

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health and Human Services Appropriations Committee

BILL: CS/CS/CS/SB 724

INTRODUCER: Health and Human Services Appropriations Committee; Committee on Governmental Oversight and Accountability; Children, Families, and Elder Affairs Committee

SUBJECT: Review/DCFS/Florida Government Accountability Act

DATE: April 13, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Fav/CS
2.	Harmsen	Wilson	GO	Fav/CS
3.	Hardy	Hansen	HA	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This legislation reenacts and authorizes the Department of Children and Family Services (DCF or the department) to reorganize. The bill changes the name of the agency to “Department of Children and Families” and aligns the statutory organizational requirements for the department with its current organization. The establishment of community alliances or partnerships is made permissive and their membership is changed. The Secretary is authorized to establish statewide advisory groups.

The bill provides that counties bear the cost of licensing family day care homes when contracting with DCF for that service.

The bill allows the department to recognize third party certification as proof of attainment of core competencies by child welfare workers.

The bill requires that by January 15, 2011, the Agency for Persons with Disabilities (APD), in consultation with DCF, prepare a plan to perform its own administrative and operational functions separate from the department by July 1, 2015.

The bill amends s. 394.9135, F.S., to allow for the transfer of sexually violent predators for whom a detainer order is in place to the United States Immigration and Customs Enforcement immediately upon his or her release from the Department of Corrections. The bill further provides that if deportation is not possible, the individual shall be transferred back to the custody of the department for the appropriate proceedings.

The bill requires DCF to establish a procedure for assisting certain undocumented aliens' return to their country of origin, and requires that the department institute a program for identifying undocumented aliens in mental health institutions who may be appropriate candidates for removal. According to the Office of Program Policy Analysis and Government Accountability (OPPAGA), the State of Florida spends an estimated \$9 million annually providing institutional mental health services to undocumented aliens.

The bill requires the department to define legal services associated with dependency proceedings, and by contract amendment, redirect responsibility and funding for the cost of those services to the department.

The bill deletes the requirement that advisory council members submit a disclosure statement annually and removes obsolete language related to the privatization of South Florida State Hospital. The bill also repeals the Family Builders Program and other obsolete provisions relating to the department.

There is no negative fiscal impact associated with this legislation. This bill might have a positive fiscal impact of up to \$300,000 in additional annual revenues from the six counties that currently opt to impose higher licensing requirements on family day care homes and contract with DCF to conduct the inspections. The legislation will require these counties to bear the licensing expense, thereby removing the cost burden from the department. In addition, when APD achieves self-sufficiency from DCF, the department will be relieved of the need to subsidize APD's administrative services, and the agency will be eligible to receive an estimated \$640,000 in additional federal reimbursement for APD's indirect costs.

This bill substantially amends ss. 20.19, 20.04, 20.43, 394.47865, 394.78, 394.9135, 402.313, 402.315, 402.40, 409.1671, 420.621, and 420.622, F.S.

The bill repeals ss. 39.311, 39.312, 39.313, 39.314, 39.315, 39.316, 39.317, 39.318, 394.9083, and 402.35, F.S.

The bill creates three unnumbered sections of Florida Statutes.

II. Present Situation:

Sunset Review

Sections 11.901-.920, F.S., are known as the Florida Government Accountability Act. Under this act, the department is subject to a "sunset" review in 2010. A sunset review is accomplished in three stages:

- Two years before the scheduled legislative review, the agency is required to provide the Legislature with a report as described in s. 11.906, F.S.
- Upon receipt of the report, the Joint Sunset Committee may, and the substantive legislative committees assigned to act as sunset review committees must, review the information submitted and may request reviews by the Office of Program Policy Analysis and Government Accountability (OPPAGA).
- Based upon the agency report, the OPPAGA reviews, and public input, the joint committee¹ and the substantive legislative sunset review committees make recommendations to the Legislature regarding the abolition, reorganization, or continuation of the department and its programs, as well as the consolidation, transfer, or reorganization of programs in other state agencies which duplicate functions performed by the department.

The review process for DCF began July 1, 2008, upon the department's submission of the statutorily mandated sunset report. Senate professional staff prepared an issue brief after review of the department's report as well as other relevant documents, reports, and studies.² The Senate Committee on Children, Families, and Elder Affairs requested additional information to be provided by OPPAGA, and directed staff to prepare this bill implementing their recommendations at its February 18, 2010 meeting.

Statutory Organizational Requirements

The department is created and organizationally structured pursuant to s. 20.19, F.S., with the express mission "to work in partnership with local communities to ensure the safety, well-being, and self-sufficiency of the people served." Although the department name established in statute is the Department of Children and Family Services, the department is authorized to use the name Department of Children and Families.³

The department is headed by a Secretary appointed by the Governor, subject to confirmation by the Senate. The Secretary is directed by current law to appoint the following specified positions:

- Deputy Secretary who shall act in the absence of the Secretary;
- Assistant Secretary for Substance Abuse and Mental Health;
- Program Director for Mental Health and Program Director for Substance Abuse;
- Program directors to whom the Secretary may delegate responsibilities for the management, policy, program, and fiscal functions of the department; and
- District administrators for each of the service districts delineated in s. 20.19(5), F.S.

Section 20.19(7), F.S., provides for one prototype regional operational structure for the counties in the third, twelfth and thirteenth judicial circuits (Sun Coast Region). The service districts and

¹ The Joint Sunset Committee issued its *Report of the Joint Legislative Sunset Committee*, March 2010, available at <http://www.floridasunsetreviews.gov/UserContent/docs/File/2010%20Sunset%20Report%20Final.pdf> (last visited March 16, 2010).

² Committee on Children, Families and Elder Affairs, *Agency Sunset Review of the Department of Children and Family Services, Issue Brief 2009-304* (January 2009).

³ Chapter 2007-174 (1)(c), L.O.F.

prototype region are statutorily responsible for all service delivery operations in their respective areas, with the exception of substance abuse and mental health services.⁴

Section 20.04(4), F.S., provides that within the department “there are organizational units called ‘program offices,’ headed by program directors.” Section 20.19(4)(b), F.S., establishes the following program offices for the department:

- Adult Services;
- Child Care Services;
- Domestic Violence;
- Economic Self-Sufficiency Services;
- Family Safety;
- Mental Health;
- Refugee Services; and
- Substance Abuse.

The Secretary is authorized to consolidate, restructure, or rearrange program and support offices in consultation with the Executive Office of the Governor, provided that any such changes are capable of meeting the functions, activities, and outcomes delineated in law. The Secretary is likewise authorized to appoint additional managers and administrators at his or her discretion. However, DCF is one of three executive agencies for which any additional offices may only be established by statutory enactment.⁵

Section 20.19(6), F.S., directs the department to establish a community alliance of stakeholders, community leaders, client representatives and funders of human services in each county to provide a focal point for community participation and governance of community-based services. According to the department, community alliances never developed in some areas, although they are vibrant in others.⁶

Departmental Organization Work Group

In 2007, the department established a Departmental Organization Work Group to examine the organizational structure of the department. The work group recommended a series of organizational modifications designed to enhance the department’s organizational structure so that the department would be more efficient, responsive and innovative in providing services. The Workgroup made multiple recommendations, including:⁷

Regionalization of Services

- Adopt a regional structure for field operations.

⁴ Pursuant to section 20.19(2)(c)1., F.S., the Program Director for Substance Abuse and the Program Director for Mental Health have direct line authority over all district substance abuse and mental health staff. Mental health institutions report to the Program Director for Mental Health.

⁵ Section 20.04(7)(b), F.S. The Departments of Transportation and Corrections are also subject to this restriction.

⁶ DCF, *Staff Analysis and Economic Impact, Senate Bill Number 1980* (January 20, 2009).

⁷ *Organizational Review of the Department of Children and Families, Final Report of the Organizational Review Work Group (DRAFT)* i-iv (April 2, 2007).

- Implement a circuit-based model for the provision of community services and ensure a Departmental leadership presence in each of Florida's 20 judicial circuits.

Organizational Structure

- Adopt a standardized template for the provision of community and administrative services and support at the regional and community level.

Assistant Secretary for Operations

- Modify the table of organization for the Office of the Assistant Secretary for Operations to reflect the changes in field services delivery.

Assistant Secretary for Programs

- Realign the table of organization for the Office of the Assistant Secretary for Programs to parallel the three elements of the Department's formal Mission Statement.
- Expand the role of the existing Office of Provider Relations.
- Reassign Headquarters Substance Abuse and Mental Health (SAMH) staff and treatment facilities to the Office of the Assistant Secretary for Programs and SAMH field personnel to the appropriate regional reporting structure.⁸
- Establish an ombudsman position.

Office of Strategic Planning and Innovation

- Create and staff an Office of Strategic Planning and Innovation.

Quality Management

- Designate the Office of Strategic Planning and Innovation as the entity responsible for setting quality and training standards, identifying appropriate resources to support Headquarters and field activities, and maintaining centralized databases on techniques and training standards.
- Transfer the Contract Oversight Unit to the Assistant Secretary for Programs to assure integration of efforts and to maximize communication.
- Distribute quality functions within regions, rather than reporting to Central Office.
- Move responsibility for strategic planning at the regional level to performance and planning teams.
- Adopt a regional model for Quality Assurance and Quality Improvement.

Current Organizational Structure of DCF

In 2007, the Legislature authorized the department to reorganize its administrative structure.⁹ Pursuant to this authority, and consistent with the recommendations of the Workgroup, the

⁸ In reviewing the organization of Substance Abuse and Mental Health, the Work Group concluded that "the creation of the position of Assistant Secretary for Substance Abuse and Mental Health (SAMH) with a separate chain of command for SAMH personnel in the field, albeit necessary at one time to assure proper attention to the issue, has created a silo which impedes both communication and effective management of Departmental field resources."

⁹ Chapter 2007-174, L.O.F.

department now plans, administers, and delivers most of its services to target groups through offices in six regions and 20 circuits aligned to match the state's 20 judicial circuits.¹⁰

According to the department, prior to reorganization, local district administrators had authority over:

- Child welfare;
- Economic self-sufficiency; and
- Adult services.

After reorganization, the circuit administrators (formerly district administrators) also have direct authority over:

- Substance abuse and mental health services;
- Homelessness;
- Domestic violence; and
- Refugee programs.¹¹

According to the department, the transition of decision-making to the circuit level allows the circuit administrators more opportunities to focus resources as needed in the community:

In its reorganization, the Department has pushed decision-making to the lowest appropriate level. Circuit Administrators have more authority over the entire array of Department services than in previous years... This allows Circuit Administrators the ability to focus resources as needed for direct services in their communities.¹²

To assure consistency and efficiency of operations throughout the state, the department has also adopted a standardized template for the provision of administrative services and support at the regional and circuit level.¹³

In order to integrate Substance Abuse and Mental Health (SAMH) into the department's overall approach to the delivery of services, and to further align substance abuse and mental health services with the specific needs of the community, the department has:

- Appointed an Assistant Secretary for SAMH who also serves as Director of the Governor's Office of Drug Control;
- Aligned the SAMH programs with the department's overall approach to circuit-based service delivery;

¹⁰ DCF, *Reorganization of the Department of Children and Families, Report to the Legislature* 4; Appendix 1 (January 1, 2008), available at <http://www.dcf.state.fl.us/publications/docs/ReorgReport013108.pdf>. (last visited March 29, 2010). Circuits were made consistent with the geographic boundaries of judicial circuits, because of the department's ongoing and regular interaction with the State's court system.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.* at 4; Appendices 2, 3. Although the department reports that it has adopted a "standardized template" for regional and circuit management, there are two templates for circuit management. It is not clear why two different models are described and how it is determined which one is utilized in each circuit.

- Revised the organizational structure of the SAMH programs, so that SAMH activities in each circuit are being led by a SAMH Program Supervisor who reports to the circuit administrator;
- Taken action to more closely align SAMH programs statewide, by combining the SAMH Contract and Data Units in the central office; and
- Continued oversight for the State Mental Health Treatment Facilities, which report to the Assistance Secretary for SAMH with assistance from the Mental Health Chief of Facilities and the Director of Mental Health.¹⁴

The 2007 Legislature also permitted the department to establish (1) community partnerships at the request of local communities in order to improve the delivery of community-based services; and (2) state level advisory groups to ensure and enhance communication among stakeholders, community leaders, and clients.¹⁵ Pursuant to this authorization, the department has established the following groups “to garner community guidance and expertise:”

- Task Force on Child Protection;
- Select Advisory Panel for Adult Protective Services; and
- Office of Refugee Services Work Group.¹⁶

County Licensure of Family Day Care Homes

Currently, s. 402.313(1), F.S., permits a county through resolution to require the licensure of family day care homes. If a county does not have a local licensing ordinance, the department has the authority to license family day care homes under contract with the county, and the state is required to bear the cost of such licensure, pursuant to s. 402.315(2), F.S.

Child Welfare Training

Section 402.40, F.S., requires that the department establish a child welfare training program and every person involved in providing child welfare services is mandated to successfully complete the training. DCF has developed an integrated curriculum which instructs on the core competencies for those knowledge, skills, and abilities, in collaboration with individuals with expertise in the field of child welfare, as well as providers affected by the curriculum, including community-based care lead agencies, sheriffs’ offices, and child welfare legal services providers.

The department must annually examine the advanced training needed by child welfare providers in collaboration with providers affected by the child welfare training curriculum and experts in the child welfare field. This examination is to include whether current advanced training efforts should be continued and describe plans for incorporating needed advanced training.

DCF is also required to develop minimum standards for a certification process. Those standards developed must ensure that persons participating have successfully attained the knowledge, skills, and abilities necessary to competently perform their work responsibilities.

¹⁴ *Id.* at 4-5.

¹⁵ Chapter 2007-174, L.O.F.

¹⁶ Department of Children and Families, Special Initiatives, available at <http://www.dcf.state.fl.us/initiatives> (last visited March 29, 2010).

Agency for Persons with Disabilities (APD or agency)¹⁷

In 2004, the Legislature transferred responsibility for programs serving persons with developmental disabilities from DCF to the newly created Agency for Persons with Disabilities.^{18,19} The agency ensures the safety and well-being of clients with developmental disabilities and provides opportunities for clients to work, socialize, and recreate as active members of their communities.²⁰ APD operates state-run institutional programs, administers the programmatic management of Medicaid waivers established to provide services to persons with developmental disabilities, and works with local communities and private providers to identify and assist persons who have developmental disabilities. APD administers the developmental disabilities program through a central office, four state developmental disabilities centers, and 14 area offices.²¹ For Fiscal Year 2009-10, the Legislature appropriated the agency over \$1 billion and 3,403 positions.²²

When the Legislature established APD, it directed the agency to enter into an interagency agreement with DCF for the provision of administrative and operational services. Under the law, the department is to continue to provide these services to the agency for as long as necessary.²³ In addition, APD entered into a second service-level agreement with DCF to provide for its information technology services.

Through an administrative service-level agreement, DCF currently provides assistance with the following services to APD: background screenings, contract administration services, financial management services, human resources services and general services (which includes functions such as property, records, facilities and fleet management and purchasing).²⁴ As provided by the Legislature, the funding for these services remains with DCF rather than APD.

Over time, APD has taken on some functions and tasks originally carried out by DCF. However, due to a lack of statewide staff, APD has at times taken on these responsibilities for only certain areas of the state, and left DCF to continue to provide these services in the remaining areas of the state. The result is a fragmented, inefficient administrative service system where both the department and the agency perform some functions (e.g., contract administration), but at different office locations. Contract administration involves a number of functions, including

¹⁷ This discussion is drawn substantially from *The Department of Children and Families and the Agency for Persons with Disabilities Have Improved Their Working Relationship, but Several Problems Remain*, Research Memorandum, OPPAGA, October 12, 2009.

¹⁸ As part of the transfer, 3,871 positions were shifted from DCF to APD. Most of these positions are staff that serve clients at the state's developmental disability centers. Since the initial transfer of positions in 2004, the department transferred 14 additional positions to the agency, which included staff for finance, contract management, legal, and information technology.

¹⁹ While administratively housed within DCF, the agency is not subject to control, supervision, or direction by the department.

²⁰ Persons with developmental disabilities include individuals who have or are at risk of having mental retardation, autism, cerebral palsy, spina bifida, or Prader-Willi syndrome.

²¹ The state's developmental disability centers are the Gulf Coast Center in Fort Myers, Tacahale Center in Gainesville, Sunland center in Marianna, and the Mentally-Retarded Defendant Program housed within the DCF's Florida State Hospital in Chattahoochee. These centers were formerly known as developmental services institutions.

²² While 3,871 positions were transferred to APD when it was created, 300 positions were subsequently eliminated for Fiscal Year 2009-10 due to the planned closure of the Gulf Coast Center in 2010. The remaining positions were eliminated with the prior closing of the Landmark center.

²³ Chapter 2004-267, *Laws of Florida*.

²⁴ The current administrative service-level agreement between DCF and APD is effective as of July 1, 2008.

writing and conducting legal review of contracts, contract management, and contract monitoring. DCF conducts legal review of contracts for area offices, while APD conducts legal review of contracts for the central office and the developmental disability centers. In addition to taking on responsibility for certain contracting functions, APD also has taken on some personnel, payroll, and revenue accounting functions, which also are divided between the department and the agency across the central and area offices.²⁵

APD assumed responsibility for providing some services based on a schedule established in the 2008 service-level agreement. However, due to budget reductions in administrative staff, DCF has had to shift some functions to APD, even though the agency was not prepared to assume these responsibilities. APD officials report that transferring functions affects the agency's efficiency and effectiveness because it does not have existing staff with necessary experience. In addition, for services for which APD depends completely on DCF, agency officials express concern that they do not have sufficient staff to conduct quality assurance oversight of the services provided by the department.

For DCF, budget and staff reductions have affected its ability to provide necessary administrative services within DCF as well as to APD. With the current division of administrative functions between the agencies, neither entity can seek federal reimbursement for any of the indirect costs associated with the administrative services the department provides to the agency. State policy requires agencies to maximize reimbursement of federal funding whenever possible. Generally, federal law allows for reimbursement of indirect costs for entities administering federal grants and programs. However, an agency can seek reimbursement for only its indirect cost rate, the administrative costs incurred to support its own programs. DCF estimated that its administrative expenses for providing services to APD during Fiscal Year 2007-08 were \$1.68 million. Therefore, the state forfeited approximately \$640,000 in federal reimbursement during this period (based on a reimbursement rate of 38 percent).

Costs of Certain Legal Services²⁶

Chapter 39, F.S., makes the department responsible for protecting children in the dependency system. A 1989 Florida Supreme Court opinion required adequate legal representation on behalf of the Department of Health and Rehabilitative Services (now the Department of Children and Families) at every stage of juvenile dependency proceedings conducted under Chapter 39.²⁷ To comply with this requirement, the 1992 Legislature required that an attorney for the department must represent the state in dependency proceedings.²⁸ The 1997 Legislature modified this

²⁵ Agency officials reported that this division of duties was based on a comprehensive review of available resources.

²⁶ This discussion is drawn substantially from *Children's Legal Services Has Made Changes to Address Recommendations for Improvement; Some Challenges Remain*, Research Memorandum, OPPAGA, December 17, 2009.

²⁷ The Florida Bar Re: Advisory Opinion HRS Nonlawyer Counselor, 547 So. 2d 909 (1989). Prior to this opinion, state attorneys represented the state in contested dependency cases. In non-contested cases, case workers prepared petitions, filed motions, appeared in court, and presented evidence without assistance from the state attorney. The Department of Legal Affairs represented the state in cases under appeal.

²⁸ Chapter 92-170, Laws of Florida.

requirement to specify that an attorney must represent the department during dependency and termination of parental rights proceedings.²⁹

The department uses in-house attorneys to perform these functions in most counties and judicial circuits (Children's Legal Services or CLS). However, it contracts with the state attorney for Pinellas and Pasco counties to provide these services in the 6th Judicial Circuit and with the Office of the Attorney General to provide these services in Hillsborough, Manatee, and Broward counties (Judicial Circuits 12, 13, and 17).

Unlike other state legal entities such as state attorneys, public defenders, and court-appointed counsel, CLS does not receive a designated appropriation for legal costs. The Florida Bar's 2004 report noted that non-attorneys, rather than CLS managers, were projecting budgetary needs for the department's legal costs in dependency proceedings. To ensure there are adequate funds to cover the cost of litigation, it was recommended that managing attorneys be responsible for this function, and that CLS be given control and responsibility for all legal costs associated with dependency proceedings.

Despite these recommendations, the department has not made this change, and there is inconsistency across circuits in which entity is responsible for paying for legal costs such as expert witnesses, service of process, and public notice of termination of parental rights proceedings. Generally, the department's budget does not cover these costs, and it must request payment for these expenses from the contracted lead agencies.³⁰ Some lead agency directors question why their organizations are expected to pay for trial costs.

In contrast, in Circuits 6, 12, 13, and 17, the department's contracted CLS providers (a state attorney and the Office of the Attorney General) receive funding in their contracts for all legal costs incurred while working on behalf of the department. These contractors indicated that billing lead agencies for legal costs would be problematic and not in keeping with their normal operations.

Undocumented Aliens in State Mental Health Facilities³¹

The department provides mental health treatment within institutions for mentally ill persons involved in the criminal justice system and those with severe and persistent mental illness who cannot be served in the community. A judge may commit to a state mental health treatment facility an individual who has been evaluated as having a mental illness and who poses a threat to themselves, other individuals, or public safety.

Judges may order two types of commitment—forensic or civil. Forensic commitments include defendants who are incompetent to proceed to trial and those who are determined not guilty of a charged crime by reason of insanity. Civil commitments include mentally ill individuals committed under the Baker Act as well as sexually violent predators committed under the Involuntary Civil Commitment of Sexually Violent Predators Act.

²⁹ Chapter 97-238, Laws of Florida, amended Ch. 39, Florida Statutes, and transferred sections related to delinquency and children and families in need of services to Chapters. 984 and 985, F.S., respectively.

³⁰ According to department administrators, funding for legal costs shifted from the department to lead agencies during the transition to community-based care, but they were not able to identify the point in time or the reasons why this occurred.

³¹ This discussion is drawn substantially from *Better Coordination Between Florida and the Federal Government Could Expedite Removal of Undocumented Aliens in Mental Health Institutions*, Research Memorandum, OPPAGA. February 1, 2010.

As of November 24, 2009, a total of 86 undocumented aliens resided in state mental health treatment facilities, 69 of whom resided in state mental health treatment facilities and 17 in the Florida Civil Commitment Center. Most of these persons are from Central America and the Caribbean Region, and about half have families in Florida. While the number of undocumented aliens in state mental health treatment facilities does not appear to be growing, the department does not have a standardized process for identifying and verifying undocumented alien status. According to DCF staff, the number of undocumented aliens varies between 60 and 90 at any given time.

Based on DCF's assessment, two-thirds of undocumented aliens in state mental health facilities have committed or stand accused of committing a crime. All individuals forensically committed as incompetent to proceed or not guilty by reason of insanity have committed or stand accused of a felony crime, and all sexually violent predators committed under the Involuntary Civil Commitment of Sexually Violent Predators Act have been convicted of at least one sexually motivated crime and typically have multiple convictions. Of the four commitment categories, only civil commitment pursuant to the Baker Act does not involve a felony crime. Overall, 67% of the 86 undocumented aliens in state mental health treatment facilities and the Sexually Violent Predator Program have committed or stand accused of committing at least one felony crime; most commonly a violent crime and/or sex offense.

Florida spends over \$9 million annually on undocumented aliens in mental health treatment facilities. Additionally, aliens have longer than average stays compared to non-aliens, resulting in higher costs.

The annualized cost to serve the 69 undocumented aliens that were in state mental health treatment facilities on November 23, 2009, is \$8.5 million, with annual costs for individual clients ranging from \$115,037 to \$130,036. Because some of these individuals are in residential treatment for periods longer than a year, the accrued cost for these specific patients is just over \$17.2 million. In addition, the state spends nearly \$630,000 annually to treat the 17 undocumented violent sexual predators in the Florida Civil Commitment Center. The annual cost for a Sexually Violent Predator Program treatment bed is just under \$37,000. The accrued cost for these 17 individuals is \$2.4 million.

Most of the \$19.6 million the state has spent thus far on residential treatment for the 86 undocumented aliens housed in November 2009 comes from general revenue. Funding for state mental health treatment facilities is 75% general revenue with approximately 25% trust funded through the Federal Grants Trust Fund. Funding for the Sexually Violent Predator Program is exclusively state general revenue.

Florida has limited options for reducing the cost of serving undocumented aliens in mental health treatment facilities:

- Thirty-three of the 86 undocumented aliens (38%) are individuals found incompetent to proceed. The state is constitutionally required to restore their competency prior to a criminal proceeding. As a result, Florida cannot reduce competency training and restoration costs by allowing the federal government to remove an incompetent alien unless the state wants to drop the criminal charges. In addition, immigration judges are reticent to order an alien removed unless they are satisfied that the person is competent and can understand the proceeding and its significance. While mental incompetence does not appear to preclude alien removal from a legal perspective, in practice, if an alien has had his/her competency restored, judges are more likely to issue a removal order.

- Removal of undocumented aliens is the responsibility of the U.S. Department of Homeland Security's Immigration and Customs Enforcement. Under current federal law, the state of Florida cannot remove undocumented aliens. The filing of detainers, conducting removal hearings and the issuing of removal orders are all federal functions. The department cannot independently vacate a commitment order or remove an alien without the approval of a judge.
- U.S. Department of Homeland Security's Immigration and Customs Enforcement cannot remove an individual if the United States does not have diplomatic relations with his/her country of origin. For example, the United States does not have diplomatic relations with Cuba. Currently, there are 22 Cuban nationals in state mental health treatment facilities. In addition, Immigration and Customs Enforcement cannot remove an individual if his/her country of origin will not accept them. Some countries will not accept individuals who have been removed, particularly those who are mentally ill or have committed a crime. The federal government cannot hold an alien indefinitely; if after six months they are unable to remove the alien, they must release him/her into the community.

III. Effect of Proposed Changes:

The bill re-enacts the Department of Children and Family Services and places in statute the reorganization plans already accomplished by DCF in response to direction given in Chapter 2007-174, L.O.F. The bill amends s. 20.04, F.S., and substantially rewords s. 20.19, F.S., as follows:

Department Reorganization

- Renames the "Department of Children and Family Services" to "Department of Children and Families;"
- Deletes the requirement for the Secretary to appoint Program Directors for Mental Health and Substance Abuse, and deletes their statutory responsibilities, including but not limited to line authority over district staff;
- Deletes the directive for the Assistant Secretary for Mental Health and Substance Abuse to have direct authority over Mental Health Institutions;
- Provides for the appointment of Assistant Secretary positions as necessary and requires the appointment of the Assistant Secretary for Substance Abuse and Mental Health;
- Provides that DCF is authorized to establish certain program offices and adds Homelessness as a program office, each headed by a program director;
- Deletes the requirement for the Governor to appoint the executive director of the State Office of Homelessness;
- Amends the current law changing *service districts* to *operating units* and provides that DCF will administer programs through operating units which must conform to the geographic boundaries of judicial circuits prescribed in s. 26.021, F.S., and provides for the combining of judicial circuits among operating units;
- Provides for the establishment of an unspecified number of regions to oversee one or more circuits;
- Provides that the Secretary may appoint a circuit administrator for each circuit and may appoint a region director for each region;
- Deletes the prototype region structure in current law, s. 20.19(7), F.S.;

- Deletes the requirement each fiscal year to develop projections of the number of child abuse cases and include in the department's legislative budget request a specific appropriation for an adequate number of child protective investigators and caseworkers;

Community Alliances or Partnerships

- Allows DCF to establish community alliances/partnerships, but requires their establishment at the request of a county government;
- Provides for the duties of community alliances/partnerships;
- Requires the department to periodically notify county governments of the opportunity to establish a community alliance if one does not currently exist within the circuit;
- Deletes the specification of initial membership of a community alliance in s. 20.19(6)(d), F.S., and replaces it with a more general description of the organizations who should be included in the alliance and requires membership to reflect the diversity of the community;
- Deletes the prohibition against certain members of the alliance receiving contractual payment for services from the department or a community-based care lead agency;
- Retains current law, s. 20.19(6)(g)-(k), F.S., providing for alliances and partnership members to be reimbursed for certain expenses, subject to ethics provisions, and financial disclosures, provides that meetings are open to the public and public records provisions in statute, and requires that actions taken by alliance meetings must be consistent with DCF policies and state and federal laws;
- Retains current law, s. 20.19(8), F.S., requiring consultation with counties on mandated programs;
- Deletes the requirement that divisions or offices for DCF can only be established by specific statutory enactment;
- Deletes obsolete language in s. 20.19(9) F.S., which exempts from competitive bids health services involving examination, diagnosis, or treatment;
- Deletes the requirement that advisory council members submit a disclosure statement annually.

Family Day Care Homes

- Allows the department to contract with local governments to license family day care homes;
- Requires local governments to bear the cost of licensing family day care homes when the requirement for licensure is mandated by local ordinance.

Child Welfare Training

The bill provides a definition of child welfare certification to provide that it is a professional credential awarded by DCF or by a credentialing entity recognized by the department. It also defines core competency. The bill provides that child welfare workers can demonstrate core competency by earning and maintaining a department or third party certification and allows the department to recognize third party certification as proof of attainment of those core competencies.

Other Provisions Affecting the Department

The bill requires APD to work with DCF to prepare a plan by which APD will become self-sufficient in operation by July 1, 2015. The plan is to be presented to the Legislature by January 15, 2011. Once implemented, the separation will relieve DCF of the need to subsidize APD's administrative services and make the state eligible to receive federal reimbursement of an estimated \$640,000 in APD's indirect costs.

DCF is directed to work with its contracted legal services providers and lead agency administrators to define the types of legal services associated with dependency proceedings. By contract amendment, the department will specify the costs each lead agency will pay for those defined legal services, and modify lead agency funding amounts to shift funding and responsibility for those costs to the department's Office of General Counsel. This will bring about a greater degree of uniformity in these arrangements across circuits.

The bill amends s. 394.9135, F.S., to require United States Immigration and Customs Enforcement (ICE) take custody of a sexually violent predator immediately upon his or her release from the Department of Corrections. If ICE were unable to deport the alien, he or she would then be transferred to DCF for civil detention and possible commitment as authorized in law. The department is also directed to develop a memorandum of understanding with the federal government to codify this process in order to reduce the likelihood that the federal government mistakenly releases into the community an alien who was not successfully deported.³² Directly transferring aliens who are sexually violent predators to ICE should speed removal and free up Florida Civil Commitment Center beds for other sexually violent predators.

The bill requires DCF to establish a procedure to identify appropriate candidates³³ and develop written procedures to facilitate their voluntary repatriation. In a few cases, the department has assisted the voluntary return of undocumented aliens to their home countries.³⁴ While there are not a large number of candidates appropriate for voluntary repatriation, having a plan in place to identify and assist those undocumented aliens is expected to aid in freeing up civil beds and reducing program costs.

The department is also directed to coordinate with ICE to identify undocumented aliens in mental health institutions who may be appropriate for removal, and institute a program modeled

³² The department does not have access to law enforcement systems that would electronically designate individuals detained to the Sexually Violent Predator Program. As a result, a process would need to be put in place to ensure that Immigration and Customs Enforcement employees are made aware of undocumented aliens who are still subject to state civil commitment pursuant to the Involuntary Civil Commitment of Sexually Violent Predators Act.

³³ Those persons who are found incompetent to proceed are defendants in ongoing criminal proceedings in Florida and are not appropriate candidates for repatriation. Only those undocumented aliens who are forensically committed as not guilty by reason of insanity or civilly committed under the Baker Act and nearing their times of discharge should be considered appropriate candidates.

³⁴ For example, South Florida Evaluation and Treatment Center (a privatized state forensic facility in Miami), has helped aliens who have requested to return to their country of origin. The patient filled out a consent/release form allowing facility staff to make the necessary contacts. The facility contacted the appropriate embassy and the embassy then contacted ICE to coordinate the return.

on the Department of Corrections' Institutional Hearing Program.³⁵ It is expected that development of a similar program would allow identification of undocumented aliens of any commitment status in state mental health treatment facilities and the initiation of the removal process early in their commitment. For example, when DCF admits an alleged undocumented alien, it would alert ICE, who could begin conducting the citizenship verification process.

In addition, the bill:

- Eliminates the Family Builders Program;
- Eliminates the Behavioral Health Services Integration Workgroup;
- Eliminates other obsolete provisions relating to the department and conforms multiple cross references and nomenclature changes throughout the statutes.

The bill is effective July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

³⁵ Under this program, the Department of Corrections identifies individuals suspected of being undocumented aliens and shares this information with ICE. The federal office then places a detainer order on the individual and the U.S. Department of Justice conducts removal hearings while these individuals are still in Department of Corrections' custody. If the immigration judge has issued a removal order or the hearing process is underway when the offender reaches the end of his prison sentence, Immigration and Customs Enforcement takes custody of the offender.

C. Government Sector Impact:

No negative fiscal impact is anticipated as a result of this legislation.

The bill may generate additional revenues related to the licensure of family day care homes if a county opts to contract with the department for such services. Counties who opt to impose higher licensing requirements on family day care homes will be required to bear the licensing costs. Currently DCF provides licensure and inspection services for six counties--Clay, Duval, Miami-Dade, Nassau, Polk, and St. Johns that have passed local ordinances to require the licensure of family day care homes, and who are not local licensing authorities. The department estimates that this licensure requires approximately six FTEs to conduct inspections of family day care homes in these counties, at an annual cost of \$300,000.

When APD achieves self-sufficiency from DCF, the latter will be relieved of the need to subsidize APD's administrative services, and the state will be eligible to receive federal reimbursement of an estimated \$640,000 in APD's indirect costs.

The legislation requires the United States Immigration and Customs Enforcement (ICE) to take custody and attempt to deport sexually violent predators who are also undocumented aliens. The bill also requires DCF to coordinate with ICE to identify undocumented aliens in mental health institutions who may be appropriate for removal and repatriation. According to OPPAGA, DCF spends up to \$9 million annually providing services to undocumented aliens in state mental health facilities.

VI. Technical Deficiencies:

"Core competency" is vaguely defined, and lacks a measurable standard under bill section 28.36

VII. Related Issues:

It is unclear how the services provided by child welfare credentialing entities will be procured by the Department of Children and Family Services. Current statute provides procurement processes for the development, validation, and evaluation of the training standards, but does not appear to address the procurement of the certification services provided by third-party child welfare training credentialing entities allowed for in this bill.³⁷

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health and Human Services Appropriations Committee on April 13, 2010:

The committee substitute deletes the requirement that advisory council members submit a disclosure statement annually; removes obsolete language related to the privatization of

³⁶ *DBPR v. Jones*, 474 So. 2d 359, 361 (Fla. 1st DCA 1985). The non-delegation doctrine dictates that the Legislature may not delegate its powers "absent ascertainable minimal standards and guidelines."

³⁷ Section 402.40(5)(c), Florida Statutes.

South Florida State Hospital; removes references to the Substance Abuse and Mental Health Corporation; and restores current language that allows community based lead agencies to provide direct services.

CS by Children, Families, and Elder Affairs on March 18, 2010

The committee substitute incorporates the three amendments adopted by the committee, which reinstate the Mission and Plan for the department; correct a drafting error; and allow the department to recognize third party certification as proof of attainment of core competencies by child welfare workers.

CS by Governmental Oversight and Accountability on April 6, 2010:

The committee substitute incorporates the three amendments adopted by the committee, which provides for the annual evaluation of lead community-based providers; conforms cross-references; and fixes a technical deficiency to maintain the current number of members (21) on the board of One Church One Child.

B. Amendments:

None.