a crime for which pretrial  
 629 detention could be ordered is arrested, the arresting agency  
 630 shall promptly notify the state attorney of the arrest and shall  
 631 provide the state attorney with such information as the  
 632 arresting agency has obtained relative to:

- 633 1. The nature and circumstances of the offense charged;
- 634 2. The nature of any physical evidence seized and the  
 635 contents of any statements obtained from the defendant or any  
 636 witness;
- 637 3. The defendant's family ties, residence, employment,  
 638 financial condition, and mental condition; and
- 639 4. The defendant's past conduct and present conduct,  
 640 including any record of convictions, previous flight to avoid  
 641 prosecution, or failure to appear at court proceedings.

642 (e) When a person charged with a crime for which pretrial  
 643 detention could be ordered is arrested, the arresting agency may  
 644 detain such defendant, prior to the filing by the state attorney  
 645 of a motion seeking pretrial detention, for a period not to  
 646 exceed 24 hours.

647 (f) The pretrial detention hearing shall be held within 5  
 648 days of the filing by the state attorney of a complaint to seek  
 649 pretrial detention. The defendant may request a continuance. No  
 650 continuance shall be for longer than 5 days unless there are

651 extenuating circumstances. The defendant may be detained pending  
652 the hearing. The state attorney shall be entitled to one  
653 continuance for good cause.

654 (g) The state attorney has the burden of showing the need  
655 for pretrial detention.

656 (h) The defendant is entitled to be represented by  
657 counsel, to present witnesses and evidence, and to cross-examine  
658 witnesses. The court may admit relevant evidence without  
659 complying with the rules of evidence, but evidence secured in  
660 violation of the United States Constitution or the Constitution  
661 of the State of Florida shall not be admissible. No testimony by  
662 the defendant shall be admissible to prove guilt at any other  
663 judicial proceeding, but such testimony may be admitted in an  
664 action for perjury, based upon the defendant's statements made  
665 at the pretrial detention hearing, or for impeachment.

666 (i) The pretrial detention order of the court shall be  
667 based solely upon evidence produced at the hearing and shall  
668 contain findings of fact and conclusions of law to support it.  
669 The order shall be made either in writing or orally on the  
670 record. The court shall render its findings within 24 hours of  
671 the pretrial detention hearing.

672 (j) A defendant convicted at trial following the issuance  
673 of a pretrial detention order shall have credited to his or her  
674 sentence, if imprisonment is imposed, the time the defendant was  
675 held under the order, pursuant to s. 921.161.

676 (k) The defendant shall be entitled to dissolution of the  
 677 pretrial detention order whenever the court finds that a  
 678 subsequent event has eliminated the basis for detention.

679 (l) The Legislature finds that a person who manufactures  
 680 any substances in violation of chapter 893 poses a threat of  
 681 harm to the community and that the factual circumstances of such  
 682 a crime indicate a disregard for the safety of the community.  
 683 The court shall order pretrial detention if the court finds that  
 684 there is a substantial probability that a defendant charged with  
 685 manufacturing any substances in violation of chapter 893  
 686 committed such a crime and if the court finds that there are no  
 687 conditions of release reasonably sufficient to protect the  
 688 community from the risk of physical harm to persons.

689 Section 7. For the purpose of incorporating the amendment  
 690 made by this act to section 907.041(4)(a), Florida Statutes, in  
 691 a reference thereto, paragraph (c) of subsection (2) of section  
 692 790.065, Florida Statutes, is reenacted to read:

693 790.065 Sale and delivery of firearms.—

694 (2) Upon receipt of a request for a criminal history  
 695 record check, the Department of Law Enforcement shall, during  
 696 the licensee's call or by return call, forthwith:

697 (c)1. Review any records available to it to determine  
 698 whether the potential buyer or transferee has been indicted or  
 699 has had an information filed against her or him for an offense  
 700 that is a felony under either state or federal law, or, as

701 mandated by federal law, has had an injunction for protection  
 702 against domestic violence entered against the potential buyer or  
 703 transferee under s. 741.30, has had an injunction for protection  
 704 against repeat violence entered against the potential buyer or  
 705 transferee under s. 784.046, or has been arrested for a  
 706 dangerous crime as specified in s. 907.041(4)(a) or for any of  
 707 the following enumerated offenses:

- 708 a. Criminal anarchy under ss. 876.01 and 876.02.
- 709 b. Extortion under s. 836.05.
- 710 c. Explosives violations under s. 552.22(1) and (2).
- 711 d. Controlled substances violations under chapter 893.
- 712 e. Resisting an officer with violence under s. 843.01.
- 713 f. Weapons and firearms violations under this chapter.
- 714 g. Treason under s. 876.32.
- 715 h. Assisting self-murder under s. 782.08.
- 716 i. Sabotage under s. 876.38.
- 717 j. Stalking or aggravated stalking under s. 784.048.

718  
 719 If the review indicates any such indictment, information, or  
 720 arrest, the department shall provide to the licensee a  
 721 conditional nonapproval number.

722 2. Within 24 working hours, the department shall determine  
 723 the disposition of the indictment, information, or arrest and  
 724 inform the licensee as to whether the potential buyer is  
 725 prohibited from receiving or possessing a firearm. For purposes

726 of this paragraph, "working hours" means the hours from 8 a.m.  
 727 to 5 p.m. Monday through Friday, excluding legal holidays.

728 3. The office of the clerk of court, at no charge to the  
 729 department, shall respond to any department request for data on  
 730 the disposition of the indictment, information, or arrest as  
 731 soon as possible, but in no event later than 8 working hours.

732 4. The department shall determine as quickly as possible  
 733 within the allotted time period whether the potential buyer is  
 734 prohibited from receiving or possessing a firearm.

735 5. If the potential buyer is not so prohibited, or if the  
 736 department cannot determine the disposition information within  
 737 the allotted time period, the department shall provide the  
 738 licensee with a conditional approval number.

739 6. If the buyer is so prohibited, the conditional  
 740 nonapproval number shall become a nonapproval number.

741 7. The department shall continue its attempts to obtain  
 742 the disposition information and may retain a record of all  
 743 approval numbers granted without sufficient disposition  
 744 information. If the department later obtains disposition  
 745 information which indicates:

746 a. That the potential buyer is not prohibited from owning  
 747 a firearm, it shall treat the record of the transaction in  
 748 accordance with this section; or

749 b. That the potential buyer is prohibited from owning a  
 750 firearm, it shall immediately revoke the conditional approval

751 number and notify local law enforcement.

752           8. During the time that disposition of the indictment,  
 753 information, or arrest is pending and until the department is  
 754 notified by the potential buyer that there has been a final  
 755 disposition of the indictment, information, or arrest, the  
 756 conditional nonapproval number shall remain in effect.

757           Section 8. This act shall take effect October 1, 2017.

758



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	_____	

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1 Committee/Subcommittee hearing bill: Children, Families &  
 2 Seniors Subcommittee  
 3 Representative Nuñez offered the following:

**Amendment**

6 Remove line 85 and insert:  
 7 by s. 409.16791.