Children, Families & Seniors Subcommittee

Wednesday, January 20, 2016
9:00 AM – 11:00 AM
12 HOB

Steve Crisafulli
Speaker

Gayle B. Harrell
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Children, Families & Seniors Subcommittee

Start Date and Time: Wednesday, January 20, 2016 09:00 am

End Date and Time: Wednesday, January 20, 2016 11:00 am

Location: 12 HOB

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 563 Temporary Cash Assistance Program by Gaetz
HB 599 Child Welfare by Combee
HB 741 Public Records/Involuntary Assessment and Stabilization Petition by Kerner
HB 1027 Public Records/Petitions to Determine Incapacity by Adkins
HB 1125 Child Care Facilities by McBurney
HB 1299 Public Assistance by Eagle

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members is 6:00 p.m., Tuesday, January 19, 2016.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 19, 2016.

NOTICE FINALIZED on 01/15/2016 3:52PM by Ellerkamp.Donna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 563 Temporary Cash Assistance Program
SPONSOR(S): Gaetz
TIED BILLS: **IDEN./SIM. BILLS:** SB 750

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

Florida's Temporary Cash Assistance (TCA) Program provides cash assistance to needy families with children that meet the technical, income, and asset eligibility requirements. The purpose of the TCA Program is to help families become self-supporting while allowing children to remain in their own homes.

The Department of Children and Families makes the eligibility determination for TCA. To be eligible for the TCA Program, among other things, applicants must be U.S. citizens or qualified non-citizens, reside in Florida, and have a gross income of less than 185% of the Federal Poverty Level. When calculating eligibility, the earned income of a child who attends high school or the equivalent, and is 19 years of age and younger, is disregarded. When determining eligibility for the family members who meet citizenship requirements in a family that also has illegal or ineligible noncitizen members, only a pro-rata share of the illegal or ineligible noncitizen family member's income is counted.

Adult TCA recipients must participate in work activities unless they qualify for an exemption. Individuals receiving TCA who are not otherwise exempt from work activity requirements may be sanctioned, in the form of loss of TCA benefits for a minimum period of time, for failing to meet their work requirements.

In Florida, participants may receive TCA for a lifetime cumulative total of 48 months unless they receive a hardship extension, allowing them to receive TCA beyond the 48 month time limit.

HB 563 reduces the lifetime limit for receipt of TCA from 48 to 30 months. TCA families who have used between 30 and 48 months of time limited assistance would no longer qualify for TCA unless they qualified for a hardship extension. All other TCA recipients who have used fewer than 30 months would have their benefits terminated when they reach 30 months unless they qualify for a hardship extension.

The bill requires an applicant for TCA to provide proof of application for employment with three employers as a condition of TCA benefit approval. Regional Workforce Boards (RWBs) currently have discretionary authority under statute to assign the applicant to a job search work activity as a precondition of TCA approval. The bill would mandate all RWBs to require applicants to complete three job applications as a condition of eligibility. Individuals who do not comply would not be able to begin receiving benefits. The bill also requires a participant, as part of their work activity requirements, to provide proof of application for employment with three employers; however, it does not provide a timeframe in which the applications must be made.

The bill amends s. 414.095(3)(d), F.S., to count all of a noncitizen's income when determining a household's income eligibility. The bill treats the income of U.S. citizens and noncitizens (legal, ineligible, or illegal) who are mandatory family members the same for TCA eligibility.

The bill amends s. 414.095(11)(b), F.S., to clarify that the earned income of a child who attends high school or the equivalent is disregarded only if that child is under the age of 19, rather than 19 years old or younger. This change aligns the definition of a "child" with the definition of a "minor child" in s. 414.0252(8), F.S.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Temporary Assistance for Needy Families (TANF)

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

Florida's Temporary Cash Assistance Program

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

Cash assistance is available to two categories of families: work-eligible (full-family cases) and child-only. The TCA Program also provides monthly cash assistance to relatives who meet eligibility rules and have custody of a child under age 18 who has been court-ordered dependent by a Florida court and placed in their home though the relative caregiver program. The majority of cash assistance benefits are provided to child-only and relative caregiver cases.

Administration

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

- The Department of Children and Families (DCF) is the recipient of the federal TANF block grant. DCF monitors eligibility and disperses benefits.
- CareerSource Florida, formerly Workforce Florida, Inc.,[2] is the state's workforce policy and investment board. CareerSource Florida has planning and oversight responsibilities for all workforce-related programs.
- The Department of Economic Opportunity (DEO) is the designated agency for workforce programs, funding and personnel, and implements the policy created by CareerSource.[3] DEO is responsible for financial and performance reports ensuring compliance with federal and state measures and also provides training and technical assistance to Regional Workforce Boards.

[1] Parents, children and minor siblings who live together must apply together. Additionally, pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy.
[2] On May 22, 2013, the WFI Board of Directors unanimously approved the brand charter, name, and logo establishing "CareerSource Florida" as the single, statewide unified brand for Florida's workforce system. This universal brand will apply directly to WFI, RWBs and One-Stop Career Centers, creating aligned brand names and logos system-wide (i.e. Workforce Florida Inc. is now CareerSource Florida and Gulf Coast Workforce Development Board is now CareerSource Gulf Coast).
[3] S. 445.007(13), F.S.

- Regional Workforce Boards (RWBs) provide a coordinated and comprehensive delivery of local workforce services. There are 24 RWBs in service delivery areas that are closely aligned with the community college system. The RWBs focus on strategic planning, policy development and oversight of the local workforce investment system within their respective areas and contract with one-stop career centers. The contracts with the RWBs are performance- and incentive-based.

Eligibility Determination

A person must pass all eligibility rules to get TCA benefits. The initial application for TANF is processed by DCF. The application may be submitted in person, online or through the mail. DCF makes the determination of eligibility. To be eligible for the TCA Program, among other things, applicants must:

- Be U.S. citizens or qualified non-citizens;
- Reside in Florida;
- Have a gross income of less than 185% of the Federal Poverty Level (FPL);[4] and
- Have a countable income that is not higher than the payment standard for the family size.

The earned income of a child who attends high school or the equivalent, and is 19 years of age and younger, is disregarded. The total income of U.S. citizens is counted in determining a family's eligibility. Ineligible noncitizens may not receive benefits, however, their family members who meet the citizenship requirement may be eligible. When determining eligibility for those family members who meet citizenship requirements, only a pro-rata share of the illegal or ineligible noncitizen family member's income is counted.[5]

Additionally, some applicants must participate in work activities unless they qualify for an exemption. Exemptions from the work requirement are available for:

- An individual who receives benefits under the Supplemental Security Income program or the Social Security Disability Insurance program.
- An adult who is not defined as a work-eligible individual under federal law.
- A single parent of a child under 3 months of age, except that the parent may be required to attend parenting classes or other activities to better prepare for raising a child.
- An individual who is exempt from the time period pursuant to s. 414.105, F.S.

If no exemptions from work requirements apply, DCF refers the applicant to DEO.[6] Upon referral the participant must complete an in-take application and undergo assessment by RWB staff which includes:

- Identifying barriers to employment.
- Identifying the participant's skills that will translate into employment and training opportunities.
- Reviewing participant's work history.
- Identifying whether a participant needs alternative requirements due to domestic violence, substance abuse, medical problems, mental health issues, hidden disabilities, learning disabilities or other problems which prevent the participant from engaging in full-time employment or activities.

Once the assessment is complete, the staff member and participant create the Individual Responsibility Plan (IRP). The IRP includes:

[4] For 2015, 185% of the FPL for a family of two is $ 29,470.50 (or $ 2,455.88 per month); for a family four it is $ 44,862.50 (or $ 3,738.54 per month).
[5] S. 414.095(3)(d), F.S.
[6] This is an electronic referral through a system interface between DCF's computer system and DEO's computer system. Once the referral has been entered into the DEO system the information may be accessed by any of the RWBs or One-Stop Career Centers.

- The participant's employment goal;
- The participant's assigned activities;
- Services provided through program partners, community agencies and the workforce system;
- The weekly number of hours the participant is expected to complete; and
- Completion dates and deadlines for particular activities.

DCF does not disperse any benefits to the participant until it receives confirmation from DEO or the RWB that the participant has registered and attended orientation.

Work Requirement

Individuals receiving TCA who are not otherwise exempt from work activity requirements must participate in work activities for the maximum number of hours allowable under federal law.[7] The number of required work or activities hours is determined by calculating the value of the cash benefits and then dividing that number by the hourly minimum wage amount.

Federal law requires individuals to participate in work activities for at least:

- 20 hours per week, or attend at a secondary school or the equivalent or participate in education directly related to employment if under the age of 20 and married or single head-of-household.
- 20 hours per week for single parents with a child under the age of six.
- 30 hours per week for all other single parents.
- 35 hours per week, combined, for two-parent families not receiving subsidized child care.
- 55 hours per week, combined, for two-parent families receiving subsidized child care, the family must work at least a combined total of 55 hours per week.

Pursuant to federal rule[8] and state law,[9] the following activities may be used individually or in combination to satisfy the work requirements for a participant in the TCA program:

- Unsubsidized employment.
- Subsidized private sector employment.
- Subsidized public sector employment.
- On-the-job training.
- Community service programs.
- Work experience.
- Job search and job readiness assistance.[10]
- Vocational educational training.
- Job skills training directly related to employment.
- Education directly related to employment.
- Attendance at school or course of study for graduate equivalency diploma.
- Providing child care services.

RWB's currently have discretion to assign an applicant to a work activity, including job search, before receiving TCA. Some RWBs already require applicants to complete an initial job search as part of the

[7] S. 445.024(2), F.S.
[8] 45 C.F.R. § 261.30
[9] S. 445.024, F.S.
[10] This includes the act of seeking or obtaining employment, preparation to seek or obtain employment, including life skills training, and substance abuse treatment, mental health treatment, or rehabilitation activities. Such treatment or therapy must be determined to be necessary and documented by a qualified medical, substance abuse, or mental health professional. Federal regulations allow states to count job search and job readiness assistance towards federal work participation rate for a maximum of six or 12 weeks, depending on the state's unemployment level, in the preceding 12-month period.

application process.[11] Currently, Florida's TANF Work Verification Plan[12] requires participants to record each on-site job contact and a representative of the employer or RWB provider staff to certify the validity of the log by signing each entry. If the applicant conducts a job search by phone or internet, the activity must be recorded on a job search report form and include detailed, specific information to allow follow-up and verification by the RWB provider staff.[13]

Lifetime Limit

The federal TANF program sets 60 months as the maximum number of months a participant may receive TCA, absent a hardship extension. However, states may set their own more stringent limits. States that offer benefits beyond 60 months must do so with only state funds. As of 2013, states set their time limits as follows:[14]

Time Limit	*12 Months*	*21 Months*	*24 Months*	*36 Months*	*48 Months*	*60 Months*	*No Limit*
States	Arizona[15]	Connecticut	Arizona Arkansas Idaho Indiana New Mexico	Delaware Utah	California Florida Georgia Kansas Michigan Rhode Island	33 States[16]	Massachusetts[17] New York[18] Vermont[19]

In Florida, a participant may receive TCA for a lifetime cumulative total of 48 months.[20] This limit only applies for full-family cases; child-only cases are not subject to the lifetime limit. Participants often do not use their eligibility consecutively, but rather enter and exit the TCA program on an episodic basis as their financial circumstances change. Currently there are:

- 7,420 time limited TCA families who have received fewer than 12 months of benefits.
- 2,001 time limited TCA families who have received between 12 and 23 months of benefits.
- 537 time limited TCA families who have used between 24 and 29 months of benefits.
- 355 time limited TCA families who have used between 30 and 35 months of benefits.
- 390 time limited TCA families who have used between 36 and 47 months of benefits.
- 135 TCA families are in an extension and have used between 48 and 60 months of benefits.
- 52 TCA families are in an extension and have used more than 60 months of benefits.[21]

Since June of 2005, 3,671 families have been closed due to reaching their lifetime limit.[22]

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[11] Department of Children and Families, Agency Analysis of 2016 House Bill 563 (Nov. 20, 2015)(on file with Children, Families, and Seniors Subcommittee staff)

[12] Department of Children and Families Economic Self-Sufficiency Program Office, *Temporary Assistance for Needy Families State Plan Renewal October 1, 2014 – September 30, 2017,* Nov. 14, 2014, available at www.dcf.state.fl.us/programs/access/docs/TANF-Plan.pdf (last visited December 17, 2015).

[13] *Supra*, note 11 at 2.

[14] NATIONAL CENTER FOR CHILDREN IN POVERTY, *50-State Policy Tracker*, http://www.nccp.org/tools/policy/ (report generated December 11, 2015).

[15] Arizona will switch to 12 months from 24 months July 1, 2016. See Laws 2015, Ch. 18, s. 3; Az. Rev. Stat. s. 46-294.

[16] Alaska, Colorado, District of Columbia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

[17] Recipients who have exceeded the federal TANF 60-month limit, but who continue to be eligible for cash assistance under state law, are included as part of the federally-funded hardship exception or funded through state funds.

[18] Units in compliance with TANF program rules may continue to receive benefits through a separate state program beyond 60 months.

[19] Recipients who reach the 60-month federal time limit are placed in a solely state-funded program.

[20] S. 414.105, F.S. Additionally, TCA received while an individual is a minor child does not count towards time limitations as an adult.

[21] The data is for families headed by adults who are subject to time limits in TANF (rather than an count of individuals). Additionally, the data is for current recipients as of November 2015. It does not include those who received assistance in the past and are now closed. Email from Nicole Stookey, Deputy Director, Office of Legislative Affairs, Department of Children and Families, "Re: TANF Follow-Up Questions (Nov. 20, 2015 10:15am)(on file with Children, Families, and Seniors Subcommittee staff).

[22] Email from Nicole Stookey, Deputy Director, Office of Legislative Affairs, Department of Children and Families, "Re: TANF Follow-Up Questions (Nov. 20, 2015 10:15am)(on file with Children, Families, and Seniors Subcommittee staff).

Hardship Extensions

A hardship extension allows a recipient to continue to receive cash assistance beyond the 48 month time limit for TCA. A hardship extension is available for a participant who:

- Has participated diligently and has an inability to obtain employment;
- Has one or more extraordinary barriers to employment;
- Has a significant barrier combined with need for additional time;
- Received cash assistance as an "adult" while still a teen; or
- Receives social security or social security disability benefits.

Additionally, there is a statutory extension available for the minor child of a family that is about to reach its lifetime limit and termination of TCA would result in the child being placed in emergency shelter or foster care.

From July 1, 2014, to June 30, 2015, RWBs conducted 389 hardship extension reviews and approved 84 applications.[23] The most common reason was medical incapacity (listed as at least one of the reasons on 53 applications). Of those who received hardship extensions:

- 414 TCA families received two extensions.
- 75 TCA families received three extensions.
- 75 TCA families received four or more extensions.[24]

Effect of the Bill

Reduction of Lifetime Limit of TCA

HB 563 reduces the lifetime limit for receipt of TCA from 48 to 30 months effective July 1, 2016. There are currently 755 families receiving TCA who have used between 30 and 48 months of time-limited assistance who would no longer qualify for TCA unless they qualified for a hardship extension.[25] All other TCA recipients who have used fewer than 30 months would have their benefits terminated if they reach 30 months, unless they qualified for a hardship extension.

Hardship extensions would continue to be available as provided in current law to those families who qualify. However, those participants who reach 30 months and do not qualify for a hardship extension would no longer be eligible. DCF believes that the shorter time limit could also increase the urgency to find employment more quickly, causing an undetermined caseload decline.

Proof of Application for Employment

The bill requires an applicant for TCA to provide proof of application for employment with three employers as a condition of TCA benefit approval. RWBs already have authority under statute to assign the applicant to a job search work activity as a precondition of TCA approval; however, this is currently discretionary. The bill would mandate all RWBs to require applicants to complete three job applications as a condition of eligibility. Individuals who do not comply would not be able to begin receiving benefits.

[23] Information from the Department of Children and Families on file with Children, Families, and Seniors Subcommittee staff.
[24] *Supra*, note 22.
[25] *Supra*, note 11.

The bill also requires a participant, as part of his or her work activity requirements, to provide proof of application for employment with three employers. However, the bill does not specify within what timeframe these applications would need to be made or if they would need to be repeated over time.

Counting Income for TCA Eligibility

Noncitizens' Income

The bill amends s. 414.095(3)(d), F.S., to count all of a noncitizen's income, not only a pro-rata share. The income of U.S. citizens and noncitizens (legal, ineligible, or illegal) who are mandatory family members will be treated the same. This will increase families' countable income. For families where the increase in counted income places them above the threshold for receiving benefits, they would no longer be eligible and would cease receiving TCA. This change will effect an estimated 149 households per month.[26]

Earned Income by a Child

The bill amends s. 414.095(11)(b), F.S., to clarify that the earned income of a child who attends high school or the equivalent is disregarded only if that child is under the age of 19, rather than 19 years old or younger. This change aligns the definition of a "child" with the definition of a "minor child" in s. 414.0252(8), F.S.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Amends s. 414.095, F.S., relating to determining eligibility for temporary cash assistance.
Section 2: Amends s. 414.105, F.S., relating to time limitations of temporary cash assistance.
Section 3: Amends s. 445.024, F.S., relating to work requirements.
Section 4: Reenacts s. 414.065, F.S., relating to noncompliance with work requirements.
Section 5: Reenacts s. 445.051, F.S., relating to individual development accounts.
Section 6: Reenacts s. 414.045, F.S., relating to cash assistance program.
Section 7: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill could reduce annual expenditures through reduced TCA payments to families that are no longer eligible because they reach their lifetime limit. The current annual cost of providing cash benefits to 755 families who would be impacted is $2,530,884. However, some of the 755 families who would qualify for a hardship extension would continue to receive benefits. To the degree that families qualified for hardship extensions and continued to receive benefits, the reduction in expenditure would be less than the $2,530,884 annually if all families were to cease receiving benefits.

[26] Id.

The bill will reduce annual expenditures through reduced TCA payments to households that contain an illegal or ineligible noncitizen with income. The estimated savings from this change is $239,518 annually.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Approximately 755 households will no longer be eligible to receive TCA as a result of the changes to the lifetime limits. It is unknown how many of those families would qualify for a hardship extension. Those not qualifying for a hardship exemption will lose their monthly benefits, an average of $279 per family per month.

Approximately 149 households, monthly, will no longer be eligible to receive TCA as a result of the changes to the non-citizen income calculations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the temporary cash assistance program; amending s. 414.095, F.S.; adding proof of application for employment to the eligibility requirements for receiving services or temporary cash assistance; revising the formula for calculating the income of certain noncitizens for purposes of a determination of family eligibility; amending s. 414.105, F.S.; decreasing the lifetime cumulative total time limit for which an applicant or current participant may receive temporary cash assistance; conforming provisions to changes made by the act; amending s. 445.024, F.S.; adding proof of application for employment to the work activity requirements for a participant in the temporary cash assistance program; reenacting ss. 414.065(4)(b) and (c) and 445.051(4)(a), F.S., relating to noncompliance with work requirements and individual development accounts, respectively, to incorporate the amendment made to s. 414.105, F.S., in references thereto; reenacting s. 414.045(1), F.S., relating to the cash assistance program, to incorporate the amendments made to ss. 414.095 and 414.105, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1), paragraph (d) of subsection (3), and subsection (11) of section 414.095, Florida Statutes, are amended to read:

414.095 Determining eligibility for temporary cash assistance.—

(1) ELIGIBILITY.—An applicant must meet eligibility requirements of this section before receiving services or temporary cash assistance under this chapter, except that an applicant shall be required to register for work, provide proof of application for employment with three employers, and engage in work activities in accordance with s. 445.024, as designated by the regional workforce board, and may receive support services or child care assistance in conjunction with such requirements ~~requirement~~. The department shall make a determination of eligibility based on the criteria listed in this chapter. The department shall monitor continued eligibility for temporary cash assistance through periodic reviews consistent with the food assistance eligibility process. Benefits may ~~shall~~ not be denied to an individual solely based on a felony drug conviction, unless the conviction is for trafficking pursuant to s. 893.135. To be eligible under this section, an individual convicted of a drug felony must be satisfactorily meeting the requirements of the temporary cash assistance program, including all substance abuse treatment requirements. Within the limits specified in this chapter, the

state opts out of the provision of Pub. L. No. 104-193, s. 115, that eliminates eligibility for temporary cash assistance and food assistance for any individual convicted of a controlled substance felony.

(3) ELIGIBILITY FOR NONCITIZENS.—A "qualified noncitizen" is an individual who is admitted to the United States as a refugee under s. 207 of the Immigration and Nationality Act or who is granted asylum under s. 208 of the Immigration and Nationality Act; a noncitizen whose deportation is withheld under s. 243(h) or s. 241(b)(3) of the Immigration and Nationality Act; a noncitizen who is paroled into the United States under s. 212(d)(5) of the Immigration and Nationality Act, for at least 1 year; a noncitizen who is granted conditional entry pursuant to s. 203(a)(7) of the Immigration and Nationality Act as in effect prior to April 1, 1980; a Cuban or Haitian entrant; or a noncitizen who has been admitted as a permanent resident. In addition, a "qualified noncitizen" includes an individual who, or an individual whose child or parent, has been battered or subject to extreme cruelty in the United States by a spouse, a parent, or other household member under certain circumstances, and has applied for or received protection under the federal Violence Against Women Act of 1994, Pub. L. No. 103-322, if the need for benefits is related to the abuse and the batterer no longer lives in the household. A "nonqualified noncitizen" is a nonimmigrant noncitizen, including a tourist, business visitor, foreign student, exchange

visitor, temporary worker, or diplomat. In addition, a "nonqualified noncitizen" includes an individual paroled into the United States for less than 1 year. A qualified noncitizen who is otherwise eligible may receive temporary cash assistance to the extent permitted by federal law. The income or resources of a sponsor and the sponsor's spouse shall be included in determining eligibility to the maximum extent permitted by federal law.

(d) The income of an illegal noncitizen or ineligible noncitizen who is a mandatory member of a family~~, less a pro rata share for the illegal noncitizen or ineligible noncitizen,~~ counts in full in determining a family's eligibility to participate in the program.

(11) DISREGARDS.—

(a) As an incentive to employment, the first $200 plus one-half of the remainder of earned income shall be disregarded. In order to be eligible for earned income to be disregarded, the individual must be:

1. A current participant in the program; or

2. Eligible for participation in the program without the earnings disregard.

(b) A child's earned income shall be disregarded if the child is a family member, attends high school or the equivalent, and is less than 19 years of age ~~or younger~~.

Section 2. Section 414.105, Florida Statutes, is amended to read:

414.105 Time limitations of temporary cash assistance.—Except as otherwise provided in this section, an applicant or current participant shall receive temporary cash assistance for no more than a lifetime cumulative total of 30 ~~48~~ months, unless otherwise provided by law.

(1) Hardship exemptions from the time limitations provided in this section may not exceed 20 percent of the average monthly caseload, as determined by the department in cooperation with CareerSource Florida, Inc. Criteria for hardship exemptions include:

(a) Diligent participation in activities, combined with inability to obtain employment.

(b) Diligent participation in activities, combined with extraordinary barriers to employment, including the conditions which may result in an exemption to work requirements.

(c) Significant barriers to employment, combined with a need for additional time.

(d) Diligent participation in activities and a need by teen parents for an exemption in order to have 24 months of eligibility beyond receipt of the high school diploma or equivalent.

(e) A recommendation of extension for a minor child of a participating family that has reached the end of the eligibility period for temporary cash assistance. The recommendation must be the result of a review that determines that the termination of the child's temporary cash assistance would be likely to result

in the child being placed into emergency shelter or foster care.

(2) A victim of domestic violence may be granted a hardship exemption if the effects of such domestic violence delay or otherwise interrupt or adversely affect the individual's participation in the program.

(3) The department, in cooperation with CareerSource Florida, Inc., shall establish a procedure for approving hardship exemptions and for reviewing hardship cases at least once every 2 years. Regional workforce boards may assist in making these determinations.

(4) For individuals who have moved from another state, the months in which temporary cash assistance was received under a block grant program that provided temporary assistance for needy families in any state shall count towards the cumulative 30-month ~~48-month~~ benefit limit for temporary cash assistance.

(5) For individuals subject to a time limitation under the Family Transition Act of 1993, that time limitation shall continue to apply. Months in which temporary cash assistance was received through the family transition program shall count towards the time limitations under this section.

(6) Except when temporary cash assistance was received through the family transition program, the calculation of the time limitation for temporary cash assistance shall begin with the first month of receipt of temporary cash assistance after the effective date of this act.

(7) Child-only cases are not subject to time limitations,

and temporary cash assistance received while an individual is a minor child shall not count towards time limitations.

(8) An individual who receives benefits under the Supplemental Security Income (SSI) program or the Social Security Disability Insurance (SSDI) program is not subject to time limitations. An individual who has applied for supplemental security income (SSI) or supplemental security disability income (SSDI) but has not yet received a determination must be granted an extension of time limits until the individual receives a final determination on the SSI or SSDI application. Determination shall be considered final once all appeals have been exhausted, benefits have been received, or denial has been accepted without any appeal. While awaiting a final determination, the individual must continue to meet all program requirements assigned to the participant based on medical ability to comply. If a final determination results in the denial of benefits for supplemental security income (SSI) or supplemental security disability income (SSDI), any period during which the recipient received assistance under this section shall be counted in the recipient's 30-month ~~48-month~~ lifetime limit.

(9) A person who is totally responsible for the personal care of a disabled family member is not subject to time limitations if the need for the care is verified and alternative care is not available for the family member. The department shall annually evaluate an individual's qualifications for this

exemption.

(10) A member of the staff of the regional workforce board shall interview and assess the employment prospects and barriers of each participant who is within 6 months of reaching the 30-month ~~48-month~~ time limit. The staff member shall assist the participant in identifying actions necessary to become employed prior to reaching the benefit time limit for temporary cash assistance and, if appropriate, shall refer the participant for services that could facilitate employment.

Section 3. Subsection (2) of section 445.024, Florida Statutes, is amended to read:

445.024 Work requirements.—

(2) WORK ACTIVITY REQUIREMENTS.—Each individual who is not otherwise exempt from work activity requirements must provide proof of application for employment with three employers and participate in a work activity for the maximum number of hours allowable under federal law; however, a participant may not be required to work more than 40 hours per week. The maximum number of hours each month that a family may be required to participate in community service or work experience programs is the number of hours that would result from dividing the family's monthly amount for temporary cash assistance and food assistance by the applicable minimum wage. However, the maximum hours required per week for community service or work experience may not exceed 40 hours.

(a) A participant in a work activity may also be required

to enroll in and attend a course of instruction designed to increase literacy skills to a level necessary for obtaining or retaining employment if the instruction plus the work activity does not require more than 40 hours per week.

(b) Program funds may be used, as available, to support the efforts of a participant who meets the work activity requirements and who wishes to enroll in or continue enrollment in an adult general education program or other training programs.

Section 4. For the purpose of incorporating the amendment made by this act to section 414.105, Florida Statutes, in s thereto, paragraphs (b) and (c) of subsection (4) of section 414.065, Florida Statutes, are reenacted to read:

414.065 Noncompliance with work requirements.—

(4) EXCEPTIONS TO NONCOMPLIANCE PENALTIES.—Unless otherwise provided, the situations listed in this subsection shall constitute exceptions to the penalties for noncompliance with participation requirements, except that these situations do not constitute exceptions to the applicable time limit for receipt of temporary cash assistance:

(b) Noncompliance related to domestic violence.—An individual who is determined to be unable to comply with the work requirements because such compliance would make it probable that the individual would be unable to escape domestic violence shall be exempt from work requirements. However, the individual shall comply with a plan that specifies alternative requirements

that prepare the individual for self-sufficiency while providing for the safety of the individual and the individual's dependents. A participant who is determined to be out of compliance with the alternative requirement plan shall be subject to the penalties under subsection (1). An exception granted under this paragraph does not automatically constitute an exception to the time limitations on benefits specified under s. 414.105.

(c) Noncompliance related to treatment or remediation of past effects of domestic violence.—An individual who is determined to be unable to comply with the work requirements under this section due to mental or physical impairment related to past incidents of domestic violence may be exempt from work requirements, except that such individual shall comply with a plan that specifies alternative requirements that prepare the individual for self-sufficiency while providing for the safety of the individual and the individual's dependents. A participant who is determined to be out of compliance with the alternative requirement plan shall be subject to the penalties under subsection (1). The plan must include counseling or a course of treatment necessary for the individual to resume participation. The need for treatment and the expected duration of such treatment must be verified by a physician licensed under chapter 458 or chapter 459; a psychologist licensed under s. 490.005(1), s. 490.006, or the provision identified as s. 490.013(2) in s. 1, chapter 81-235, Laws of Florida; a therapist as defined in s.

491.003(2) or (6); or a treatment professional who is registered under s. 39.905(1)(g), is authorized to maintain confidentiality under s. 90.5036(1)(d), and has a minimum of 2 years experience at a certified domestic violence center. An exception granted under this paragraph does not automatically constitute an exception from the time limitations on benefits specified under s. 414.105.

Section 5. For the purpose of incorporating the amendment made by this act to section 414.105, Florida Statutes, in a reference thereto, paragraph (a) of subsection (4) of section 445.051, Florida Statutes, is reenacted to read:

445.051 Individual development accounts.—

(4)(a) Any family subject to time limits and fully complying with work requirements of the temporary cash assistance program, pursuant to ss. 414.045, 414.065, 414.095, 414.105, and 445.024, which enters into an agreement with an approved fiduciary organization is eligible to participate in an individual development account.

Section 6. For the purpose of incorporating the amendments made by this act to sections 414.095 and 414.105, Florida Statutes, in a reference thereto, subsection (1) of section 414.045, Florida Statutes, is reenacted to read:

414.045 Cash assistance program.—Cash assistance families include any families receiving cash assistance payments from the state program for temporary assistance for needy families as defined in federal law, whether such funds are from federal

funds, state funds, or commingled federal and state funds. Cash assistance families may also include families receiving cash assistance through a program defined as a separate state program.

(1) For reporting purposes, families receiving cash assistance shall be grouped into the following categories. The department may develop additional groupings in order to comply with federal reporting requirements, to comply with the data-reporting needs of the board of directors of CareerSource Florida, Inc., or to better inform the public of program progress.

(a) Work-eligible cases.—Work-eligible cases shall include:

1. Families containing an adult or a teen head of household, as defined by federal law. These cases are generally subject to the work activity requirements provided in s. 445.024 and the time limitations on benefits provided in s. 414.105.

2. Families with a parent where the parent's needs have been removed from the case due to sanction or disqualification shall be considered work-eligible cases to the extent that such cases are considered in the calculation of federal participation rates or would be counted in such calculation in future months.

3. Families participating in transition assistance programs.

4. Families otherwise eligible for temporary cash assistance which receive diversion services, a severance

payment, or participate in the relocation program.

(b) Child-only cases.—Child-only cases include cases that do not have an adult or teen head of household as defined in federal law. Such cases include:

1. Children in the care of caretaker relatives, if the caretaker relatives choose to have their needs excluded in the calculation of the amount of cash assistance.

2. Families in the Relative Caregiver Program as provided in s. 39.5085.

3. Families in which the only parent in a single-parent family or both parents in a two-parent family receive supplemental security income (SSI) benefits under Title XVI of the Social Security Act, as amended. To the extent permitted by federal law, individuals receiving SSI shall be excluded as household members in determining the amount of cash assistance, and such cases shall not be considered families containing an adult. Parents or caretaker relatives who are excluded from the cash assistance group due to receipt of SSI may choose to participate in work activities. An individual whose ability to participate in work activities is limited who volunteers to participate in work activities shall be assigned to work activities consistent with such limitations. An individual who volunteers to participate in a work activity may receive child care or support services consistent with such participation.

4. Families in which the only parent in a single-parent family or both parents in a two-parent family are not eligible

for cash assistance due to immigration status or other limitation of federal law. To the extent required by federal law, such cases shall not be considered families containing an adult.

5. To the extent permitted by federal law and subject to appropriations, special needs children who have been adopted pursuant to s. 409.166 and whose adopting family qualifies as a needy family under the state program for temporary assistance for needy families. Notwithstanding any provision to the contrary in s. 414.075, s. 414.085, or s. 414.095, a family shall be considered a needy family if:

a. The family is determined by the department to have an income below 200 percent of the federal poverty level;

b. The family meets the requirements of s. 414.095(2) and (3) related to residence, citizenship, or eligible noncitizen status; and

c. The family provides any information that may be necessary to meet federal reporting requirements specified under Part A of Title IV of the Social Security Act.

Families described in subparagraph 1., subparagraph 2., or subparagraph 3. may receive child care assistance or other supports or services so that the children may continue to be cared for in their own homes or in the homes of relatives. Such assistance or services may be funded from the temporary assistance for needy families block grant to the extent

permitted under federal law and to the extent funds have been provided in the General Appropriations Act.

Section 7. This act shall take effect July 1, 2016.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Children, Families & Seniors Subcommittee

Representative Gaetz offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (3), and subsection (11) of section 414.095, Florida Statutes, are amended to read:

414.095 Determining eligibility for temporary cash assistance.—

(3) ELIGIBILITY FOR NONCITIZENS.—A "qualified noncitizen" is an individual who is admitted to the United States as a refugee under s. 207 of the Immigration and Nationality Act or who is granted asylum under s. 208 of the Immigration and Nationality Act; a noncitizen whose deportation is withheld under s. 243(h) or s. 241(b)(3) of the Immigration and Nationality Act; a noncitizen who is paroled into the United

States under s. 212(d)(5) of the Immigration and Nationality Act, for at least 1 year; a noncitizen who is granted conditional entry pursuant to s. 203(a)(7) of the Immigration and Nationality Act as in effect prior to April 1, 1980; a Cuban or Haitian entrant; or a noncitizen who has been admitted as a permanent resident. In addition, a "qualified noncitizen" includes an individual who, or an individual whose child or parent, has been battered or subject to extreme cruelty in the United States by a spouse, a parent, or other household member under certain circumstances, and has applied for or received protection under the federal Violence Against Women Act of 1994, Pub. L. No. 103-322, if the need for benefits is related to the abuse and the batterer no longer lives in the household. A "nonqualified noncitizen" is a nonimmigrant noncitizen, including a tourist, business visitor, foreign student, exchange visitor, temporary worker, or diplomat. In addition, a "nonqualified noncitizen" includes an individual paroled into the United States for less than 1 year. A qualified noncitizen who is otherwise eligible may receive temporary cash assistance to the extent permitted by federal law. The income or resources of a sponsor and the sponsor's spouse shall be included in determining eligibility to the maximum extent permitted by federal law.

(d) The income of an illegal noncitizen or ineligible noncitizen who is a mandatory member of a family~~, less a pro rata share for the illegal noncitizen or ineligible noncitizen,~~

counts in full in determining a family's eligibility to participate in the program.

(11) DISREGARDS.—

(a) As an incentive to employment, the first $200 plus one-half of the remainder of earned income shall be disregarded. In order to be eligible for earned income to be disregarded, the individual must be:

1. A current participant in the program; or

2. Eligible for participation in the program without the earnings disregard.

(b) A child's earned income shall be disregarded if the child is a family member, attends high school or the equivalent, and is less than 19 years of age ~~or younger~~.

Section 2. For the purpose of incorporating the amendments made by this act to sections 414.095, Florida Statutes, in references thereto, subsection (1) of section 414.045, Florida Statutes, is reenacted to read:

414.045 Cash assistance program.—Cash assistance families include any families receiving cash assistance payments from the state program for temporary assistance for needy families as defined in federal law, whether such funds are from federal funds, state funds, or commingled federal and state funds. Cash assistance families may also include families receiving cash assistance through a program defined as a separate state program.

(1) For reporting purposes, families receiving cash

assistance shall be grouped into the following categories. The department may develop additional groupings in order to comply with federal reporting requirements, to comply with the data-reporting needs of the board of directors of CareerSource Florida, Inc., or to better inform the public of program progress.

(a) *Work-eligible cases.*—Work-eligible cases shall include:

1. Families containing an adult or a teen head of household, as defined by federal law. These cases are generally subject to the work activity requirements provided in s. 445.024 and the time limitations on benefits provided in s. 414.105.

2. Families with a parent where the parent's needs have been removed from the case due to sanction or disqualification shall be considered work-eligible cases to the extent that such cases are considered in the calculation of federal participation rates or would be counted in such calculation in future months.

3. Families participating in transition assistance programs.

4. Families otherwise eligible for temporary cash assistance which receive diversion services, a severance payment, or participate in the relocation program.

(b) *Child-only cases.*—Child-only cases include cases that do not have an adult or teen head of household as defined in federal law. Such cases include:

1. Children in the care of caretaker relatives, if the

caretaker relatives choose to have their needs excluded in the calculation of the amount of cash assistance.

2. Families in the Relative Caregiver Program as provided in s. 39.5085.

3. Families in which the only parent in a single-parent family or both parents in a two-parent family receive supplemental security income (SSI) benefits under Title XVI of the Social Security Act, as amended. To the extent permitted by federal law, individuals receiving SSI shall be excluded as household members in determining the amount of cash assistance, and such cases shall not be considered families containing an adult. Parents or caretaker relatives who are excluded from the cash assistance group due to receipt of SSI may choose to participate in work activities. An individual whose ability to participate in work activities is limited who volunteers to participate in work activities shall be assigned to work activities consistent with such limitations. An individual who volunteers to participate in a work activity may receive child care or support services consistent with such participation.

4. Families in which the only parent in a single-parent family or both parents in a two-parent family are not eligible for cash assistance due to immigration status or other limitation of federal law. To the extent required by federal law, such cases shall not be considered families containing an adult.

5. To the extent permitted by federal law and subject to

appropriations, special needs children who have been adopted pursuant to s. 409.166 and whose adopting family qualifies as a needy family under the state program for temporary assistance for needy families. Notwithstanding any provision to the contrary in s. 414.075, s. 414.085, or s. 414.095, a family shall be considered a needy family if:

a. The family is determined by the department to have an income below 200 percent of the federal poverty level;

b. The family meets the requirements of s. 414.095(2) and (3) related to residence, citizenship, or eligible noncitizen status; and

c. The family provides any information that may be necessary to meet federal reporting requirements specified under Part A of Title IV of the Social Security Act.

Families described in subparagraph 1., subparagraph 2., or subparagraph 3. may receive child care assistance or other supports or services so that the children may continue to be cared for in their own homes or in the homes of relatives. Such assistance or services may be funded from the temporary assistance for needy families block grant to the extent permitted under federal law and to the extent funds have been provided in the General Appropriations Act.

Section 3. This act shall take effect July 1, 2016.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to the temporary cash assistance program; amending s. 414.095, F.S.; revising the consideration of income from illegal noncitizen or ineligible noncitizen family members in determining eligibility for temporary cash assistance; reenacting s. 414.045, F.S.; incorporate the amendments made to s. 414.095, F.S., in references thereto; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 599 Child Welfare
SPONSOR(S): Combee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7018

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

SUMMARY ANALYSIS

Chapter 39, F.S., creates the dependency system, which is charged with child welfare. Child welfare services aim to prevent abandonment, abuse, and neglect of children. 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 contracts for foster care placement and related services with lead agencies, also known as community-based care organizations.

DCF's new practice model seeks to achieve the goals of safety, permanency, child well-being, and family well-being. DCF is required to administer a system of care that prevents the separation of children from their families and provides interventions to allow children to remain safely in their own homes. However, when it is determined that in-home services are not enough to allow a child to safely remain in his or her home, the child is removed from his or her home and placed with a safe and appropriate temporary out-of-home placement.

PCS 599 creates new sections of law creating a continuum of care, intervention services and assessments.

The bill requires the provision of intervention services for unsafe children, and requires a monitoring plan and annual report. The bill requires DCF, in collaboration with certain stakeholders, to develop a continuum of care. This continuum of care must be a complete range of placement options, programs, and services for children served by, or at risk of being served by, the dependency system. The bill requires an annual report on the continuum of care.

The bill creates a new section of law that requires an initial assessment whenever a child has been determined to need an out-of-home placement to aid in guiding the child into the least restrictive placement and help determine any services needed. The bill also requires a comprehensive assessment to be completed for each child placed in out-of-home care to supplement the initial assessment and further determine service and placement needs.

The bill creates permanency teams that are required to review out-of-home placements for certain children who have historically faced barriers to permanency. The bill also outlines the intervention services to be provided by the lead agencies.

The bill makes specific conforming changes to align statute with the new language and practice of the safety methodology, such as:

- Extending jurisdiction for children older than 18 years of age until the age of 22 for young adults having a disability;
- Moving the provisions relating to 'maintaining and strengthening' the placement from the case planning sections of statute to s. 39.621, F.S., making them permanency goals;
- Requiring a transition plan to be approved by the child's 18th birthday; and
- Changing the standard for the court to return a child to the home.

The bill also:

- Requires the court to order the department or community-based care lead agency to file a written notification with the court when a child changes placements;
- Restructures the case plan sections of statute and adds language that conforms to the new assessments and practice model;
- Revises the designation of an agency that is allowed to access confidential records to conform with practice;
- Makes conforming cross reference changes; and
- Repeals obsolete sections of law dealing with residential group care.

The bill has an indeterminate fiscal impact.

The bill provides for an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Child Welfare System

Chapter 39, F.S., creates the dependency system, which is charged with child welfare. Child welfare services aim to prevent abandonment, abuse, and neglect of children.[1] 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.

New Safety Methodology

In 2013, DCF began implementing a new child welfare practice model that standardizes the approach to safety decision making and risk assessment in determining a child's safety.[2] DCF's practice model seeks to achieve the goals of safety, permanency, child well-being, and family well-being.[3] The methodology emphasizes parent engagement and empowerment and that child welfare professionals have the skills and supervisory support they need to assess child safety.[4] Child welfare professionals use a safety-focused, family-centered, and trauma-informed approach to achieve these goals.[5] Some of the key practices used to achieve these goals are:[6]

- Engaging the family: Build rapport and trust with the family.
- Partner with all involved: Form partnerships with family members and others who support them.
- Plan for child safety: Develop and implement, with the family and other partners, short-term actions to keep the child safe in the home or in out-of-home care.
- Plan for family change: Work with the child, family members, and other team members to identify appropriate interventions and supports necessary to achieve child safety, permanency and well-being.
- Monitor and adapt case plans: Link family members to services and help them navigate formal systems.

The new practice model shifts the focus from the previously used incident-centered practice to a safety-focused and family-centered practice. This means that instead of the system addressing the specific incident that prompted the investigation into the family, DCF looks to treat the family in a more holistic and safety-focused way to keep children in their homes whenever possible.

Community-Based Care Organizations and Services

DCF contracts for foster care and related services with lead agencies, also known as community-based care organizations (CBCs). The transition to outsourced provision of child welfare services was intended to increase local community ownership of service delivery and design.[7]

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[1] S. 39.001(8), F.S.
[2] The Department of Children and Families, 2013 Year in Review, accessible at: http://www.dcf.state.fl.us/admin/publications/year-in-review/2013/page19.shtml (last accessed December 13, 2015).
[3] The Department of Children and Families, Florida's Child Welfare Practice Model, accessible at: http://www.myflfamilies.com/service-programs/child-welfare/child-welfare-practice-model (last accessed December 11, 2015).
[4] Supra. at FN 2.
[5] Supra. at FN 3.
[6] Supra. at FN 3.
[7] Community-Based Care, The Department of Children and Families, accessible at http://www.myflfamilies.com/service-programs/community-based-care (last viewed December 8, 2015).

DCF, through the CBCs, is required to administer a system of care[8] for children that is directed toward:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had children removed from their care;
- Safety for children who are separated from their families;
- Focus on the well-being of children through emphasis on educational stability and timely health care;
- Permanency; and
- Transition to independence and self-sufficiency.

Statute provides that under this system CBCs are responsible for providing foster care and related services. These services include, but are not limited to, counseling, domestic violence services, substance abuse services, family preservation, emergency shelter, and adoption.[9] The CBC must give priority to services that are evidence-based and trauma informed.[10] CBCs contract with a number of subcontractors for case management and direct care services to children and their families.[11] There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.[12]

Dependency Case Process

When a child is removed 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. The process is as follows:

Dependency Proceeding	Description of Process	Controlling Statute
Removal	The child's home is determined to be unsafe, and the child is removed	s. 39.401, F.S.
Shelter Hearing	A shelter hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	A petition for dependency occurs within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	An arraignment and shelter review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	An adjudicatory trial is held within 30 days of arraignment. This is the trial that the judge determines whether a child is dependent.	s. 39.507, F.S.
Disposition Hearing	Disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews the case plan and placement of the child. The judge orders the case plan for the family and the appropriate placement of the child.	ss. 39. 506 and 39.521, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.

[8] S. 409.145(1), F.S.
[9] Id.
[10] S. 409.988(3), F.S.
[11] Supra. at FN 7.
[12] Community Based Care Lead Agency Map, The Department of Children and Families, accessible at http://www.myflfamilies.com/service-programs/community-based-care/cbc-map (last accessed December 8, 2015).

Case Plans

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.[13] The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights.[14] 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.[15]

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.

Section 39.6012, F.S., details the types of tasks and services that must be provided to the parents as well as the type of care that must be provided to the child. The services must be designed to improve the conditions in the home, facilitate the child's safe return to the home, ensure proper care of the child, and facilitate permanency. The case plan must describe each task with which the parent must comply and the services provided that address the identified problem in the home and all available information that is relevant to the child's care.

When determining whether to place a child back into the home he or she was removed from, or whether to move forward with another permanency option, the court uses the case plan to determine whether the parent has complied with the tasks and services to the extent that the safety, well-being, and the physical, mental and emotional health of the child is not endangered by the return of the child to the home.[16]

Placements of Children in the Child Welfare System

In-home with Services

DCF is required to administer a system of care that prevents the separation of children from their families and provides interventions to allow children to remain safely in their own homes.[17] Protective investigators and CBC case managers can refer families for in-home services to allow a child, who would otherwise be unsafe, to remain in his or her own home.

Out-of-Home Care

When a child protective investigator determines that in-home services are not enough to allow a child to safely remain in his or her home, the investigator removes the child from his or her home and places the child with a safe and appropriate temporary placement. These temporary placements, referred to as out-of-home care, provide housing and services to children until they can return home to their family or achieve permanency with another family through adoption or guardianship.[18]

CBCs must place all children in out-of-home care in the most appropriate available setting after conducting an assessment using child-specific factors.[19] Legislative intent is to place children in a family-like environment when they are removed from their homes. When possible, child protective

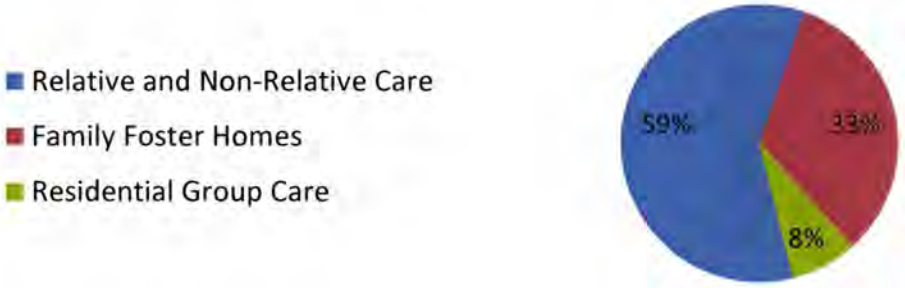
[13] Ss, 39.6011 and 39.6012, F.S.
[14] S. 39.01(11), F.S.
[15] S. 39.521, F.S.
[16] S. 39.522, F.S.
[17] Supra. at FN 8.
[18] Office of Program Policy and Government Accountability, Research Memorandum, Florida's Residential Group Care Program for Children in the Child Welfare System (December 22, 2014) (on file with the Children, Families, and Seniors Subcommittee).
[19] Child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement. (Rule 65C-28.004, F.A.C.)

investigators and lead agency case managers place the children with a relative or responsible adult that the child knows and with whom they have a relationship. These out-of-home placements are referred to as relative and non-relative caregivers. When a relative or non-relative caregiver placement is not possible, case managers try to place the children in family foster homes licensed by DCF.

Some children have extraordinary needs, such as multiple placement disruptions, mental and behavioral health problems, juvenile justice involvement, or children with disabilities, which may require case managers to place them in residential group care. The primary purpose of residential group care is to provide a setting that addresses the unique needs of children and youth who require more intensive services than a family setting can provide.[20]

As of June 1, 2015, there were 21,916 children in out-of-home care.[21]

Distribution of Children in Out-of-Home Placements FY 2014-15 [22]



Relatives or Non-Relative Caregivers

Research indicates that children in the care of relatives and non-relatives, such as grandparents or family friends, benefit from increased placement stability and are less likely to change placements as compared to children placed in general foster care. As opposed to children living in foster care, children living in relative and non-relative care are more likely to remain in their own neighborhoods, be placed with their siblings, and have more consistent interactions with their birth parents than do children who are placed in foster care, all of which might contribute to less disruptive transitions into out-of-home care.[23] Relative and non-relative caregivers are not required to be licensed, but do undergo a walk through of their home to determine if the home is appropriate to place the child.

Florida created the Relative Caregiver Program in 1998,[24] to provide financial assistance to eligible relatives caring for children who would otherwise be in the foster care system. The monthly amount of the relative payment is:[25]

- Age zero through five years – $242
- Age six through 12 years – $249
- Age 13 to 18 years – $298

[20] Supra. at FN 18.
[21] Office of Program Policy and Government Accountability, Research Memorandum, Florida's Child Welfare System: Out-of-Home Care (November. 12, 2015) (on file with the Children, Families, and Seniors Subcommittee).
[22] Office of Program Policy and Government Accountability, Research Memorandum, Florida's Child Welfare System: Out-of Home Care (November. 12, 2015) (on file with the Children, Families, and Seniors Subcommittee).
[23] David Rubin and Downes, K., et al., The Impact of Kinship Care on Behavioral Well-being for Children in Out-of-Home Care (June 2, 2008), available at: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2654276/ (last accessed December 10, 2015).
[24] S. 39.5085, F.S.
[25] 65C-28.008, F.A.C.

Family Foster Homes

A family foster home means a licensed private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs.[26] Foster homes are licensed,[27] inspected regularly, and foster parents go through a rigorous interview process before being approved.[28] Family foster home room and board rates are:[29,30]

- Age zero through five years – $439.30
- Age six through 12 years – $450.56
- Age 13 to 21 years – $527.36

Residential Group Care

Residential group care (RGC) placements are licensed by DCF as residential child-caring agencies[31] that provide staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged.[32] These include maternity homes, runaway shelters, group homes, and emergency shelters.[33] The two primary models of group care are the shift model, with staff working in shifts providing 24-hour supervision, and the family model, which has a house parent or parents that live with and are responsible for 24 hour care of children within the group home.[34]

Lead agencies must consider placement in RGC if the following specific criteria are met:

- The child is 11 or older;
- The child has been in licensed family foster care for six months or longer and removed from family foster care more than once; and
- The child has serious behavioral problems or has been determined to be without the options of either family reunification or adoption. [35]

In addition, information from several sources, including psychological evaluations, professionals with knowledge of the child, and the desires of the child concerning placement must be considered.[36] If the lead agency case mangers determine that RGC would be an appropriate placement, the child must be placed in RGC if a bed is available. Children who do not meet the specified criteria may be placed in RGC if it is determined that such placement is the most appropriate for the child.[37]

Not only does RGC provide a placement option, it can also serve as a treatment component of the children's mental health system of care. [38] Children in RGC with behavioral health needs receive mental health, substance abuse, and support services that are provided through Medicaid-funded

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[26] S. 409.175, F.S.
[27] Id.
[28] Florida Department of Children and Families, Fostering Definitions, available at http://www.myflfamilies.com/service-programs/foster-care/definitions (last visited December 9, 2015).
[29] S. 409.145(4), F.S.
[30] Department of Children and Families, Memorandum on 2015 Foster Parent Cost of Living Allowance Increase (December 31, 2014) (on file with Children, Families, and Seniors subcommittee staff).
[31] Supra. at FN 18.
[32] S. 409.175, F.S.
[33] Id.
[34] Supra. at FN 18.
[35] S. 39.523(1), F.S.
[36] Id.
[37] S. 39.523(4), F.S.
[38] Richard Barth, Institutions vs. Foster Homes: The Empirical Base for the Second Century of Debate. Chapel Hill, NC: University of North Carolina, School of Social Work, Jordan Institute for Families (June 17, 2002), available at: http://www.researchgate.net/publication/237273744_vs._Foster_Homes_The_Empirical_Base_for_a_Century_of_Action.

Behavioral Health Overlay Services.[39] Residential group homes also directly employ or contract with therapists and counselors.[40]

Because RGC can be part of a dependent child's mental health system of care they are one of the most expensive placement options for children in the child welfare system. Unlike rates for foster parents and relative caregivers, which are set in statute or by rule, CBCs annually negotiate rates for RGC placements with providers.

During the 2013-2014 fiscal year, the per diem rate for the shift-care group home model averaged $124, and costs ranged from $52 to $283. The per diem rate for a family group home model averaged $97, and costs ranged from $17 to $175. In contrast, family foster homes had an average daily rate of $15.[41] The total cost of group home care in Florida for the 2014-15 fiscal year was $89.8 million.[42]

Licensure

DCF is required to license most out-of-home placements, including family foster homes, residential child-caring agencies (residential group care), and child-placing agencies.[43]

The following placements do not require licensure under the licensing statute:

- Relative caregivers,[44]
- Non-relative caregivers,[45]
- An adoptive home which has been approved by the department or by a licensed child-placing agency for children placed for adoption,[46] and
- Persons or neighbors who care for children in their homes for less than 90 days.[47]

Licensure involves meeting rules and regulations pertaining to:

- The operation, conduct, and maintenance of these homes,
- The provision of food, clothing, educational opportunities, services, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of the children served,
- The appropriateness, safety, cleanliness, and general adequacy of the premises, including fire prevention and health standards, to provide for the physical comfort, care, and well-being of the children served,
- The ratio of staff to children required to provide adequate care and supervision of the children served and, in the case of foster homes,
- The maximum number of children in the home, and
- The good moral character based upon screening, education, training, and experience requirements for personnel.[48]

These licensure standards are the minimum requirements that must be met to care for children within the child welfare system. The department must issue a license for those homes and agencies that meet

[39] Office of Program Policy and Government Accountability, Research Memorandum, Florida's Child Welfare System: Out-of Home Care (November. 12, 2015) (on file with the Children, Families, and Seniors Subcommittee).
[40] Id.
[41] Supra. at FN 18.
[42] Office of Program Policy and Government Accountability, Research Memorandum, Florida's Child Welfare System: Out-of Home Care (November. 12, 2015) (on file with the Children, Families, and Seniors Subcommittee).
[43] S. 409.175, F.S.
[44] S. 409.175(1)(e), F.S.
[45] Id.
[46] S. 409.175(4)(d), F.S.
[47] S. 409.175(1)(e), F.S.
[48] S. 409.175, F.S.

the minimum licensure standards.[49] However, the issuance of a license does not require a lead agency to place a child with any home or agency.[50]

Residential Group Care Quality Standards

Florida Institute for Child Welfare

The Florida Institute for Child Welfare's (FICW) 2015 Annual Report looked at seven key areas concerning Florida's child welfare system, one of which was residential group care. The report highlighted three recommendations concerning residential group care:

- DCF should continue to refine and implement residential group care quality standards.
- Explore flexible funding that can facilitate higher quality services; and
- Crosswalk quality standards to existing policy and standards to ensure uniformity.

The FICW also published a technical report titled "Improving the Quality of Residential Group Care: A Review of Current Trends, Empirical Evidence, and Recommendations" in July of 2015. This report looked at the current trends and evidence related to residential group care, finding that "[a]lthough the appropriate use of RGC has been a subject of longstanding debate, most child welfare experts, including practitioners, researchers, and advocacy groups, acknowledge that for some youth involved in the child welfare system, high quality group care is an essential and even life saving intervention."[51] Based on reviews of current trends and issues, findings from research, and reviews of recommendations proposed by child welfare experts and advocacy groups the following seven recommendations are offered:[52]

1. Develop and implement a basic set of common quality standards for RGC.
2. Increase evaluation efforts to identify and support evidence-based RGC services.
3. Support RGC providers in strengthening efforts to engage families.
4. Explore innovative approaches, including those that are trauma-informed and relationship-based.
5. Increase efforts to identify and implement culturally competent practices that are supported by research.
6. Continue to build upon efforts to strengthen the child welfare workforce.
7. Explore flexible funding strategies that can help facilitate higher quality services and innovative uses of RGC that are consistent with systems of care principles.

The recommendations made by the FICW focus mainly on quality and implementing strategies to facilitate high quality services within RGC.

Group Care Quality Standards Workgroup

The Group Care Quality Standards Workgroup (workgroup) was established by DCF and the Florida Coalition for Children. The workgroup had representation from group care providers, lead agencies, and DCF and reviewed standards-related literature to determine consensus and ensure a high quality of group care standards.[53] The workgroup identified eight specific category areas for quality standards with 251 distinct quality standards for residential group care.[54]

[49] S. 409.175(6)(h), F.S.
[50] S. 409.175(6)(i), F.S.
[51] Boel-Studt, S. M. (2015). *Improving the Quality of Residential Group Care: A Review of Current Trends, Empirical Evidence, and Recommendations* (Florida Institute for Child Welfare).
[52] Id.
[53] Group Care Quality Standards Workgroup, Quality Standards for Group Care, Florida Department of Children and Families and the Florida Coalition of Children (2015) (on file with Children, Families, and Seniors subcommittee staff).
[54] Id.

Extended Foster Care

In 2014, the Legislature provided foster youth with the ability to extend foster care.[55] Previously, youth did not have the option to remain in foster care after their 18th birthday. Now, through extended foster care, they have the option to remain in care until they turn 21 or, if enrolled in an eligible post-secondary institution, receive financial assistance as they continue pursuing academic and career goals.[56] In extended foster care, young adults continue to receive case management services and other supports to provide them with a sound platform for success as independent adults.

Effect of Proposed Changes:

Child Welfare System

Services and Placement

HB 599 creates s. 409.142, F.S., relating to intervention services for unsafe children, to provide legislative findings that intervention services and supports are designed to strengthen and support families in order to keep them safely together and to prevent children from entering foster care. The bill also states legislative intent for the DCF to identify evidence-based intervention programs that remedy child abuse and neglect, reduce the likelihood of foster care placement by supporting parents and relative or nonrelative caregivers, increase family reunification with parents or other relatives, and promote placement stability for children living with relatives or nonrelative caregivers. The section defines the term "intervention services and supports," provides the types of intervention services that must be available for eligible individuals, provides eligibility for intervention services, and requires each community-based care lead agency to submit a monitoring plan to the DCF by October 1, 2016. Each community-based care lead agency must also submit an annual report to the DCF detailing specified collected data as part of the Results Oriented Accountability Program under s. 409.997, F.S. The DCF is also given rulemaking authority to adopt rules to administer this section.

The bill creates s. 409.144, F.S., relating to a continuum of care. The bill provides legislative findings and intent pertaining to the safety, permanency, and well-being of children in out-of-home care. The bill defines the terms "continuum of care," "family foster care," "level of care," "out-of-home care," and "residential group care."

The bill requires the DCF, in collaboration with the Florida Institute for Child Welfare, the Quality Parenting Initiative, and the Florida Coalition for Children to develop a continuum of care for the placement of children in out-of-home care that includes both family foster care and residential group care by December 31, 2017. To implement the continuum, the DCF must:

- Establish levels of care that are clearly defined with the qualifying criteria for placement at each level identified;
- Revise licensure standards and rules to reflect the services and supports provided by a placement at each level of care and include the quality standards that must be met by licensed providers;
- Develop policies and procedures to ensure that placements are appropriate for each child as determined by the required assessments and staffing and last only long enough to resolve the issue that required the placement;
- Develop a plan to recruit, train, and retain specialized foster homes for pregnant and parenting teens that are designed to provide an out-of-home placement option that will enable them to live in the same foster family home while caring for the child and working towards independent care of the child; and

[55] S. 39.6251, F.S.
[56] The Department of Children and Families, Extended Foster Care – My Future My Choice, *accessible at*: http://www.myflfamilies.com/service-programs/independent-living/extended-foster-care (last accessed 12/15/15).

- Work with the Department of Juvenile Justice to develop specialized placements for children who are involved with both the dependency and the juvenile justice systems.

The bill requires an annual report by the DCF to the Governor, the President of the Senate, and the Speaker of the House of Representatives and specifies what the report must contain.

The bill creates s. 409.143, F.S., relating to assessment and determination of appropriate placements for children in care, and provides state legislative findings and intent relating to the assessment of children in order to determine the most appropriate placement for each child in out-of-home care. The bill defines the terms "child functioning level," "comprehensive behavioral health assessment," and "level of care." The bill requires an initial placement assessment whenever a child has been determined to need an out-of-home placement and requires the DCF to document these initial assessments in the Florida Safe Families Network (FSFN) and update the case plan.

The bill requires procedures in s. 39.407, F.S., to be followed whenever a child is being placed in a residential treatment facility and prohibits placement decisions from being made by an individual or entity that has a conflict of interest with an agency being considered for placement.

The bill also requires a follow-up comprehensive behavioral health assessment to be completed for each child placed in out-of-home care; requires certain information to be included in the assessment; requires that the assessment be completed within 30 calendar days after the child enters out-of-home care; and requires the DCF to use the results of the comprehensive assessment to determine the child's functioning level and the level of care needed by the child.

The bill requires the establishment of permanency teams by the DCF or the community-based care lead agencies to regularly convene a multi-disciplinary staffing every 180 days to review the appropriateness of the child's placement and provides the contents of the review. An annual report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year that includes specified data on child placements and services.

The bill requires lead agencies to ensure the availability of a full array of services necessary to meet the needs of all individuals within their local system of care. The bill also requires the DCF to report annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the adequacy of the available service array by lead agency.

Dependency Proceedings and the New Safety Methodology

The bill requires that a court order for placement of a child in shelter contain a written finding that the placement proposed by the DCF is in the least restrictive and most family-like setting that meets the needs of the child, unless that type of placement is unavailable.

The bill requires that a court order for disposition contain a written finding that the placement of the child is in the least restrictive and most family-like setting that meets the needs of the child, as determined by the required assessments.

The bill changes the standard for the court to return a child to the home from "substantially complied with the terms of the case plan" to whether the "circumstances that caused the out-of-home placement have been remedied" with an in-home safety plan in place.

The bill adds provisions relating to maintaining and strengthening the placement as a permanency determination. These provisions are current law in s. 39.6011, F.S., and they are being relocated to s. 39.621, F.S.

The bill adds a requirement to the social study report for judicial review to include documentation that the placement of the child is in the least restrictive, most family-like setting that meets the needs of the child as determined through assessment.

The bill requires the court to order DCF and the community-based care lead agency to file a written notification before a child changes placements, if possible. If the notification before changing placements is not possible, the notification must be filed immediately following a change. This flexibility would accommodate those cases when a child must be moved on short notice or after work hours.

Case Plans

The bill completely restructures ss. 39.6011 and 39.6012, F.S. The changes to s. 39.6011, F.S., are that the bill states the purpose of a case plan and requires documentation that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, if appropriate, have been provided and that reasonable efforts to prevent out-of-home placement have been made. Under the bill, procedures for involving the child in the case planning process are revised and put in a separate subsection.

The changes to s. 39.6011, F.S., are that the bill requires documentation in the case plan that the required placement assessments have been completed; that the child has been placed in the least restrictive, most family-like setting, or if not, the reason for the alternative placement; and that if the child has been placed in a residential group care setting, regular reviews and updates to the case plan must be completed.

The bill also requires that provisions in the case plan relating to visitation and contact of the child with his or her parents and/or siblings also apply to extended family members and fictive kin. The term "fictive kin" is defined as individuals that are unrelated to the child by either birth or marriage, but have an emotionally significant relationship with the child that would take on the characteristics of a family relationship.

The bill clarifies that the transition plan must be approved by the court before the child's 18th birthday and be attached to the case plan.

Extended Foster Care

The bill creates a process for making federal education and training vouchers available to a child or young adult in out-of-home care if he or she meets certain eligibility requirements. The bill provides that the DCF may adopt rules to implement the program which must include an appeals process.

The bill extends court jurisdiction until the age of 22 for young adults having a disability who choose to remain in extended foster care. This is consistent with the provisions of s. 39.6251, F.S.

The bill also:

- Amends s. 39.01, F.S., relating to definitions, to create a definition of the term "conditions for return" which applies when consideration is being given to the DCF returning a child.
- Amends s. 39.202, F.S., relating to the confidentiality of records and reports in cases of child abuse or neglect and to revise the designation of an agency.
- Makes conforming cross reference changes;
- Repeals obsolete sections of law relating to group home reimbursement methodology, group home placement, and group home services.

The bill provides for an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1; Amends s. 39.01, F.S., relating to definitions
Section 2: Amends s. 39.013, F.S., relating to procedures and jurisdiction.
Section 3: Amends s. 39.402, F.S., relating to placement in shelter.
Section 4: Amends s. 39.521, F.S., relating to disposition hearings.
Section 5: Amends s. 39.522, F.S., relating to postdisposition change of custody.
Section 6: Amends s. 39.6011, F.S, relating to case plan development.
Section 7: Amends s. 39.6012, F.S., relating to case plan tasks.
Section 8: Amends s. 39.6035, F.S., relating to transition plans.
Section 9: Amends s. 39.621, F.S., relating to permanency determination by the court.
Section 10: Amends s. 39.701, F.S., relating to judicial review.
Section 11: Creates s. 409.142, F.S., relating to intervention services for unsafe children.
Section 12: Creates s. 409.143, F.S., relating to assessment and determination of appropriate placement.
Section 13: Creates s. 409.144, F.S., relating to a continuum of care for children.
Section 14: Amends s. 409.1451, F.S., relating to the Road-to-Independence program.
Section 15: Amends s. 409.988, F.S., relating to lead agency duties.
Section 16: Amends s. 39.202, F.S., relating to confidentiality of reports and records.
Section 17: Amends s. 39.302, F.S., relating to protective investigations.
Section 18: Amends s. 39.524, F.S., relating to safe-harbor placement.
Section 19: Amends s. 39.6013, F.S., relating to case plan amendments.
Section 20: Amends s. 394.495, F.S., relating to child and adolescent mental health system of care.
Section 21: Amends s. 409.1678, F.S., relating to specialized residential options for children who are victims of sexual exploitation.
Section 22: Amends s. 960.065, F.S., relating to eligibility for awards.
Section 23: Amends s. 1002.3305, F.S., relating to the college-prepatory boarding academy pilot program for at-risk students.
Section 24: Repeals s. 39.523, F.S., relating to placement in group care.
Section 25: Repeals s. 409.141, F.S., relating to the equitable reimbursement methodology for nonprofit residential group care services.
Section 26: Repeals s. 409.1676, F.S., relating to residential group care services.
Section 27: Repeals s. 409.4677, F.S., relating to model comprehensive group care services for children with extraordinary needs.
Section 28: Repeals s. 409.1679, F.S., relating to the reimbursement methodology for group care.
Section 29: Provides for an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has an indeterminate fiscal impact on state government. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector. See fiscal comments.

D. FISCAL COMMENTS:

The fiscal impact on state government and the private sector is indeterminate. Impacts may relate to technology upgrades for DCF's Florida Safe Families Network (FSFN), such as for storing data collected through the assessment instruments or for reporting on service adequacy; DCF and CBC staffing for tasks such as developing or selecting new assessment instruments, developing and reporting on continuum of care system and then ensuring an adequate range of services are offered, and some new case planning tasks; and direct services to children and families, particularly those that keep children safe in their own homes. However, these impacts may be able to be absorbed within the current system; for instance, technology upgrades may be able to be addressed through the ongoing FSFN upgrade programs, DCF and the CBC's may be able to carry out the tasks with existing staff, and in-home safety services may be substituted for current out-of-home services. The degree to which the bill imposes additional technology requirements, workload, and service costs are unknown, as is the ability of the system to absorb such costs.

There may be additional costs for the courts to carry out their duties under the bill, which are also indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill grants rule making authority to create and implement the assessments under the newly created section of law, as well as rule making authority to provide intervention services.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to child welfare; amending s. 39.01, F.S.; defining a term; amending s. 39.013, F.S.; extending court jurisdiction to age 22 for young adults with disabilities in foster care; amending s. 39.402, F.S.; revising information that the Department of Children and Families is required to inform the court of at shelter hearings; revising the written findings required to be included in an order for placement of a child in shelter care; amending s. 39.521, F.S.; revising the required information a court must include in its written orders of disposition; amending s. 39.522, F.S.; providing conditions under which a child may be returned home with an in-home safety plan; amending s. 39.6011, F.S.; providing the purpose of a case plan; requiring a case plan to document that a preplacement plan has been provided and reasonable efforts have been made to prevent out-of-home placement; removing the prohibition of threatening or coercing a parent with the loss of custody or parental rights for failing to admit certain actions in a case plan; providing that a child must be given the opportunity to review, sign, and receive a copy of his or her case plan; providing additional requirements when the child attains a certain age; requiring the case plan to document that

each parent has received additional written notices; amending s. 39.6012, F.S.; providing additional requirements for the department and criteria for a case plan, with regard to placement, permanency, education, health care, contact with family, extended family, and fictive kin, and independent living; amending s. 39.6035, F.S.; requiring court approval of a transition plan before the child's 18th birthday; amending s. 39.621, F.S.; creating an exception to the order of preference for permanency goals under ch. 39, F.S., for maintaining and strengthening the placement; authorizing the new permanency goal to be used in specified circumstances; amending s. 39.701, F.S.; revising the information which must be included in a specified written report under certain circumstances; requiring a court, if possible, to order the department to file a written notification; creating s. 409.142, F.S.; providing legislative findings and intent; defining the term "intervention services and supports"; requiring specified intervention services and supports; providing eligibility for such services and supports; providing requirements for the provision of services and supports; requiring community-based care lead agencies to submit a monitoring plan to the department by a certain date; requiring community-based care lead agencies to annually collect and

report specified information for each child to whom intervention services and supports are provided; requiring the department to adopt rules; creating s. 409.143, F.S.; providing legislative findings and intent; defining terms; requiring an initial placement assessment for certain children under specified circumstances; requiring every child placed in out-of-home care to be referred within a certain time for a comprehensive behavioral health assessment; requiring the department or the community-based care lead agency to establish special permanency teams to assist children in adjusting to home placement; requiring the department to submit an annual report to the Governor and the Legislature on the placement of children in licensed out-of-home care; creating s. 409.144, F.S.; providing legislative findings and intent; defining terms; requiring the department to develop a continuum of care for the placement of children in care settings; requiring the department to submit a report annually to the Governor and the Legislature; requiring the department to adopt rules; amending s. 409.1451, F.S.; requiring that a child be living in licensed care on or after his or her 18th birthday as a condition for receiving aftercare services; requiring the department to provide education training vouchers; providing eligibility requirements;

prohibiting vouchers from exceeding a certain amount; providing rulemaking authority; amending s. 409.988, F.S.; requiring lead agencies to ensure the availability of a full array of family support services; requiring the department to submit annually to the Governor and Legislature a report that evaluates the adequacy of family support services; requiring the department to adopt rules; amending s. 39.202, F.S.; revising the designation of an agency with access to records; amending ss. 39.302, 39.524, 39.6013, 394.495, 409.1678, 960.065, and 1002.3305, F.S.; conforming cross-references; repealing s. 39.523, F.S., relating to the placement of children in residential group care; repealing s. 409.141, F.S., relating to equitable reimbursement methodology; repealing s. 409.1676, F.S., relating to comprehensive residential group care services to children who have extraordinary needs; repealing s. 409.1677, F.S., relating to model comprehensive residential services programs; repealing s. 409.1679, F.S., relating to program requirements and reimbursement methodology; providing an effective date.

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

Section 1. Subsection (10) of section 39.01, Florida

Statutes, is amended, present subsections (20) through (79) of that section are redesignated as subsections (21) through (80), respectively, a new subsection (20) is added to that section, and present subsection (32) of that section is amended, to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(10) "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (48) ~~subsection (47)~~.

(20) "Conditions for return" means the circumstances that caused the out-of-home placement have been remedied to the extent that the return of the child to the home with an in-home safety plan will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health.

(32) "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care as defined in subsection (48) ~~subsection (47)~~.

Section 2. Paragraph (e) is added to subsection (2) of section 39.013, Florida Statutes, to read:

39.013 Procedures and jurisdiction; right to counsel.—

(2) The circuit court has exclusive original jurisdiction

of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition, or a petition for an injunction to prevent child abuse issued pursuant to s. 39.504, is filed or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was not in the physical or legal custody of any person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 21 years of age, with the following exceptions:

(e) If a young adult with a disability remains in foster care, jurisdiction shall continue until the young adult chooses to leave foster care or upon the young adult reaching 22 years of age, whichever occurs first.

Section 3. Paragraphs (f) and (h) of subsection (8) of section 39.402, Florida Statutes, are amended to read:

39.402 Placement in a shelter.—

(8)

(f) At the shelter hearing, the department shall inform the court of:

1. Any identified current or previous case plans negotiated under this chapter in any judicial circuit ~~district~~ with the parents or caregivers ~~under this chapter~~ and problems associated with compliance;

2. Any adjudication of the parents or caregivers of delinquency;

3. Any past or current injunction for protection from domestic violence; and

4. All of the child's places of residence during the prior 12 months.

(h) The order for placement of a child in shelter care must identify the parties present at the hearing and must contain written findings:

1. That placement in shelter care is necessary based on the criteria in subsections (1) and (2).

2. That placement in shelter care is in the best interest of the child.

3. That the placement proposed by the department is in the least restrictive and most family-like setting that meets the needs of the child, unless it is otherwise documented that the identified type of placement needed is not available.

4.~~3.~~ That continuation of the child in the home is contrary to the welfare of the child because the home situation

presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services.

5.~~4.~~ That based upon the allegations of the petition for placement in shelter care, there is probable cause to believe that the child is dependent or that the court needs additional time, which may not exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child.

6.~~5.~~ That the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home. A finding of reasonable effort by the department to prevent or eliminate the need for removal may be made and the department is deemed to have made reasonable efforts to prevent or eliminate the need for removal if:

a. The first contact of the department with the family occurs during an emergency;

b. The appraisal of the home situation by the department indicates that the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services;

c. The child cannot safely remain at home, either because there are no preventive services that can ensure the health and safety of the child or because, even with appropriate and available services being provided, the health and safety of the

child cannot be ensured; or

d. The parent or legal custodian is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights in s. 39.806(1)(f)-(i).

7.~~6.~~ That the department has made reasonable efforts to keep siblings together if they are removed and placed in out-of-home care unless such placement is not in the best interest of each child. It is preferred that siblings be kept together in a foster home, if available. Other reasonable efforts shall include short-term placement in a group home with the ability to accommodate sibling groups if such a placement is available. The department shall report to the court its efforts to place siblings together unless the court finds that such placement is not in the best interest of a child or his or her sibling.

8.~~7.~~ That the court notified the parents, relatives that are providing out-of-home care for the child, or legal custodians of the time, date, and location of the next dependency hearing and of the importance of the active participation of the parents, relatives that are providing out-of-home care for the child, or legal custodians in all proceedings and hearings.

9.~~8.~~ That the court notified the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013.

10.~~9.~~ That the court notified relatives who are providing out-of-home care for a child as a result of the shelter petition being granted that they have the right to attend all subsequent hearings, to submit reports to the court, and to speak to the court regarding the child, if they so desire.

Section 4. Paragraph (d) of subsection (1) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(d) The court shall, in its written order of disposition, include all of the following:

1. The placement or custody of the child, including whether the placement is in the least restrictive and most family-like setting that meets the needs of the child, as determined by assessments completed pursuant to s. 409.143.

2. Special conditions of placement and visitation.

3. Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered.

4. The persons or entities responsible for supervising or

monitoring services to the child and parent.

5. Continuation or discharge of the guardian ad litem, as appropriate.

6. The date, time, and location of the next scheduled review hearing, which must occur within the earlier of:

a. Ninety days after the disposition hearing;

b. Ninety days after the court accepts the case plan;

c. Six months after the date of the last review hearing; or

d. Six months after the date of the child's removal from his or her home, if no review hearing has been held since the child's removal from the home.

7. If the child is in an out-of-home placement, child support to be paid by the parents, or the guardian of the child's estate if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child. The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61. The state's child support enforcement agency shall enforce child support orders under this section in the same manner as child support orders under chapter 61. Placement of the child shall not be contingent upon issuance of a support order.

8.a. If the court does not commit the child to the temporary legal custody of an adult relative, legal custodian,

or other adult approved by the court, the disposition order shall include the reasons for such a decision and shall include a determination as to whether diligent efforts were made by the department to locate an adult relative, legal custodian, or other adult willing to care for the child in order to present that placement option to the court instead of placement with the department.

b. If no suitable relative is found and the child is placed with the department or a legal custodian or other adult approved by the court, both the department and the court shall consider transferring temporary legal custody to an adult relative approved by the court at a later date, but neither the department nor the court is obligated to so place the child if it is in the child's best interest to remain in the current placement.

For the purposes of this section, "diligent efforts to locate an adult relative" means a search similar to the diligent search for a parent, but without the continuing obligation to search after an initial adequate search is completed.

9. Other requirements necessary to protect the health, safety, and well-being of the child, to preserve the stability of the child's educational placement, and to promote family preservation or reunification whenever possible.

Section 5. Subsection (2) of section 39.522, Florida Statutes, is amended to read:

39.522 Postdisposition change of custody.—The court may change the temporary legal custody or the conditions of protective supervision at a postdisposition hearing, without the necessity of another adjudicatory hearing.

(2) In cases where the issue before the court is whether a child should be reunited with a parent, the court shall determine whether the circumstances that caused the out-of-home placement have been remedied ~~parent has substantially complied with the terms of the case plan~~ to the extent that the return of the child to the home with an in-home safety plan will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health ~~of the child is not endangered by the return of the child to the home~~.

Section 6. Section 39.6011, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 39.6011, F.S., for present text.)

39.6011 Case plan purpose; requirements; procedures.—

(1) PURPOSE.—The purpose of the case plan is to promote and facilitate change in parental behavior and to address the treatment and long-term well-being of children receiving services under this chapter.

(2) GENERAL REQUIREMENTS.—The department shall draft a case plan for each child receiving services under this chapter. The case plan must:

(a) Document that a preplacement assessment of the service

needs of the child and family, and preplacement preventive services, if appropriate, have been provided pursuant to s. 409.142, and that reasonable efforts to prevent out-of-home placement have been made.

(b) Be developed in a face-to-face conference with the parent of the child, any court-appointed guardian ad litem, the child's attorney, and, if appropriate, the temporary custodian of the child. The parent may receive assistance from any person or social service agency in preparing the case plan. The social service agency, the department, and the court, when applicable, shall inform the parent of the right to receive such assistance, including the right to assistance of counsel.

(c) Be written simply and clearly in English and, if English is not the principal language of the child's parent, in the parent's principal language, to the extent practicable.

(d) Describe a process for making available to all physical custodians and family services counselors the information required by s. 39.6012(2) and for ensuring that this information follows the child until permanency has been achieved.

(e) Specify the period of time for which the case plan is applicable, which must be as short a period as possible for the parent to comply with the terms of the plan. The case plan's compliance period expires no later than 12 months after the date the child was initially removed from the home, the date the child is adjudicated dependent, or the date the case plan is

accepted by the court, whichever occurs first.

(f) Be signed by all of the parties. Signing the case plan constitutes an acknowledgment by each of the parties that they have been involved in the development of the case plan and that they are in agreement with the terms and conditions contained in the case plan. The refusal of a parent to sign the case plan does not preclude the court's acceptance of the case plan if it is otherwise acceptable to the court. The parent's signing of the case plan does not constitute an admission to any allegation of abuse, abandonment, or neglect and does not constitute consent to a finding of dependency or termination of parental rights. The department shall explain the provisions of the case plan to all persons involved in its implementation, before the signing of the plan.

(3) PARTICIPATION BY THE CHILD.—It is important that the child be involved in all aspects of the case planning process, including development of the plan, as well as the opportunity to review, sign, and receive a copy of the case plan. The child may not be included in any aspect of the case planning process when information will be revealed or discussed that is of a nature that would best be presented to the child in a more therapeutic setting. The child, when the child has attained 14 years of age or the child is otherwise at the appropriate age and capacity, must:

(a) Be included in the face-to-face conference to develop the plan under this section, have the opportunity to express a

placement preference, and have the option to choose two members of the case planning team who are not a foster parent or caseworker for the child.

(b) Sign the case plan, unless there is reason to waive the child's signature.

(c) Receive an explanation of the provisions of the case plan from the department.

(d) Be provided a copy of the case plan:

1. After the case plan has been agreed upon and signed; and

2. Within 3 business days before the disposition hearing after jurisdiction attaches and the plan has been filed with the court.

(4) NOTICE TO PARENTS.—The case plan must document that each parent has been advised of the following by written notice:

(a) That he or she may not be coerced or threatened with the loss of custody or parental rights for failing to admit the abuse, neglect, or abandonment of the child in the case plan. Participation in the development of a case plan is not an admission to any allegation of abuse, abandonment, or neglect and does not constitute consent to a finding of dependency or termination of parental rights.

(b) That the department must document a parent's unwillingness or inability to participate in developing a case plan and provide such documentation in writing to the parent when it becomes available for the court record. In such event,

the department will prepare a case plan that, to the extent possible, conforms with the requirements of this section. The parent must also be advised that his or her unwillingness or inability to participate in developing a case plan does not preclude the filing of a petition for dependency or for termination of parental rights. If the parent is available, the department shall provide a copy of the case plan to the parent and advise him or her that, at any time before the filing of a petition for termination of parental rights, he or she may enter into a case plan and that he or she may request judicial review of any provision of the case plan with which he or she disagrees at any court hearing set for the child.

(c) That his or her failure to substantially comply with the case plan may result in the termination of parental rights, and that a material breach of the case plan may result in the filing of a petition for termination of parental rights before the scheduled completion date.

(5) DISTRIBUTION AND FILING WITH THE COURT.—The department shall adhere to the following procedural requirements in developing and distributing a case plan:

(a) After the case plan has been agreed upon and signed by the parties, a copy of the case plan must immediately be given to the parties and to other persons, as directed by the court.

(b) In each case in which a child has been placed in out-of-home care, a case plan must be prepared within 60 days after the department removes the child from the home and must be

submitted to the court for review and approval before the disposition hearing.

(c) After jurisdiction attaches, all case plans must be filed with the court, and a copy provided to all of the parties whose whereabouts are known not less than 3 business days before the disposition hearing. The department shall file with the court and provide copies of such to all of the parties, all case plans prepared before jurisdiction of the court attached.

(d) A case plan must be prepared, but need not be submitted to the court, for a child who will be in care for 30 days or less unless that child is placed in out-of-home care for a second time within a 12-month period.

Section 7. Section 39.6012, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 39.6012, F.S., for present text.)

39.6012 Services and parental tasks under the case plan; safety, permanency, and well-being of the child.—The case plan must include a description of the identified problem that is being addressed, including the parent's behavior or acts that have resulted in a threat to the safety of the child and the reason for the department's intervention. The case plan must be designed to improve conditions in the child's home to facilitate the child's safe return and ensure proper care of the child, or to facilitate the child's permanent placement. The services offered must be as unobtrusive as possible in the lives of the

parent and the child, must focus on clearly defined objectives, and must provide the most timely and efficient path to reunification or permanent placement, given the circumstances of the case and the child's need for safe and proper care.

(1) CASE PLAN SERVICES AND TASKS.—The case plan must be based upon an assessment of the circumstances that required intervention by the child welfare system. The case plan must describe the role of the foster parents or legal custodians, and must be developed in conjunction with the determination of the services that are to be provided under the case plan to the child, foster parents, or legal custodians. If a parent's substantial compliance with the case plan requires the department to provide services to the parent or the child and the parent agrees to begin compliance with the case plan before it is accepted by the court, the department shall make appropriate referrals for services which will allow the parent to immediately begin the agreed-upon tasks and services.

(a) Itemization in the case plan.—The case plan must describe each of the tasks which the parent must complete and the services that will be provided to the parent, in the context of the identified problem, including:

1. The type of services or treatment which will be provided.

2. If the service is being provided by the department or its agent, the date the department will provide each service or referral for service.

3. The date by which the parent must complete each task.

4. The frequency of services or treatment to be provided, which shall be determined by the professionals providing the services and may be adjusted as needed based on the best professional judgment of the provider.

5. The location of the delivery of the services.

6. Identification of the staff of the department or the service provider who are responsible for the delivery of services or treatment.

7. A description of measurable outcomes, including the timeframes specified for achieving the objectives of the case plan and addressing the identified problem.

(b) Meetings with case manager.—The case plan must include a schedule of the minimum number of face-to-face meetings to be held each month between the parent and the case manager to review the progress of the case plan, eliminate barriers to completion of the plan, and resolve conflicts or disagreements.

(c) Request for notification from relative.—The case manager shall advise the attorney for the department of a relative's request to receive notification of proceedings and hearings submitted pursuant to s. 39.301(14)(b).

(d) Financial support.—The case plan must specify the parent's responsibility for the financial support of the child, including, but not limited to, health insurance and child support. The case plan must list the costs associated with any services or treatment that the parent and child are expected to

receive which are the financial responsibility of the parent. The determination of child support and other financial support must be made independently of any determination of dependency under s. 39.013.

(2) SAFETY, PERMANENCY, AND WELL-BEING OF THE CHILD.—The case plan must include all available information that is relevant to the child's care, including a detailed description of the identified needs of the child while in care and a description of the plan for ensuring that the child receives safe and proper care that is appropriate to his or her needs. Participation by the child must meet the requirements under s. 39.6011.

(a) Placement.—To comply with federal law, the department must ensure that the placement of a child in foster care be in the least restrictive, most family-like environment; must review the family assessment, safety plan, and case plan for the child to assess the necessity for and the appropriateness of the placement; must assess the progress that has been made toward case plan outcomes; and must project a likely date by which the child can be safely reunified or placed for adoption or legal guardianship. The family assessment must indicate the type of placement to which the child has been assigned and must document the following:

1. That the child has undergone the placement assessments required pursuant to s. 409.143.

2. That the child has been placed in the least restrictive

and most family-like setting available consistent with the best interest and special needs of the child, and in as close proximity as possible to the child's home.

3. If the child is placed in a setting that is more restrictive than recommended by the placement assessments or is placed more than 50 miles from the child's home, the reasons why the placement is necessary and in the best interest of the child and the steps required to place the child in the placement recommended by the assessment.

4. If residential group care is recommended for the child, the needs of the child which necessitate such placement, the plan for transitioning the child to a family setting, and the projected timeline for the child's transition to a less restrictive environment. If the child is placed in residential group care, his or her case plan shall be reviewed and updated within 90 days after the child's admission to the residential group care facility and at least every 60 days thereafter.

(b) Permanency.—If reunifying a child with his or her family is not possible, the department shall make every effort to provide other forms of permanency, such as adoption or guardianship. If a child is placed in an out-of-home placement, the case plan, in addition to any other requirements imposed by law or department rule, must include:

1. If concurrent planning is being used, a description of the permanency goal of reunification with the parent or legal custodian and a description of one of the remaining permanency

goals defined in s. 39.01; or, if concurrent case planning is not being used, an explanation as to why it is not being used.

2. If the case plan has as its goal the adoption of the child or his or her placement in another permanent home, a statement of the child's wishes regarding his or her permanent placement plan and an assessment of those stated wishes. The case plan must also include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, or a legal guardian; and to finalize the adoption or legal guardianship. At a minimum, the documentation must include child-specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, after he or she has become legally eligible for adoption.

3. If the child has been in out-of-home care for at least 12 months and the permanency goal is not adoptive placement, the documentation of the compelling reason for a finding that termination of parental rights is not in the child's best interest.

(c) Education.—A case plan must ensure the educational stability of the child while in foster care. To the extent available and accessible, the names and addresses of the child's educational providers, a record of his or her grade level performance, and his or her school record must be attached to

the case plan and updated throughout the judicial review process. The case plan must also include documentation that the placement:

1. Takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.

2. Has been coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement, or, if remaining in that school is not in the best interest of the child, assurances by the department and the local education agency to provide immediate and appropriate enrollment in a new school and to provide all of the child's educational records to the new school.

(d) Health care.—To the extent that they are available and accessible, the names and addresses of the child's health and behavioral health providers, a record of the child's immunizations, the child's known medical history, including any known health issues, the child's medications, and any other relevant health and behavioral health information must be attached to the case plan and updated throughout the judicial review process.

(e) Contact with family, extended family, and fictive kin.—When out-of-home placement is made, the case plan must include provisions for the development and maintenance of sibling relationships and visitation, if the child has siblings

and is separated from them, a description of the parent's visitation rights and obligations, and a description of any visitation rights with extended family members as defined in s. 751.011. As used in this paragraph, the term "fictive kin" means individuals who are unrelated to the child by either birth or marriage, but who have an emotionally significant relationship with the child that would take on the characteristics of a family relationship. As soon as possible after a court order is entered, the following must be provided to the child's out-of-home caregiver:

1. Information regarding any court-ordered visitation between the child and the parents, and the terms and conditions necessary to facilitate such visits and protect the safety of the child.

2. Information regarding the schedule and frequency of the visits between the child and his or her siblings, as well as any court-ordered terms and conditions necessary to facilitate the visits and protect the safety of the child.

3. Information regarding the schedule and frequency of the visits between the child and any extended family member or fictive kin, as well as any court-ordered terms and conditions necessary to facilitate the visits and protect the safety of the child.

(f) Independent living.—

1. When appropriate, the case plan for a child who is 13 years of age or older, must include a written description of the

life skills services to be provided by the caregiver which will assist the child, consistent with his or her best interests, in preparing for the transition from foster care to independent living. The case plan must be developed with the child and individuals identified as important to the child, and must include the steps the agency is taking to ensure that the child has a connection with a caring adult.

2. During the 180-day period after a child reaches 17 years of age, the department and the community-based care provider, in collaboration with the caregiver and any other individual whom the child would like to include, shall assist the child in developing a transition plan pursuant to s. 39.6035, which is in addition to standard case management requirements. The transition plan must address specific options that the child may use in obtaining services, including housing, health insurance, education, and workforce support and employment services. The transition plan must also consider establishing and maintaining naturally occurring mentoring relationships and other personal support services. The transition plan may be as detailed as the child chooses and must be attached to the case plan and updated before each judicial review.

Section 8. Subsection (4) of section 39.6035, Florida Statutes, is amended to read:

39.6035 Transition plan.—

(4) ~~If a child is planning to leave care upon reaching 18~~

~~years of age,~~ The transition plan must be approved by the court before the child's 18th birthday ~~child leaves care and the court terminates jurisdiction~~.

Section 9. Subsection (2) of section 39.621, Florida Statutes, is amended, present subsections (3) through (11) of that section are redesignated as subsections (4) through (12), respectively, and a new subsection (3) is added to that section, to read:

39.621 Permanency determination by the court.—

(2) Except as provided in subsection (3), the permanency goals available under this chapter, listed in order of preference, are:

(a) Reunification;

(b) Adoption, if a petition for termination of parental rights has been or will be filed;

(c) Permanent guardianship of a dependent child under s. 39.6221; or

~~(d) Permanent placement with a fit and willing relative under s. 39.6231; or~~

(d)~~(e)~~ Placement in another planned permanent living arrangement under s. 39.6241.

(3) The permanency goal of maintaining and strengthening the placement with a parent may be used in the following circumstances:

(a) If a child has not been removed from a parent but is found to be dependent, even if adjudication of dependency is

withheld, the court may leave the child in the current placement with maintaining and strengthening the placement as a permanency option.

(b) If a child has been removed from a parent and is placed with the parent from whom the child was not removed, the court may leave the child in the placement with the parent from whom the child was not removed with maintaining and strengthening the placement as a permanency option.

(c) If a child has been removed from a parent and is subsequently reunified with that parent, the court may leave the child with that parent with maintaining and strengthening the placement as a permanency option.

Section 10. Paragraphs (a) and (d) of subsection (2) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF AGE.—

(a) Social study report for judicial review.—Before every judicial review hearing or citizen review panel hearing, the social service agency shall make an investigation and social study concerning all pertinent details relating to the child and shall furnish to the court or citizen review panel a written report that includes, but is not limited to:

1. A description of the type of placement the child is in at the time of the hearing, including the safety of the child, ~~and~~ the continuing necessity for ~~and appropriateness of~~ the

placement, and that the placement is in the least restrictive and most family-like setting that meets the needs of the child as determined by the assessment completed pursuant to s. 409.143.

2. Documentation of the diligent efforts made by all parties to the case plan to comply with each applicable provision of the case plan.

3. The amount of fees assessed and collected during the period of time being reported.

4. The services provided to the foster family or legal custodian in an effort to address the needs of the child as indicated in the case plan.

5. A statement that either:

a. The parent, though able to do so, did not comply substantially with the case plan, and the agency recommendations;

b. The parent did substantially comply with the case plan; or

c. The parent has partially complied with the case plan, with a summary of additional progress needed and the agency recommendations.

6. A statement from the foster parent or legal custodian providing any material evidence concerning the return of the child to the parent or parents.

7. A statement concerning the frequency, duration, and results of the parent-child visitation, if any, and the agency

recommendations for an expansion or restriction of future visitation.

8. The number of times a child has been removed from his or her home and placed elsewhere, the number and types of placements that have occurred, and the reason for the changes in placement.

9. The number of times a child's educational placement has been changed, the number and types of educational placements which have occurred, and the reason for any change in placement.

10. If the child has reached 13 years of age but is not yet 18 years of age, a statement from the caregiver on the progress the child has made in acquiring independent living skills.

11. Copies of all medical, psychological, and educational records that support the terms of the case plan and that have been produced concerning the parents or any caregiver since the last judicial review hearing.

12. Copies of the child's current health, mental health, and education records as identified in s. 39.6012.

(d) Orders.—

1. Based upon the criteria ~~set forth~~ in paragraph (c) and the recommended order of the citizen review panel, if any, the court shall determine whether ~~or not~~ the social service agency shall initiate proceedings to have a child declared a dependent child, return the child to the parent, continue the child in out-of-home care for a specified period of time, or initiate

termination of parental rights proceedings for subsequent placement in an adoptive home. Amendments to the case plan must be prepared as prescribed in s. 39.6013. If the court finds that ~~the prevention or reunification efforts of the department will allow~~ the child can safely ~~to~~ remain in the ~~safely at~~ home with an in-home safety plan ~~or be safely returned to the home~~, the court shall allow the child to remain in ~~or return to~~ the home ~~after making a specific finding of fact that the reasons for the creation of the case plan have been remedied to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered~~.

2. The court shall return the child to the custody of the parents with an in-home safety plan at any time it determines that they have met conditions for return ~~substantially complied with the case plan~~, and if the court is satisfied that return of the child to the home ~~reunification~~ will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health.

3. If, in the opinion of the court, the social service agency has not complied with its obligations as specified in the written case plan, the court may find the social service agency in contempt, shall order the social service agency to submit its plans for compliance with the agreement, and shall require the social service agency to show why the child could not safely be returned to the home of the parents.

4. If possible, the court shall order the department to

file a written notification before a child changes placements or living arrangements. If such notification is not possible before the change, the department must file a notification immediately after a change. A written notification filed with the court must include assurances from the department that the provisions of s. 409.145 and administrative rule relating to placement changes have been met.

5.~~4.~~ If, at any judicial review, the court finds that the parents have failed to substantially comply with the case plan to the degree that further reunification efforts are without merit and not in the best interest of the child, on its own motion, the court may order the filing of a petition for termination of parental rights, whether or not the time period as contained in the case plan for substantial compliance has expired.

6.~~5.~~ Within 6 months after the date that the child was placed in shelter care, the court shall conduct a judicial review hearing to review the child's permanency goal as identified in the case plan. At the hearing the court shall make findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home. If the court makes a written finding that it is not likely that the child will be reunified with the parent or legal custodian within 12 months after the child was removed from the home, the department must file with the court, and serve on all parties, a motion to amend the case

plan under s. 39.6013 and declare that it will use concurrent planning for the case plan. The department must file the motion within 10 business days after receiving the written finding of the court. The department must attach the proposed amended case plan to the motion. If concurrent planning is already being used, the case plan must document the efforts the department is taking to complete the concurrent goal.

7.~~6.~~ The court may issue a protective order in assistance, or as a condition, of any other order made under this part. In addition to the requirements included in the case plan, the protective order may set forth requirements relating to reasonable conditions of behavior to be observed for a specified period of time by a person or agency who is before the court; and the order may require any person or agency to make periodic reports to the court containing such information as the court in its discretion may prescribe.

Section 11. Section 409.142, Florida Statutes, is created to read:

409.142 Intervention services for unsafe children.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that intervention services and supports are designed to strengthen and support families in order to keep them safely together and to prevent children from entering foster care. Therefore, it is the intent of the Legislature for the department to identify evidence-based intervention programs that remedy child abuse and neglect, reduce the likelihood of foster

care placement by supporting parents and relative or nonrelative caregivers, increase family reunification with parents or other relatives, and promote placement stability for children living with relatives or nonrelative caregivers.

(2) DEFINITION.—As used in this section the term "Intervention services and supports" means assistance provided to a child or to the parents or relative and nonrelative caregivers of a child determined by a child protection investigation to be in present or impending danger.

(3) SERVICES AND SUPPORTS.—Intervention services and supports that shall be made available to eligible individuals include, but are not limited to:

(a) Safety management services provided to unsafe children which immediately and actively protect the child from dangerous threats if the parent or other caregiver cannot, as part of a safety plan.

(b) Parenting skills training, including parent advocates, peer-to-peer mentoring, and support groups for parents and relative caregivers.

(c) Individual, group, and family counseling, mentoring, and therapy.

(d) Behavioral health care needs, domestic violence, and substance abuse services.

(e) Crisis assistance or services to stabilize families in times of crisis or to facilitate relative placement, such as transportation, clothing, household goods, assistance with

housing and utility payments, child care, respite care, and assistance connecting families with other community-based services.

(4) ELIGIBILITY FOR SERVICES.—The following individuals are eligible for services and supports under this section:

(a) A child who is unsafe but can remain safely at home or in a relative or nonrelative placement with receipt of specified services and supports.

(b) A parent or relative caregiver of an unsafe child.

(5) GENERAL REQUIREMENTS.—The community-based care lead agency shall prepare a case plan for each child and his or her family receiving services and support under this section which includes:

(a) The safety services and supports necessary to prevent the child's entry into foster care.

(b) The services and supports that will enable the child to return home with an in-home safety plan.

(6) ASSESSMENT AND REPORTING.—

(a) By October 1, 2016, each community-based care lead agency shall submit a monitoring plan to the department describing how the lead agency will monitor and oversee the safety of children who receive intervention services and supports. The monitoring plan shall include a description of training and support for caseworkers handling intervention cases, including how caseload size and type will be determined, managed, and overseen.

(b) Beginning October 1, 2016, each community-based care lead agency shall collect and report annually to the department, as part of the child welfare Results Oriented Accountability Program required under s. 409.997, the following with respect to each child for whom, or on whose behalf, intervention services and supports are provided during a 12-month period:

1. The number of children and families served;

2. The specific services provided and the total expenditures for each such service;

3. The child's placement status at the beginning and at the end of the period; and

4. The child's placement status 1 year after the end of the period.

(c) Outcomes for this subsection shall be included in the annual report required under s. 409.997.

(7) RULEMAKING.—The department shall adopt rules to administer this section.

Section 12. Section 409.143, Florida Statutes, is created to read:

409.143 Assessment and determination of appropriate placement.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that it is a basic tenet of child welfare practice and the law that children be placed in the least restrictive, most family-like setting available in close proximity to the home of their parents, consistent with

the best interests and needs of the child, and that children be placed in permanent homes in a timely manner.

(b) The Legislature also finds that behavior problems can create difficulties in a child's placement and ultimately lead to multiple placements, which have been linked to negative outcomes for children.

(c) The Legislature further finds that given the harm associated with multiple placements, the ideal is connecting children to the most appropriate setting at the time they come into care.

(d) Therefore, it is the intent of the Legislature that through the use of a standardized assessment process and the availability of an adequate array of appropriate placement options, that the first placement be the best placement for every child entering care.

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

(a) "Child functioning level" means specific categories of child behaviors and needs.

(b) "Comprehensive behavioral health assessment" means an in-depth and detailed assessment of the child's emotional, social, behavioral, and developmental functioning within the family home, school, and community that must include direct observation of the child in the home, school, and community, as well as in the clinical setting.

(c) "Level of care" means a tiered approach to the types of placement used and the acuity and intensity of intervention

services provided to meet the severity of a dependent child's specific physical, emotional, psychological, and social needs.

(3) INITIAL PLACEMENT ASSESSMENT.—

(a) Each child that has been determined by the department, a sheriff's office conducting protective investigations, or a community-based care provider to require an out-of-home placement must be assessed prior to placement selection to determine the best placement option to meet the child's immediate and ongoing intervention and services and supports needs. The department shall develop and adopt by rule a preplacement assessment tool, which must include an analysis based on information available to the department at the time of the assessment, of the child's age, maturity level, known behavioral health diagnosis, behaviors, prior placement arrangements, physical and medical needs, and educational commitments.

(b) If it is determined during the preplacement evaluation that a child may be suitable for residential treatment as defined in s. 39.407, the procedures in that section must be followed.

(c) A decision to place a child in group care with a residential child care agency may not be made by any individual or entity who has an actual or perceived conflict of interest with any agency being considered for placement.

(d) The department shall document initial placement assessments in the Florida Safe Families Network.

(4) COMPREHENSIVE ASSESSMENT.—

(a) Each child placed in out-of-home care shall be referred by the department for a comprehensive behavioral health assessment. The comprehensive assessment is intended to support the family assessment, which will guide the case plan outcomes, treatment, and well-being service provisions for a child in out-of-home care, in addition to providing information to help determine if the child's initial placement was the most appropriate out-of-home care setting for the child.

(b) The referral for the comprehensive behavioral health assessment shall be made within 7 calendars days of the child entering out-of-home care.

(c) The comprehensive assessment will measure the strengths and needs of the child and the services and supports that are necessary to maintain the child in the least restrictive out-of-home care setting. In developing the assessment, consideration must be given to:

1. Current and historical information from any psychological testing or evaluation of the child;

2. Current behaviors exhibited by the child which interfere with or limit the child's role or ability to function in a less restrictive, family-like setting;

3. Current and historical information from the guardian ad litem, if one has been appointed;

4. Current and historical information from any current therapist, teacher, or other professional who has knowledge of

the child or has worked with the child;

5. Information related to the placement of any siblings of the child; and

6. If the child has been moved more than once, the circumstances necessitating the moves and the recommendations of the former foster families or other caregivers, if available.

(d) Completion of the comprehensive assessment must occur within 30 calendar days after the child entering out-of-home care.

(e) The department shall use the results of the comprehensive assessment and any additional information gathered to determine the child's functioning level and the level of care needed for continued placement.

(f) Upon receipt of a child's completed comprehensive assessment, the child's case manager shall review the assessment, and document whether a less restrictive, more family-like setting for the child is recommended and available. The department shall document determinations resulting from the comprehensive assessment in the Florida Safe Families Network and update the case plan to include identified needs of the child, specified services and supports to be provided by the out-of-home care placement setting to meet the needs of the child, and diligent efforts to transition the child to a less restrictive, family-like setting.

(5) PERMANENCY TEAMS.—The department or community-based care lead agency that places children pursuant to this section

shall establish special permanency teams dedicated to overcoming the permanency challenges occurring for children in out-of-home care. The special permanency team shall convene a multidisciplinary staffing every 180 calendar days, to coincide with the judicial review, to reassess the appropriateness of the child's current placement. At a minimum, the staffing shall be attended by the community-based care lead agency, the caseworker for the child, out-of-home care provider, guardian ad litem, and any other agency or provider of services to the child. The multidisciplinary staffing shall consider, at a minimum, the current level of the child's functioning, whether recommended services are being provided effectively, any services that would enable transition to a less restrictive family-like setting, and diligent search efforts to find other permanent living arrangements for the child.

(6) ANNUAL REPORT.—By October 1 of each year, the department shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the placement of children in licensed out-of-home care, including family foster homes and residential group care, during the year. At a minimum, the report should include the number of children placed in family foster homes and residential group care, the number of children placed more than 50 miles from their parents, the number of children who had to change schools as a result of a placement decision; use of this form of placement on a local, regional, and statewide level; and the available services array

to serve children in the least restrictive settings.

Section 13. Section 409.144, Florida Statutes, is created to read:

409.144 Continuum of care for children.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that permanency, well-being, and safety are critical goals for all children, especially for those in care, and that children in foster care or at risk of entering foster care are best supported through a continuum of care that provides appropriate ongoing services, supports and place to live from entry to exit.

(b) The Legislature also finds that federal law requires that out-of-home placements for children are to be in the least restrictive, most family-like setting available that is in close proximity to the home of their parents and consistent with the best interests and needs of the child, and that children be transitioned from out-of-home care to a permanent home in a timely manner.

(c) The Legislature further finds that permanency can be achieved through preservation of the family, reunification with the birth family, or through legal guardianship or adoption by relatives or other caring and committed adults. Planning for permanency should begin at entry into care and should be child-driven, family-focused, culturally appropriate, continuous, and approached with the highest degree of urgency.

(d) It is, therefore, the intent of the Legislature that

the department and the larger child welfare community establish and maintain a continuum of care that affords every child the opportunity to benefit from the most appropriate and least restrictive interventions, both in or out of the home, while ensuring that well-being and safety are addressed.

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

(a) "Continuum of care" means the complete range of programs and services for children served by, or at risk of being served by, the dependency system.

(b) "Family foster care" means a family foster home as defined in s. 409.175.

(c) "Level of care" means a tiered approach to the type of placements used and the acuity and intensity of intervention services provided to meet the severity of a dependent child's specific physical, emotional, psychological, and social needs.

(d) "Out-of-home care" means the placement of a child in licensed and nonlicensed settings, arranged and supervised by the department or contracted service provider, outside the home of the parent.

(e) "Residential group care" means a 24-hour, live-in environment that provides supervision, care, and services to meet the physical, emotional, social, and life skills needs of children served by the dependency system. Services may be provided by residential group care staff who are qualified to perform the needed service or a community-based service provider with clinical expertise, credentials, and training to provide

services to the children being served.

(3) DEVELOPMENT OF CONTINUUM.—The department, in collaboration with the Florida Institute for Child Welfare, the Quality Parenting Initiative, and the Florida Coalition for Children, Inc., shall develop a continuum of care for the placement of children in care, including, but not limited to, both family foster care and residential group care. To implement the continuum of care, the department shall by December 31, 2017:

(a) Establish levels of care in the continuum which are clearly and concisely defined with the qualifying criteria for placement for each level identified.

(b) Revise licensure standards and rules to reflect the supports and services provided by a placement at each level of care and the complexity of the needs of the children served. This must include attention to the need for a particular category of provider in a community before licensure can be considered; quality standards of operation that must be met by all licensed providers; numbers and qualifications of staff which are adequate to effectively serve children with the issues the facility seeks to serve; and a well-defined process tied to specific criteria which leads to licensure suspension or revocation.

(c) Develop policies and procedures necessary to ensure that placement in any level of care is appropriate for each specific child, is determined by the required assessments and

staffing, and lasts only as long as necessary to resolve the issue that required the placement.

(d) Develop a plan to recruit, train, and retain specialized family foster homes for pregnant and parenting children and young adults. These family foster homes must be designed to provide an out-of-home placement option for young parents and their children to enable them to live in the same family foster home while caring for their children and working toward independent care of the child.

(e) Develop, in collaboration with the Department of Juvenile Justice, a plan to develop specialized out-of-home placements for children who are involved in both the dependency and the juvenile justice systems.

(4) REPORTING REQUIREMENT.—The department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year, with the first report due October 1, 2016. At a minimum, the report must include the following:

(a) An update on the development of the continuum of care required by this section.

(b) An inventory of existing placements for children by type and by community-based care lead agency.

(c) An inventory of existing services available by community-based care lead agency and a plan for filling any identified gap, as well as a determination of what services are available that can be provided to children in family foster care

without having to move the child to a more restrictive placement.

(d) The strategies being used by community-based care lead agencies to recruit, train, and support an adequate number of families to provide home-based family care.

(e) For every placement of a child made that is contrary to an appropriate placement as determined by the assessment process in s. 409.142, an explanation from the community-based care lead agency as to why the placement was made.

(f) The strategies being used by the community-based care lead agencies to reduce the high percentage of turnover in caseworkers.

(g) A plan for oversight by the department over the implementation of the continuum by the community-based care lead agencies.

(5) RULEMAKING.—The department shall adopt rules to implement this section.

Section 14. Subsection (3) of section 409.1451, Florida Statutes, is amended, and subsection (11) is added to that section, to read:

409.1451 The Road-to-Independence Program.—

(3) AFTERCARE SERVICES.—

(a) Aftercare services are available to a young adult who was living in licensed care on his or her 18th birthday, who ~~has reached 18 years of age but~~ is not yet 23 years of age, and is:

1. Not in foster care.

2. Temporarily not receiving financial assistance under subsection (2) to pursue postsecondary education.

(11) EDUCATION AND TRAINING VOUCHERS.—The department shall make available education and training vouchers.

(a) A child or young adult is eligible for services and support under this subsection if he or she is ineligible for services under subsection (2) and:

1. Was living in licensed care on his or her 18th birthday, is currently living in licensed care, or is at least 16 years of age and has been adopted from foster care or placed with a court-approved dependency guardian.

2. Has earned a standard high school diploma pursuant to s. 1002.3105(5), s. 1003.4281, or s. 1003.4282, or its equivalent as provided in s. 1003.435.

3. Has been admitted for enrollment as a student in a postsecondary educational institution.

4. Has made the initial application to participate before age 21 and is not yet 23 years of age.

5. Has applied, with assistance from his or her caregiver and the community-based lead agency, for any other grants and scholarships for which he or she is qualified.

6. Has submitted a Free Application for Federal Student Aid which is complete and error free.

7. Has signed an agreement to allow the department and the community-based care lead agency access to school records.

8. Has maintained satisfactory academic progress as

determined by the postsecondary institution.

(b) The voucher provided for an individual under this subsection may not exceed the lesser of $5,000 per year or the total cost of attendance as defined in 42 U.S.C. s. 672.

(c) The department may adopt rules concerning the payment of financial assistance that considers the applicant's requests concerning disbursement. The rules must include an appeals process.

Section 15. Subsection (3) of section 409.988, Florida Statutes, is amended to read:

409.988 Lead agency duties; general provisions.—

(3) SERVICES.—

(a) A lead agency must provide dependent children with services that are supported by research or that are recognized as best practices in the child welfare field. The agency shall give priority to the use of services that are evidence-based and trauma-informed and may also provide other innovative services, including, but not limited to, family-centered and cognitive-behavioral interventions designed to mitigate out-of-home placements.

(b) Lead agencies shall ensure the availability of a full array of services to address the complex needs of all children, including teens, and caregivers served within their local system of care and that sufficient flexibility exists within the service array to adequately match services to the unique characteristics of families served, including the ages of the

children, cultural considerations, and parental choice.

(c) The department shall annually complete an evaluation of the service array adequacies, the engagement of trauma-informed and evidenced-based programming, and the impact of available services on outcomes for the children served by the lead agencies and any subcontracted providers of lead agencies. The evaluation report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31 of each year.

(d) The department shall adopt rules to implement this section.

Section 16. Paragraph (s) of subsection (2) of section 39.202, Florida Statutes, is amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(s) Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed residential child-caring agency defined ~~group home described~~ in s. 409.175 ~~s. 39.523~~, an approved relative or nonrelative with whom a child is placed pursuant to s. 39.402, preadoptive parents for whom a favorable

preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.

Section 17. Subsection (1) of section 39.302, Florida Statutes, is amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(33) or (48) ~~s. 39.01(32) or (47)~~, acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.201(5) and notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations or having face-to-face interviews with the child, investigation visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the

department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

Section 18. Subsection (1) of section 39.524, Florida Statutes, is amended to read:

39.524 Safe-harbor placement.—

(1) Except as provided in s. 39.407 or s. 985.801, a dependent child 6 years of age or older who has been found to be a victim of sexual exploitation as defined in s. 39.01(70)(g) ~~s. 39.01(69)(g)~~ must be assessed for placement in a safe house or safe foster home as provided in s. 409.1678 using the initial screening and assessment instruments provided in s. 409.1754(1). If such placement is determined to be appropriate for the child as a result of this assessment, the child may be placed in a safe house or safe foster home, if one is available. However,

the child may be placed in another setting, if the other setting is more appropriate to the child's needs or if a safe house or safe foster home is unavailable, as long as the child's behaviors are managed so as not to endanger other children served in that setting.

Section 19. Subsection (7) of section 39.6013, Florida Statutes, is amended to read:

39.6013 Case plan amendments.—

(7) Amendments must include service interventions that are the least intrusive into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care. A copy of the amended plan must be immediately given to the persons identified in s. 39.6011(5) ~~s. 39.6011(6)(b)~~.

Section 20. Paragraph (p) of subsection (4) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(4) The array of services may include, but is not limited to:

(p) Trauma-informed services for children who have suffered sexual exploitation as defined in s. 39.01(70)(g) ~~s. 39.01(69)(g)~~.

Section 21. Paragraph (c) of subsection (1) and paragraphs

(a) and (b) of subsection (6) of section 409.1678, Florida Statutes, are amended to read:

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

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

(c) "Sexually exploited child" means a child who has suffered sexual exploitation as defined in s. 39.01(70)(g) ~~s. 39.01(69)(g)~~ and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

(6) LOCATION INFORMATION.—

(a) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01(70)(g) ~~s. 39.01(69)(g)~~, which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such confidential and exempt information held by an agency before, on, or after the effective date of the exemption.

(b) Information about the location of a safe house, safe foster home, or other residential facility serving victims of sexual exploitation, as defined in s. 39.01(70)(g) ~~s. 39.01(69)(g)~~, may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations in the safe house, safe foster home, or other residential facility.

Section 22. Subsection (5) of section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(5) A person is not ineligible for an award pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that person is a victim of sexual exploitation of a child as defined in s. 39.01(70)(g) ~~s. 39.01(69)(g)~~.

Section 23. Subsection (11) of section 1002.3305, Florida Statutes, is amended to read:

1002.3305 College-Preparatory Boarding Academy Pilot Program for at-risk students.—

(11) STUDENT HOUSING.—Notwithstanding s. 409.176 ~~ss. 409.1677(3)(d) and 409.176~~ or any other provision of law, an operator may house and educate dependent, at-risk youth in its residential school for the purpose of facilitating the mission of the program and encouraging innovative practices.

Section 24. Section 39.523, Florida Statutes, is repealed.

Section 25. Section 409.141, Florida Statutes, is repealed.

Section 26. Section 409.1676, Florida Statutes, is repealed.

Section 27. Section 409.1677, Florida Statutes, is repealed.

Section 28. Section 409.1679, Florida Statutes, is repealed.

Section 29. This act shall take effect July 1, 2016.

Amendment No.

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

Committee/Subcommittee hearing bill: Children, Families & Seniors Subcommittee

Representative Harrell offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (2) of section 39.013, Florida Statutes, is amended to read:

39.013 Procedures and jurisdiction; right to counsel.—

(2) The circuit court has exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition, or a petition for an injunction to prevent child abuse issued pursuant to s. 39.504, is filed or when a child is taken

into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was not in the physical or legal custody of any person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 21 years of age, or 22 years of age if the child has a disability, with the following exceptions:

(a) If a young adult chooses to leave foster care upon reaching 18 years of age.

(b) If a young adult does not meet the eligibility requirements to remain in foster care under s. 39.6251 or chooses to leave care under that section.

(c) If a young adult petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the young adult's 18th birthday for the purpose of determining whether appropriate services that were required to be provided to the young adult before reaching 18 years of age have been provided.

(d) If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on

behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

Section 2. Subsection (11) of section 39.2015, Florida Statutes, is amended to read:

39.2015 Critical incident rapid response team.—

(11) The secretary shall appoint an advisory committee made up of experts in child protection and child welfare, including the Statewide Medical Director for Child Protection under the Department of Health, a representative from the institute established pursuant to s. 1004.615, an expert in organizational management, and an attorney with experience in child welfare, to conduct an independent review of investigative reports from the critical incident rapid response teams and to make recommendations to improve policies and practices related to child protection and child welfare services. The advisory committee shall meet at least once each quarter and shall submit quarterly reports to the secretary. The quarterly reports shall

~~which~~ include findings and recommendations~~.~~ and shall describe the implementation status of all recommendations contained within the advisory committee reports, including an entity's reason for not implementing a recommendation, if applicable. The secretary shall submit each report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 3. Paragraph (f) and (h) of subsection (8) of section 39.402, Florida Statutes, are amended to read:

39.402 Placement in a shelter.—

(8)

(f) At the shelter hearing, the department shall inform the court of:

1. Any identified current or previous case plans negotiated under this chapter in any judicial circuit ~~district~~ with the parents or caregivers ~~under this chapter~~ and problems associated with compliance;

2. Any adjudication of the parents or caregivers of delinquency;

3. Any past or current injunction for protection from domestic violence or an order of no contact; and

4. All of the child's places of residence during the prior 12 months.

(h) The order for placement of a child in shelter care must identify the parties present at the hearing and must contain written findings:

1. That placement in shelter care is necessary based on

the criteria in subsections (1) and (2).

2. That placement in shelter care is in the best interest of the child.

3. That continuation of the child in the home is contrary to the welfare of the child because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of ~~preventive~~ safety management services.

4. That based upon the allegations of the petition for placement in shelter care, there is probable cause to believe that the child is dependent or that the court needs additional time, which may not exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine ~~the risk to the child~~ whether placement in shelter care is necessary to ensure the child's safety.

5. That the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home. A finding of reasonable effort by the department to prevent or eliminate the need for removal may be made and the department is deemed to have made reasonable efforts to prevent or eliminate the need for removal if:

a. The first contact of the department with the family occurs during an emergency;

b. The appraisal of the home situation by the department indicates that the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of

preventive services including issuance of an injunction against a perpetrator of domestic violence pursuant to s. 39.504;

c. The child cannot safely remain at home, either because there are no ~~preventive~~ safety management services, under s. 409.988(3)(b), that can ensure the health and safety of the child or because, even with appropriate and available services being provided, the health and safety of the child cannot be ensured; or

d. The parent or legal custodian is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights in s. 39.806(1)(f)-(i).

6. That the department has made reasonable efforts to keep siblings together if they are removed and placed in out-of-home care unless such placement is not in the best interest of each child. It is preferred that siblings be kept together in a foster home, if available. Other reasonable efforts shall include short-term placement in a group home with the ability to accommodate sibling groups if such a placement is available. The department shall report to the court its efforts to place siblings together unless the court finds that such placement is not in the best interest of a child or his or her sibling.

7. That the court notified the parents, relatives that are providing out-of-home care for the child, or legal custodians of the time, date, and location of the next dependency hearing and of the importance of the active participation of the parents, relatives that are providing out-of-home care for the child, or legal custodians in all proceedings and hearings.

8. That the court notified the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013.

9. That the court notified relatives who are providing out-of-home care for a child as a result of the shelter petition being granted that they have the right to attend all subsequent hearings, to submit reports to the court, and to speak to the court regarding the child, if they so desire.

Section 4. Paragraphs (b) through (f) of subsection (1) of section 39.521, Florid Statutes, are redesignated as paragraphs (c) through (g), respectively, a new paragraph (b) is added, and paragraph (a) of that subsection is amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(a) A written case plan and a predisposition study prepared by an authorized agent of the department must be ~~filed~~ approved by the court. The department must file the case plan and pre-disposition study with the court, ~~served~~ serve it upon the

parents of the child, ~~provided~~ provide it to the representative of the guardian ad litem program, if the program has been appointed, and provided to all other parties:

1. not less than 72 hours before the disposition hearing, ~~.~~ if the disposition hearing occurs on or after 60 days from when the child was placed in out-of-home care. ~~All such case plans must be approved by the court.~~

2. not less than 72 hours before the case plan acceptance hearing, if the disposition hearing occurs prior to 60 days from when the child was placed in out-of-home care and a case plan was not submitted pursuant to paragraph (a) or ~~If~~ the court does not approve the case plan at the disposition hearing. ~~,~~ The case plan acceptance hearing must occur within 30 days of the disposition hearing ~~the court must set a hearing within 30 days after the disposition hearing to review and approve the case plan~~.

(b) The court may grant an exception to the requirement for a predisposition study by separate order or within the judge's order of disposition upon finding that all the family and child information required by subsection (2) is available in other documents filed with the court.

Section 5. Subsection (2) of section 39.522, Florida Statutes, is amended to read:

39.522 Postdisposition change of custody.—The court may change the temporary legal custody or the conditions of protective supervision at a postdisposition hearing, without the necessity of another adjudicatory hearing.

(2) In cases where the issue before the court is whether a child should be reunited with a parent, the court shall determine whether the circumstances that caused the out-of-home placement and issues subsequently identified have been remedied ~~parent has substantially complied with the terms of the case plan~~ to the extent that the return of the child to the home with an in-home safety plan will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health ~~of the child is not endangered by the return of the child to the home~~.

Section 6. Paragraphs (b) and (c) of subsection (1) of section 39.6011, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, and paragraph (b) is added to that subsection, to read:

39.6011 Case plan development.—

(1) The department shall prepare a draft of the case plan for each child receiving services under this chapter. A parent of a child may not be threatened or coerced with the loss of custody or parental rights for failing to admit in the case plan of abusing, neglecting, or abandoning a child. Participating in the development of a case plan is not an admission to any allegation of abuse, abandonment, or neglect, and it is not a consent to a finding of dependency or termination of parental rights. The case plan shall be developed subject to the following requirements:

(b) If the child has attained 14 years of age or is otherwise of an appropriate age and capacity, the child must:

1. Be consulted on the development of the case plan; have the opportunity to attend a face-to-face conference, if appropriate; express a placement preference; and have the option to choose two members of the case planning team who are not a foster parent or caseworker for the child.

a. An individual selected by a child to be a member of the case planning team may be rejected at any time if there is good cause to believe that the individual would not act in the best interests of the child. One individual selected by a child to be a member of the child's case planning team may be designated to be the child's advisor and, as necessary, advocate, with respect to the application of the reasonable and prudent parent standard to the child.

b. The child may not be included in any aspect of the case planning process when information will be revealed or discussed that is of a nature that would best be presented to the child in a more therapeutic setting.

2. Sign the case plan, unless there is reason to waive the child's signature.

3. Receive an explanation of the provisions of the case plan from the department.

4. Be provided a copy of the case plan after the case plan has been agreed upon and signed and within 72 hours before the disposition hearing after jurisdiction attaches and the plan has been filed with the court.

Section 7. Subsection (4) of section 39.6035, Florida Statutes, is amended to read:

39.6035 Transition plan.—

(4) ~~If a child is planning to leave care upon reaching 18 years of age,~~ The transition plan must be approved by the court before the child's 18th birthday and must be attached to the case plan and updated before each judicial review ~~child leaves care and the court terminates jurisdiction~~.

Section 8. Subsections (2) through (11) of section 39.621, Florida Statutes, are renumbered as subsections (3) through (12), respectively, subsection (2) is added to that section, and present subsection (2) is amended, to read:

39.621 Permanency determination by the court.—

(2) The permanency goal of maintaining and strengthening the placement with a parent may be used in the following circumstances:

(a) If a child has not been removed from a parent, even if adjudication of dependency is withheld, the court may leave the child in the current placement with maintaining and strengthening the placement as a permanency option.

(b) If a child has been removed from a parent and is placed with the parent from whom the child was not removed, the court may leave the child in the placement with the parent from whom the child was not removed with maintaining and strengthening the placement as a permanency option.

(c) If a child has been removed from a parent and is subsequently reunified with that parent, the court may leave the child with that parent with maintaining and strengthening the placement as a permanency option.

(~~2~~3) Except as provided in subsection (2), the permanency goals available under this chapter, listed in order of preference, are:

(a) Reunification;

(b) Adoption, if a petition for termination of parental rights has been or will be filed;

(c) Permanent guardianship of a dependent child under s. 39.6221;

(d) Permanent placement with a fit and willing relative under s. 39.6231; or

(e) Placement in another planned permanent living arrangement under s. 39.6241.

Section 9. Paragraphs (a) and (d) of subsection (2) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF AGE.—

(a) Social study report for judicial review.—Before every judicial review hearing or citizen review panel hearing, the social service agency shall make an investigation and social study concerning all pertinent details relating to the child and shall furnish to the court or citizen review panel a written report that includes, but is not limited to:

1. A description of the type of placement the child is in at the time of the hearing, including the safety of the child, ~~and~~ the continuing necessity for ~~and appropriateness of~~ the placement, and that the placement is the least restrictive and

family-like setting available that meets the needs of the child, or an explanation as to why the placement is not the least restrictive and family-like setting available that meets the needs of the child.

2. Documentation of the diligent efforts made by all parties to the case plan to comply with each applicable provision of the plan.

3. The amount of fees assessed and collected during the period of time being reported.

4. The services provided to the foster family or legal custodian in an effort to address the needs of the child as indicated in the case plan.

5. A statement that either:

a. The parent, though able to do so, did not comply substantially with the case plan, and the agency recommendations;

b. The parent did substantially comply with the case plan; or

c. The parent has partially complied with the case plan, with a summary of additional progress needed and the agency recommendations.

6. A statement concerning whether the circumstances that caused the out-of-home placement and issues subsequently identified have been remedied to the extent that the return of the child to the home with an in-home safety plan will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health.

~~6~~ 7. A statement from the foster parent or legal custodian providing any material evidence concerning the return of the child to the parent or parents.

~~7~~ 8. A statement concerning the frequency, duration, and results of the parent-child visitation, if any, and the agency recommendations for an expansion or restriction of future visitation.

~~8~~ 9. The number of times a child has been removed from his or her home and placed elsewhere, the number and types of placements that have occurred, and the reason for the changes in placement.

~~9~~ 10. The number of times a child's educational placement has been changed, the number and types of educational placements which have occurred, and the reason for any change in placement.

~~10~~ 11. If the child has reached 13 years of age but is not yet 18 years of age, a statement from the caregiver on the progress the child has made in acquiring independent living skills.

~~11~~ 12. Copies of all medical, psychological, and educational records that support the terms of the case plan and that have been produced concerning the parents or any caregiver since the last judicial review hearing.

~~12~~ 13. Copies of the child's current health, mental health, and education records as identified in s. 39.6012.

(d) Orders.—

1.

Based upon the criteria ~~set forth~~ in paragraph (c) and the

recommended order of the citizen review panel, if any, the court shall determine whether ~~or not~~ the social service agency shall initiate proceedings to have a child declared a dependent child, return the child to the parent, continue the child in out-of-home care for a specified period of time, or initiate termination of parental rights proceedings for subsequent placement in an adoptive home. Amendments to the case plan must be prepared as prescribed in s. 39.6013. If the court finds that ~~the prevention or reunification efforts of the department will allow the child to remain safely at home or be safely returned to the home~~ remaining in the home with an in-home safety plan will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health, the court shall allow the child to remain in ~~or return to~~ the home ~~after making a specific finding of fact that the reasons for the creation of the case plan have been remedied to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered~~.

2. The court shall return the child to the custody of the parents at any time it determines that ~~they have substantially complied with the case plan, if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health.~~ the circumstances that caused the out-of-home placement and issues subsequently identified have been remedied to the extent that the return of the child to the home with an in-home safety plan will not be detrimental to the child's safety, well-being, and

physical, mental, and emotional health.

3. If, in the opinion of the court, the social service agency has not complied with its obligations as specified in the written case plan, the court may find the social service agency in contempt, shall order the social service agency to submit its plans for compliance with the agreement, and shall require the social service agency to show why the child could not safely be returned to the home of the parents.

4. If, at any judicial review, the court finds that the parents have failed to ~~substantially comply with the case plan~~ demonstrate behavior change to the degree that further reunification efforts are without merit and not in the best interest of the child, on its own motion, the court may order the filing of a petition for termination of parental rights, whether or not the time period as contained in the case plan for substantial compliance has expired.

5. Within 6 months after the date that the child was placed in shelter care, the court shall conduct a judicial review hearing to review the child's permanency goal as identified in the case plan. At the hearing the court shall make findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home. If the court makes a written finding that it is not likely that the child will be reunified with the parent or legal custodian within 12 months after the child was removed from the home, the department must file with the court, and serve on all parties, a motion to amend the case

plan under s. 39.6013 and declare that it will use concurrent planning for the case plan. The department must file the motion within 10 business days after receiving the written finding of the court. The department must attach the proposed amended case plan to the motion. If concurrent planning is already being used, the case plan must document the efforts the department is taking to complete the concurrent goal.

6. The court may issue a protective order in assistance, or as a condition, of any other order made under this part. In addition to the requirements included in the case plan, the protective order may set forth requirements relating to reasonable conditions of behavior to be observed for a specified period of time by a person or agency who is before the court; and the order may require any person or agency to make periodic reports to the court containing such information as the court in its discretion may prescribe.

Section 10. Subsection (5) of section 409.145, Florida Statutes, is renumbered as subsection (6), respectively, and subsection (5) is added to that section, to read:

409.145 Care of children; quality parenting; "reasonable and prudent parent" standard.—The child welfare system of the department shall operate as a coordinated community-based system of care which empowers all caregivers for children in foster care to provide quality parenting, including approving or disapproving a child's participation in activities based on the caregiver's assessment using the "reasonable and prudent parent" standard.

(5) Initial Assessment.—The department in partnership with the community-based care lead agencies shall convene a workgroup to study the feasibility of the development, validation, adoption, and use of one or more statewide initial assessment tools to determine the appropriate placement, needs of, and initial services for all children placed in out-of-home care. "Out-of-home care" means a licensed or non-licensed setting, arranged and supervised by the department or contracted service provider, outside the home of the parent. The workgroup shall have representatives from the department, community-based care lead agencies, foster parents, the Florida Institute for Child Welfare, service providers, and other appropriate organizations and shall consider, at a minimum, the following factors:

(a) The traumatic and emergent nature of a removal and subsequent out-of-home placement;

(b) The frequent lack of immediate information available during a removal and subsequent out-of-home placement;

(c) Reasonable timelines for the collection of actionable information and history on the child and family;

(d) Tools and processes being used in this state, other states, and nationally;

(e) The specific behaviors and needs of the child, including, but not limited to, any current behaviors exhibited by the child which interfere with or limit the child's ability to function in less restrictive, family-like settings;

(f) The level of intervention services necessary to meet the child's specific physical, emotional, psychological,

educational, and social needs, including any developmental or other disability;

(g) Information about previous out-of-home placements, including circumstances necessitating any moves between placements and the recommendations of the former foster families or other caregivers, if available;

(h) Information related to the placement of any siblings of the child;

(i) The range of placement options currently available by community-based care lead agency, types of children served, and the type of information needed to determine whether placement of a child is appropriate; and

(j) Any service gaps within community-based care lead agency service areas for children in out-of-home care.

(2) REPORTING REQUIREMENT.—The department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2017, addressing at a minimum:

(a) The types of information needed to make an initial assessment for placement and services and methods to collect that information;

(b) Recommended procedures and practices best suited for an initial assessment;

(c) The assessment tools and procedures currently used to make the initial assessment of a child's placement and service needs;

(d) Recommendations regarding the development, validation, adoption, and use of a statewide initial assessment for placement and services; and

(f) If the workgroup finds that an initial assessment for placement and services is feasible, action steps and a timeframe for development, validation, adoption, and implementation.

Section 11. Paragraph (a) of subsection (3) of section 409.1451, Florida Statutes, is amended to read:

409.1451 The Road-to-Independence Program.—

(3) AFTERCARE SERVICES.—

(a) Aftercare services are available to a young adult who was living in licensed care on his or her 18th birthday, who ~~has reached 18 years of age but~~ is not yet 23 years of age, and is:

1. Not in foster care.

2. Temporarily not receiving financial assistance under subsection (2) to pursue postsecondary education.

Section 12. Paragraph (a) of subsection (3) of section 409.986, Florida Statutes, is amended to read:

409.986 Legislative findings and intent; child protection and child welfare outcomes; definitions.—

(3) DEFINITIONS.—As used in this part, except as otherwise provided, the term:

(a) "Care" means services of any kind which are designed to facilitate a child remaining safely in his or her own home, returning safely to his or her own home if he or she is removed from the home, or obtaining an alternative permanent home if he or she cannot remain at home or be returned home. The term

includes, but is not limited to, prevention, intervention, diversion, and related services.

Section 13. Subsection (3) of section 409.988, Florida Statutes, is amended to read:

409.988 Lead agency duties; general provisions.—

(3) SERVICES.—Lead agencies shall make available a continuum of care, meaning a range of services, programs, and placement options meeting the varied needs of children served by, or at risk of being served by, the dependency system. Such services may be provided by the lead agency or its subcontractors, through referral to another organization, or through other effective means. The department shall specify the minimum services that must be available in a lead agency's continuum of care through contract.

(a) A lead agency must provide dependent children with services that are supported by research or that are recognized as best practices in the child welfare field. The agency shall give priority to the use of services that are evidence-based and trauma-informed and may also provide other innovative services, including, but not limited to, family-centered and cognitive-behavioral interventions designed to mitigate out-of-home placements.

(b) Intervention services shall be made available to a child and the parent of a child who is unsafe but can, with services, remain in his or her home, or a child who is placed out-of-home and to the non-maltreating parent or relative or non-relative caregivers with whom an unsafe child is placed.

Intervention services and supports include:

1. Safety management services provided to an unsafe child as part of a safety plan which immediately and actively protects the child from dangerous threats if the parent or other caregiver cannot, including but not limited to behavior management, crisis management, social connection, resource support, and separation;

2. Treatment services provided to a parent or caregiver that are used to achieve fundamental change in behavioral, cognitive and emotional functioning associated with the reason that the child is unsafe, including but not limited to parenting skills training, support groups, counseling, substance abuse treatment, mental and behavioral health services, and certified domestic violence center services for survivors of domestic violence and their children, and batterers' intervention programs that comply with s. 741.325 and other intervention services for perpetrators of domestic violence.

3. Child well-being services provided to an unsafe child that address a child's physical, emotional, developmental, and educational needs, including but not limited to behavioral health services, substance abuse treatment, tutoring, counseling, and peer support; and

4. Services provided to non-maltreating parents or relative or non-relative caregivers to stabilize the child's placement, including but not limited to transportation, clothing, household goods, assistance with housing and utility payments, child care, respite care, and assistance connecting

families with other community-based services.

(d) The department or community-based care lead agency that places children pursuant to this section shall establish permanency teams dedicated to permanency for children placed in residential group care. The permanency team shall convene a multidisciplinary staffing every 180 calendar days, to coincide with the judicial review, to reassess the appropriateness of the child's current placement and services. At a minimum, the staffing shall be attended by the community-based care lead agency, the caseworker for the child, guardian ad litem, any other agency or provider of services to the child, and a representative of the residential group care provider. The multidisciplinary staffing shall consider, at a minimum, the current level of the child's functioning, whether recommended services are being provided effectively, any services that would enable transition to a less restrictive family-like setting, and diligent search efforts to find other permanent living arrangements for the child.

(e)1. By January 1, 2017, the lead agencies shall develop plans for the management of residential group care utilization within their service areas. The plans shall include strategies, action steps, timeframes, and performance measures, and for lead agencies whose group home utilization averaged 8% or above the preceding fiscal year, list specific percentage targets by fiscal year through June 30, 2020, for reduction in use of residential group care to that percentage. The department may allow for a different group home utilization target for a lead

agency with extraordinary barriers to achievement of a 8% group home utilization, such as significant challenges in developing an adequate supply of high-quality foster homes or a high number of children whose needs are best met in residential group care. Strategies may include but not be limited to increased recruitment of family foster homes, including homes for children with specific or extraordinary needs for which an adequate supply of homes is lacking; increased use of in-home services which avoid removal; and policies and procedures for identifying the least restrictive, most appropriate placements for children and transitioning them into such placements, when appropriate. However, such strategies must ensure that appropriate residential group care placements be available, particularly in family-style homes, for those children for whom it is the best option. These plans shall be updated annually through January 1, 2022, and submitted to the department.

2. The department shall track and report the community-based care lead agencies' achievement of the targets and implementation of the strategies in their individual plans, and annually by October 1, beginning in 2017 and continuing through 2022, shall provide a report on such to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) The department may adopt rules to implement this section.

Section 14. Paragraph (b) of subsection (18) of section 409.996, Florida Statutes, is amended, and subsection (22) is

added to that section to read:

409.996 Duties of the Department of Children and Families.—The department shall contract for the delivery, administration, or management of care for children in the child protection and child welfare system. In doing so, the department retains responsibility to ensure ~~for~~ the quality of contracted services and programs and ~~shall ensure that~~ an adequate array of services are available to be delivered in accordance with applicable federal and state statutes and regulations.

(18) The department, in consultation with lead agencies, shall establish a quality assurance program for contracted services to dependent children. The quality assurance program shall be based on standards established by federal and state law and national accrediting organizations.

(b) The department and each lead agency shall monitor out-of-home placements, including:

1. The extent to which sibling groups are placed together or provisions to provide visitation and other contacts if siblings are separated. The data shall identify reasons for sibling separation. Information related to sibling placement shall be incorporated into the results-oriented accountability system required pursuant to s. 409.997 and into the evaluation of the outcome specified in s. 409.986(2)(e). The information related to sibling placement shall also be made available to the institute established pursuant s. 1004.615 for use in assessing the performance of child welfare services in relation to the outcome specified in s. 409.986(2)(e).

2. The extent to which residential group care is used as a placement option, the data shall differentiate between the use of shift-model group care and family-style group care placements, reasons for placement in residential group care as well as strategies to transition children into less restrictive family-like settings. Information related to residential group care shall be incorporated into the results-oriented accountability system required pursuant to s. 409.997 and shall be made available to the institute established pursuant to s. 1004.615.

(22) By June 30, 2017, the department shall develop, in collaboration with lead agencies, service providers, and other community stakeholders, a statewide quality rating system for providers of residential group care and foster homes. This system must promote high quality in services and accommodations by creating measureable minimum quality standards that providers must meet to contract with the lead agencies, and foster homes must meet to receive placements. Domains addressed by a quality rating system for residential group care may include but not be limited to admissions, service planning and treatment planning, living environment, and program and service requirements. The system must be implemented by July 1, 2018.

(a) The rating system should include:

1. Delineated levels of quality that are clearly and concisely defined, including the domains measured and criteria that must be met to be placed in each level;

2. The number of residential group care staff and foster

home parents who have received child welfare certification pursuant to s. 402.40;

2. Contractual incentives for achieving and maintaining higher levels of quality; and

3. A well-defined process for notice, inspection, remediation, appeal, and enforcement.

(b) REPORTING REQUIREMENT.—The department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year, with the first report due October 1, 2016. The report must include an update on the development of a statewide quality rating system for residential group care, and in 2018 and subsequent years, a list of providers meeting minimum quality standards and their quality ratings, the percentage of children placed in residential group care with highly rated providers, and any negative actions taken against contracted providers for not meeting minimum quality standards; and a plan for department oversight of the implementation of the statewide quality rating system for residential group care by the community-based lead agencies.

Section 15. Subsection (52) of section 39.01, Florida Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(52) "Permanency goal" means the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. ~~Permanency goals~~

~~applicable under this chapter, listed in order of preference, are:~~

~~(a) Reunification;~~

~~(b) Adoption when a petition for termination of parental rights has been or will be filed;~~

~~(c) Permanent guardianship of a dependent child under s. 39.6221;~~

~~(d) Permanent placement with a fit and willing relative under s. 39.6231; or~~

~~(e) Placement in another planned permanent living arrangement under s. 39.6241.~~ The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time that another permanency goal is pursued.

Section 16. Paragraph (s) of subsection (2) of section 39.202, Florida Statutes, is amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(s) Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed residential child-caring agency defined ~~group home described~~ in s. 409.175 ~~s. 39.523~~, an

approved relative or nonrelative with whom a child is placed pursuant to s. 39.402, preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.

Section 17. Subsection (11) of section 1002.3305, Florida Statutes, is amended to read:

1002.3305 College-Preparatory Boarding Academy Pilot Program for at-risk students.—

(11) STUDENT HOUSING.—Notwithstanding s. 409.176 ~~ss. 409.1677(3)(d) and 409.176~~ or any other provision of law, an operator may house and educate dependent, at-risk youth in its residential school for the purpose of facilitating the mission of the program and encouraging innovative practices.

Section 18. Section 39.523, Florida Statutes, is repealed.

Section 19. Section 409.141, Florida Statutes, is repealed.

Section 20. Section 409.1676, Florida Statutes, is repealed.

Section 21. Section 409.1677, Florida Statutes, is repealed.

Section 22. Section 409.1679, Florida Statutes, is repealed.

Section 23. This act shall take effect July 1, 2016.

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

Amendment No.

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to child welfare; amending s. 39.013, F.S.; extending court jurisdiction to age 22 for young adults with disabilities in foster care; amending s. 39.2015, F.S.; revising requirements of the quarterly report submitted by the critical incident rapid response team advisory committee; amending s. 39.402, F.S.; revising information that the Department of Children and Families is required to inform the court of at shelter hearings; amending s. 39.521, F.S.; revising timelines and distribution requirements for case plans; amending s. 39.522, F.S.; providing conditions under which a child may be returned home with an in-home safety plan; amending s. 39.6011, F.S.; providing that a child of a certain age must be given the opportunity to consulted on the creation of the case plan; providing the opportunity to choose two people to be part of the case planning team; providing for the opportunity to review, sign, and receive a copy of his or her case plan; amending s. 39.6035, F.S.; requiring court approval of a transition plan before the child's 18th birthday; amending s. 39.621, F.S.; creating an exception to the order of preference for permanency goals under ch. 39, F.S., for maintaining and strengthening the placement; authorizing the new permanency goal to be used in specified circumstances; amending s. 39.701, F.S.; revising the information which must be included in a specified written report under certain circumstances; revising what must be found to maintain or return a child to his or her home; amending s.

409.145, F.S.; requiring a workgroup to study the feasibility of a statewide initial assessment for placement and services; requiring a report; amending s. 409.1451, F.S.; requiring that a child be living in licensed care on or after his or her 18th birthday as a condition for receiving aftercare services; amending s. 409.986, F.S.; adding intervention to list of services to definition of care; amending s. 409.988, F.S.; requiring a continuum of care; requiring specified intervention services; requiring the establishment of permanency teams for certain children; allowing the department to adopt rules; requiring residential group care utilization plans by lead agencies; requiring department tracking of lead agency plans; requiring a report; amending 409.996, F.S., requiring the department to ensure an adequate array of services; requiring the department to develop an adequate array of services; requiring the monitoring of residential group care placements; requiring the development of a statewide quality rating system; requiring a report; amending s. 39.01, F.S.; revising definition of permanency goal; amending s. 39.202, F.S.; changing the designation of an entity; amending s. 1002.3305, F.S.; conforming cross-references; repealing s. 39.523, F.S., relating to the placement of children in residential group care; repealing s. 409.141, F.S., relating to equitable reimbursement methodology; repealing s. 409.1676, F.S., relating to comprehensive residential group care services to children who have extraordinary needs; repealing s. 409.1677, F.S., relating to model comprehensive residential services programs; repealing

s. 409.1679, F.S., relating to program requirements and reimbursement methodology; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 741 Public Records/Involuntary Assessment and Stabilization Petition
SPONSOR(S): Kerner
TIED BILLS: **IDEN./SIM. BILLS:** SB 762

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

SUMMARY ANALYSIS

The Marchman Act addresses substance abuse through a comprehensive system of prevention, detoxification, and treatment services. It establishes methods under which substance abuse assessment, stabilization, and treatment can be obtained on a voluntary and involuntary basis.

Involuntary assessment and stabilization is a court-involved procedure under the Marchman Act which provides for very short-term court-ordered substance abuse treatment. It involves filing a petition with the court that contains facts explaining why the individual is in need of an involuntary assessment and stabilization. After holding a hearing, the court may order the individual admitted to a hospital, licensed detoxification facility, or addictions receiving facility for involuntary assessment and stabilization for five days.

Florida civil court records are generally open for public inspection unless a law or a court order specifies otherwise. Because the Marchman Act is a civil proceeding, much of the information contained in the court file is available to the public for inspection. According to Florida law, only the records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to a patient being treated for substance abuse under the Marchman Act are confidential.

HB 741 provides that a petition for involuntary assessment and stabilization filed with the court under the Marchman Act is confidential and exempt from s. 119.07(1) and article I, section 24 of the Florida Constitution. The bill will prevent the public from being able to inspect the petition for involuntary assessment and stabilization.

The bill provides legislative findings that it is a public necessity to protect the petition for involuntary assessment and stabilization of a person impaired by substance abuse under the Marchman Act. The bill also provides that the public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides an effective date of July 1, 2016.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The public also has a right to notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.[2] The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.[3]

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act[4] guarantees every person's right to inspect and copy any state or local government public record.[5] The Sunshine Law[6] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.[7]

The Legislature may create an exemption to public records or open meetings requirements.[8] An exemption must specifically state the public necessity justifying the exemption[9] and must be tailored to accomplish the stated purpose of the law.[10] There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act and also confidential.

Exempt Records

If a record is exempt, the specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, F.S., or article I, section 24 of the Florida Constitution. If records are only exempt from the Public Records Act and not confidential, the exemption does not

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[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(b).
[3] FLA. CONST., art. I, s. 24(b).
[4] Ch. 119, F.S.
[5] "Public record" means "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." S. 119.011(12), F.S. "Agency" means "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." S. 119.011(2), F.S. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature's records are public pursuant to section 11.0431, F.S.
[6] S. 286.011, F.S.
[7] S. 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.
[8] FLA. CONST., art. I, s. 24(c).
[9] FLA. CONST., art. I, s. 24(c).
[10] FLA. CONST., art. I, s. 24(c).

prohibit the showing of such information, but simply exempts them from the mandatory disclosure requirements in section 119.07(1)(a), F.S.[11]

Confidential Records

The term "confidential" is not defined in the Public Records Act; however, it is used in Article I, S. 24 of the Florida Constitution, which provides that every person has the right to inspect or copy any public record, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in the statute.[12]

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[13] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[14]

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[15] An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption; or
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt; or
- It protects trade or business secrets.[16]

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.[17]

The OGSR also requires specific questions to be considered during the review process.[18] In examining an exemption, the OGSR asks the Legislature to question the purpose and necessity of reenacting the exemption. If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[19] If the exemption is reenacted without

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[11] See, *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), rev. denied, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to s. 119.07(3)(d), F.S, [now s. 119.071(2)(c), F.S.] "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not prohibit the showing of such information." Id. at 686.

[12] *WFTV, Inc. v. School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), rev. denied, 892 So. 2d 1015 (Fla. 2004). See also, 04-09 Fla Op. Att'y Gen. (2004) and 86-97 Fla Op. Att'y Gen. (1986).

[13] S. 119.15, F.S. S. 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

[14] S. 119.15(3), F.S.

[15] S. 119.15(6)(b), F.S.

[16] Id.

[17] Id.

[18] S. 119.15(6)(a), F.S. The questions are: What specific records or meetings are affected by the exemption? Whom does the exemption uniquely affect, as opposed to the public? What is the identifiable public purpose or goal of the exemption? Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? Is the record or meeting protected by another exemption? Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[19] FLA. CONST., art. I, s. 24(c).

substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.[20]

Substance Abuse

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[21] Substance use disorders occur when the chronic use of alcohol and/or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[22] It is often mistakenly assumed that individuals with substance use disorders lack moral principles or willpower and that they could stop using drugs simply by choosing to change their behavior.[23] In reality, drug addiction is a complex disease, and quitting takes more than good intentions or a strong will. In fact, because drugs change the brain in ways that foster compulsive drug abuse, quitting is difficult, even for those who are ready to do so.[24]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[25] The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[26]

The Marchman Act

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[27] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse; in response to the laws, the Florida Legislature enacted Chapters 396 (alcohol) and 397, F.S. (drug abuse).[28] Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.[29] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address the problems faced by Florida's citizens.[30] In 1993 legislation was adopted to combine Chapters 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act ("the Marchman Act").[31]

The Marchman Act program is designed to support the prevention and remediation of substance abuse through the provision of a comprehensive system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

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[20] S. 119.15(7), F.S.
[21] WORLD HEALTH ORGANIZATION. *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited December 14, 2015).
[22] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited December 16, 2015).
[23] http://www.drugabuse.gov/publications/drugfacts/understanding-drug-abuse-addiction
[24] Id.
[25] *Supra*, note 22.
[26] Id.
[27] Department of Children and Families, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5
[28] Id.
[29] Id.
[30] Id.
[31] Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

Voluntary and Involuntary Admissions

An individual may receive services under the Marchman Act through either a voluntary or an involuntary admission. The Marchman Act encourages persons to seek treatment on a voluntary basis and to be actively involved in planning their own services with the assistance of a qualified professional. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.[32] However, denial of addiction is a common symptom, raising a barrier to early intervention and treatment.[33] As a result, treatment often comes because a third party make the intervention needed for substance abuse services.[34]

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization and treatment can be obtained on an involuntary basis. There are five involuntary admission procedures that can be broken down into two categories depending upon whether the court is involved. Regardless of the nature of the proceedings, an individual meets the criteria for an involuntary admission under the Marchman Act when there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment, has lost the power of self-control with respect to substance use; and either has inflicted, attempted or threatened to inflict, or unless admitted, is likely to inflict physical harm on himself or herself or another; or the person's judgment has been so impaired because of substance abuse that he or she is incapable of appreciating the need for substance abuse services and of making a rational decision in regard to substance abuse services.[35]

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act are:

- Protective Custody: This is used by law enforcement officers when an individual is substance-impaired or intoxicated in public and is brought to the attention of the officer. The purpose of this procedure is to allow the person to be taken to a safe environment for observation and assessment to determine the need for treatment.[36]
- Emergency Admission: This permits an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility or a detoxification facility for emergency assessment and stabilization. Individuals admitted for involuntary assessment and stabilization under this provision must have a physician's certificate for admission, demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.[37]
- Alternative Involuntary Assessment for Minors: This provides a way for a parent, legal guardian or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.[38]

[32] S. 397.601(1), F.S. Additionally, under s. 397.601(4)(a), F.S., a minor is authorized to consent to treatment for substance abuse.
[33] Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, RISK RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Program, http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited December 16, 2015).
[34] Id.
[35] S. 397.675, F.S.
[36] S. 397.667, F.S. A law enforcement officer may take the individual to their residence, to a hospital, a detoxification center, or addiction receiving facility, or in certain circumstances, to jail. Minors, however, cannot be taken to jail.
[37] S. 397.679, F.S.
[38] S. 397.6822, F.S.

Court Involved Involuntary Admissions

The two court involved Marchman Act procedures are involuntary assessment and stabilization, which provides for short-term court-ordered substance abuse treatment, and involuntary treatment, which provides for long-term court-ordered substance abuse treatment.

Involuntary Assessment and Stabilization

Involuntary assessment and stabilization involves filing a petition with the Clerk of Court. The petition for involuntary assessment and stabilization must contain:

- The name of the applicant or applicants (the individual(s) filing the petition with the court);
- The name of the respondent (the individual whom the applicant is seeking to have involuntarily assessed and stabilized);
- The relationship between the respondent and the applicant;
- The name of the respondent's attorney, if he or she has one, and whether the respondent is able to afford an attorney; and
- Facts to support the need for involuntary assessment and stabilization, including the reason for the applicant's belief that:
    - The respondent is substance abuse impaired; and
    - The respondent has lost the power of self-control with respect to substance abuse; and either that:
        - The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or
        - The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.[39]

Once the petition is filed with the Clerk of Court, the court issues a summons to the respondent and the court must schedule a hearing to take place within 10 days, or can issue an ex parte order immediately.[40]

After hearing all relevant testimony, the court determines whether the respondent meets the criteria for involuntary assessment and stabilization and must immediately enter an order that either dismisses the petition or authorizes the involuntary assessment and stabilization of the respondent.

If the court determines the respondent meets the criteria, it may order him or her to be admitted for a period of 5 days[41] to a hospital, licensed detoxification facility, or addictions receiving facility, for involuntary assessment and stabilization.[42] During that time, an assessment is completed on the

[39] S. 397.6814, F.S.
[40] S. 397.6815, F.S. Under the ex parte order, the court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him/her to the nearest appropriate licensed service provider
[41] If a licensed service provider is unable to complete the involuntary assessment and, if necessary, stabilization of an individual within 5 days after the court's order, it may, within the original time period, file a request for an extension of time to complete its assessment. The court may grant additional time, not to exceed 7 days after the date of the renewal order, for the completion of the involuntary assessment and stabilization of the individual. The original court order authorizing the involuntary assessment and stabilization, or a request for an extension of time to complete the assessment and stabilization that is timely filed pursuant to this section, constitutes legal authority to involuntarily hold the individual for a period not to exceed 10 days in the absence of a court order to the contrary. S. 397.6821, F.S.
[42] S. 397.6811, F.S. The individual may also be ordered to a less restrictive component of a licensed service provider for assessment only upon entry of a court order or upon receipt by the licensed service provider of a petition

individual.[43] The written assessment is sent to the court. Once the written assessment is received, the court must either

- Release the individual and, if appropriate, refer the individual to another treatment facility or service provider, or to community services;
- Allow the individual to remain voluntarily at the licensed provider; or
- Hold the individual if petition for involuntary treatment has been initiated.[44]

Involuntary Treatment

Involuntary treatment allows the court to require the individual to be admitted for treatment for a longer period only if the individual has previously been involved in at least one of the four other involuntary admissions procedures within a specified period.[45] Similar to a petition for involuntary assessment and stabilization, a petition for involuntary treatment must contain the same identifying information for all parties and attorneys and facts to support the need for involuntary treatment including the reason for the petitioner's belief that:

- The respondent is substance abuse impaired; and
- The respondent has lost the power of self-control with respect to substance abuse; and either
  - The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or
  - The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.[46]

A treatment hearing must be scheduled within 10 days after the petition is filed. Under this provision the court finds that the conditions for involuntary substance abuse treatment have been proven, it may order the respondent to undergo involuntary treatment for a period not to exceed 60 days.[47] However, these treatment facilities are not locked; therefore, individuals placed in treatment under the Marchman Act may voluntarily leave treatment at any time, and the only legal recourse is for a judge to issue a contempt of court charge and impose brief jail time.[48]

Confidentiality of Involuntary Hospitalization Proceedings

Confidentiality of Service Provider Records in Marchman Act Proceedings in Florida

The general rule in Florida is that civil court records are open for public inspection unless a law or a court order specifies otherwise. Because the Marchman Act is a civil proceeding, much of the information contained in the court file is available to the public for inspection. According to Florida law, only the records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to an individual being treated for substance abuse under the Marchman Act are confidential. [49]

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[43] S. 397.6819, F.S., The licensed service provider must assess the individual without unnecessary delay using a qualified professional. If an assessment is performed by a qualified professional who is not a physician, the assessment must be reviewed by a physician before the end of the assessment period.

[44] S. 397.6822, F.S. The timely of a Petition for Involuntary Treatment authorizes the service provider to retain physical custody of the individual pending further order of the court.

[45] S. 397.693, F.S.

[46] S. 397.6951, F.S.

[47] If the need for treatment is longer, renewal of the order may be petitioned prior to the expiration of the initial 60-day period.

[48] If the respondent leaves treatment, the facility will notify the court and a status conference hearing may be set. If the respondent does not appear at this hearing, a show cause hearing may be set. If the respondent does not appear for the show cause hearing, the court may find the respondent in contempt of court.

[49] S. 397.501(7), F.S. The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with the Marchman Act and with applicable federal confidentiality regulations, such as

Therefore all court records, except the records of service providers, under the Marchman Act are open for public inspection, including the petition for involuntary stabilization and assessment and the petition for involuntary treatment, unless a court orders otherwise.

Some Circuit Courts in Florida have issued orders protecting the personal information of individuals for whom an involuntary admission under the Marchman Act is sought. These court orders apply not only to Marchman Act cases, but also to cases filed under Florida's Mental Health Act, the Baker Act. Typically, these orders make all documents, and the images of all documents, filed in Baker Act and Marchman Act commitment or treatment cases confidential. Circuits have taken this action because the clinical records and other protected information in these cases are so interwoven and an integral part of the court file that it is administratively impractical to maintain only portions of the file as confidential.[50] In the Eighth Judicial Circuit,[51] the parties' names and the court dockets are not confidential and are still accessible to the public, but the viewing of the documents within the court file is limited to:

- The parties to the case,
- The parties' attorneys,
- Any governmental agency or its representative authorized by law to view the clinical records,
- Any other person or entity authorized by law, and
- A person or entity authorized to view a record by written court order.[52]

Similarly, the Sixth Judicial Circuit has ordered that the Clerks of the Circuit Court are authorized and directed to seal and must maintain as confidential the case file and every record filed in both Baker Act and Marchman Act cases, including petitions for writs of habeas corpus.[53]

Confidentiality of Involuntary Hospitalizations because of Mental Health and Substance Abuse in Other States

A number of states provide that information relating to an involuntary hospitalization for substance abuse or mental health and the related court documents are confidential and exempt. Some states provide that court records that relate only to involuntary mental health treatment are confidential,[54] while others states also protect court records relating to substance abuse treatment as confidential.[55]

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the Health Insurance Portability and Accountability Act (HIPAA), and are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

[50] J. David Walsh, Chief Judge, Seventh Judicial Circuit, *Re: Confidentiality of Court Records REF: W-2011-104*, Jun. 6, 2011, available at https://www.clerk.org/pdf/Rule_2.420.pdf (last visited January 16, 2016).

[51] Robert E. Roundtree, Chief Judge, Eighth Judicial Circuit, *Administrative Order No. 7.12: Confidentiality of Certain Baker Act and Marchman Act Files*, Oct. 5, 2012, available at www.circuit8.org/web/ao/7.12%20(v1)(s)(p)%20Conf.%20of%20Certain%20Baker%20&%20Marchman%20Files.pdf (last visited December 16, 2015).

[52] Id.

[53] J, Thomas McGrady, Chief Judge, Sixth Judicial Circuit, Administrative Order No. 2010-065 PA/PI-CIR, *Re: Sealing of Court Orders*, Sept. 30, 2010, http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2010/2010-065.htm (last visited December 17, 2015).

[54] For example, Iowa provides all that papers and records pertaining to any involuntary hospitalization or application for involuntary hospitalization of any person hospitalized with mental illness are confidential. Iowa Code s. 229.24(1). Similarly, Ohio provides that all records, and reports, other than court journal entries or court docket entries, identifying a person and pertaining to the person's mental health condition, assessment, provision of care or treatment, or payment for assessment, care or treatment must be kept confidential and cannot be disclosed. Ohio Rev. Code. s. 5119.28(A).

[55] For example, South Carolina provides that certificates, applications, records, and reports made for specified purposes, and directly or indirectly identifying a mentally ill or alcohol and drug abuse patient or former patient or individual whose commitment has been sought, must be kept confidential, and must not be disclosed. S.C. Code s. 44-22-100.(A). Additionally, in Michigan courts cannot acknowledge the existence of records pertaining to drug and alcohol screening and assessment, additional counseling, and treatment for substance abuse. Mich. Comp. Laws. s. 330.1261; 330.1285.

Effect of the Bill:

HB 741 provides that a petition for involuntary assessment and stabilization filed with the court as part of a Marchman Act proceeding is confidential and exempt from s. 119.07(1) and article I, section 24 of the Florida Constitution. The information in the petition may only be released:

- To the respondent, the respondent's spouse, attorney, guardian, or, in the case of a minor, by the respondent's parent, guardian, legal custodian, or guardian advocate.
- To the petitioner.
- Upon court order for good cause.
- To appropriate persons if necessary to ensure continuity of the respondent's health care, upon approval by the respondent, the respondent's guardian, or, in the case of a minor, by the respondent's parent, guardian, legal custodian, or guardian advocate.
- The Department of Corrections (DOC) if the respondent is committed or is to return to the custody of DOC from the Department of Children and Families.

The bill will prevent the public from being able to inspect the petition for involuntary assessment and stabilization. However, this does not affect information contained in other pleadings and documents filed in an involuntary assessment and stabilization case. For example, the bill does not provide that the order authorizing the involuntary assessment and stabilization of the respondent is confidential and exempt; such an order would contain the court's findings as to why the respondent's substance abuse necessitates an involuntary assessment. Additionally, the bill does not make confidential the information in a petition for involuntary treatment, which must also include facts to support the belief that the respondent is substance abuse impaired and has lost the power of self-control because of substance abuse.

Additionally, the bill does not specify if a licensed service provider treating the respondent would have access to the petition over the objection of the respondent.

The bill provides a statement of public necessity for the public records exemption. This statement provides legislative findings that it is a public necessity to protect the petition for involuntary assessment and stabilization of a person impaired by substance abuse under the Marchman Act because:

- The personal health of an individual and his or her alleged impairment by substance abuse are intensely private matters.
- Protecting such information is necessary to ensure the health care privacy rights of all individuals.
- Protecting such information will prevent disclosure of information of a sensitive personal nature, the release of which could cause unwarranted damage to the individual's reputation.
- The knowledge that sensitive personal information is subject to disclosure could have a chilling effect on the willingness of individuals to seek treatment services for substance use disorders.

The bill also provides that the public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:
Section 1: Amends s. 397.6815, F.S., relating to involuntary assessment and stabilization; exception; procedure.
Section 2: Provides a statement of public necessity.
Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate impact on circuit courts. Currently, circuit courts are tasked with maintaining the confidentiality of clinical records within Marchman Act cases; under the bill, petitions for involuntary assessment and stabilization will also be confidential. Circuit courts may see an indeterminate insignificant increase in costs to keep additional records confidential.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending s. 397.6815, F.S.; providing an exemption from public records requirements for a petition for involuntary assessment and stabilization of a substance abuse impaired person; providing exceptions; providing retroactive application; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing for release of a petition to a guardian advocate; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 397.6815, Florida Statutes, is amended to read:

397.6815 Involuntary assessment and stabilization; exemption; procedure.—

(1) A petition for involuntary assessment and stabilization filed with the court under this part is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall be released, in addition to the persons identified in paragraph (2)(a):

(a) To appropriate persons if necessary to ensure the continuity of the respondent's health care, upon approval by the

respondent, the respondent's guardian, or, in the case of a minor, by the respondent's parent, guardian, legal custodian, or guardian advocate.

(b) Upon court order for good cause. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the respondent.

(c) To the Department of Corrections, without charge, upon request if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

The exemption under this subsection applies to petitions filed with a court before, on, or after July 1, 2016. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) Upon receipt and filing of the petition for the involuntary assessment and stabilization of a substance abuse impaired person by the clerk of the court, the court shall ascertain whether the respondent is represented by an attorney, and if not, whether, on the basis of the petition, an attorney should be appointed; and shall:

(a) ~~(1)~~ Provide a copy of the petition and notice of hearing to the respondent; the respondent's parent, guardian, ~~or~~

legal custodian, or guardian advocate, in the case of a minor; the respondent's attorney~~, if known~~; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct pursuant to paragraph (1)(b), and have such petition and notice personally delivered to the respondent if he or she is a minor. The court shall also issue a summons to the person whose admission is sought and conduct a hearing within 10 days; or

(b) ~~(2)~~ Without the appointment of an attorney and, relying solely on the contents of the petition, enter an ex parte order authorizing the involuntary assessment and stabilization of the respondent. The court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him or her to the nearest appropriate licensed service provider.

Section 2. The Legislature finds that it is a public necessity that a petition for involuntary assessment and stabilization of a person impaired by substance abuse which is filed pursuant to chapter 397, Florida Statutes, be confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The personal health of an individual and his or her alleged impairment by substance abuse are intensely private matters. The content of such a petition should not be made public merely because the petition is filed with the court. Protecting the petition is necessary to ensure the health care privacy rights of all

individuals. Making these petitions confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to the reputation of an individual. Further, the knowledge that sensitive personal information is subject to disclosure could have a chilling effect on the willingness of individuals to seek substance abuse treatment services.

Section 3. This act shall take effect July 1, 2016.

Amendment No.

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

Committee/Subcommittee hearing bill: Children, Families & Seniors Subcommittee

Representative Kerner offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 397.6760, Florida Statutes, is created to read:

397.6760 Court records; confidentiality.—

(1) All pleadings, documents, and the images of all pleadings and documents filed with a court pursuant to Part V of Chapter 397 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Pleadings and documents made confidential and exempt by this section may be disclosed by the clerk of the court, upon request, to:

(a) The petitioner.

(b) The petitioner's attorney.

(c) The respondent.

(d) The respondent's attorney.

(e) The respondent's guardian or guardian advocate, if applicable.

(f) In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate.

(g) The respondent's treating health care practitioner.

(h) The respondent's health care surrogate or proxy.

(i) The Department of Corrections, without charge, upon request if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

(j) A person or entity authorized to view records upon a court order for good cause. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the respondent.

(2) The clerk of the court may not post any personal identifying information on the docket or in publicly accessible files.

(3) The exemption under this section applies to all documents filed with a court before, on, or after July 1, 2016.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt from the provisions of s. 119.07(1).

Section 2. The Legislature finds that it is a public necessity to exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution all pleadings and documents, and identifying information in the corresponding dockets, for an involuntary admission pursuant to part V of chapter 397, Florida Statutes, in order to preserve the privacy of the individual alleged to suffer from substance abuse. The personal health of an individual and his or her alleged impairment by substance abuse are intensely private matters. The Legislature finds that the public disclosure of such information in the petition or order or docket would produce undue harm to an individual alleged to be impaired from substance abuse. Making pleadings and documents filed for involuntary admission pursuant to part V of chapter 397, Florida Statutes, confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to the reputation of an individual. Further, the knowledge that sensitive personal information is subject to disclosure could have a chilling effect on the willingness of individuals to seek substance abuse treatment services.

Section 3. This act shall take effect July 1, 2016.

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

Remove everything before the enacting clause and insert:
An act relating to public records; creating s 397.6760, F.S. providing exemptions from public records requirements for court proceedings under Part V of Chapter 397, F.S.; listing persons to whom the clerk of the court shall allow access to the petition; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1027 Public Records/Petitions to Determine Incapacity
SPONSOR(S): Adkins
TIED BILLS: **IDEN./SIM. BILLS:** SB 1278, SB 1280

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

SUMMARY ANALYSIS

The Florida Mental Health Act, otherwise known as the Baker Act, provides legal procedures for voluntary and involuntary mental health examination and treatment, including voluntary and involuntary examinations and treatment. Involuntary examination, involuntary outpatient treatment, and involuntary inpatient treatment are court-involved procedures under the Baker Act which provide for treating an individual alleged to have a mental illness who has refused to voluntarily undergo necessary treatment. In calendar year 2014, there were 181,471 involuntary examinations initiated under the Baker Act.

Florida civil court records are generally open for public inspection unless a law or a court order specifies otherwise. Because the Baker Act is a civil proceeding, much of the information contained in the court file is available to the public for inspection. According to Florida law, only the clinical records of a patient being treated for mental illness under the Baker Act are confidential. Since the law does not provide an exemption for petitions for involuntary examination or involuntary treatment, the portions of those pleadings that do not contain clinical records, including the allegations and facts supporting the petitioner's belief that the individual suffers from mental illness, are open for public inspection.

HB 1027 provides that petitions and orders for involuntary examination, involuntary outpatient treatment, and involuntary inpatient treatment under the Baker Act are confidential and exempt from s. 119.07(1) and article I, section 24 of the Florida Constitution. The information in the petition may only be released to specified individuals. Additionally, the bill amends s. 394.4615, F.S., which provides for the confidentiality of clinical records, to require that all personal identifying information about an individual for whom a petition is filed or an is order entered pursuant to the Baker Act and filed with the clerk of the court be made confidential and exempt. The bill prohibits the clerk of the court from posting any personal identifying information on the court docket or in publicly accessible files.

The bill provides a statement of public necessity for the public records exemption. This statement provides legislative findings that the public disclosure of such information in the petition or order or docket would produce undue harm to an individual alleged to have a mental illness. Additionally, the bill provides that it is a public necessity to exempt all personal identifying information about an individual for whom a petition is filed or order entered by a judge pursuant to the Baker Act in order to preserve the privacy of the person by preserving the privacy of information in the petition or order or docket that would otherwise be accessible to the public.

The bill provides an effective date of July 1, 2016.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The public also has a right to notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.[2] The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.[3]

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act[4] guarantees every person's right to inspect and copy any state or local government public record.[5] The Sunshine Law[6] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.[7]

The Legislature may create an exemption to public records or open meetings requirements.[8] An exemption must specifically state the public necessity justifying the exemption[9] and must be tailored to accomplish the stated purpose of the law.[10] There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act and also confidential.

Exempt Records

If a record is exempt, the specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, F.S., or article I, section 24 of the Florida Constitution. If records are only exempt from the Public Records Act and not confidential, the exemption does not

[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(b).
[3] FLA. CONST., art. I, s. 24(b).
[4] Ch. 119, F.S.
[5] "Public record" means "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." S. 119.011(12), F.S. "Agency" means "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." S. 119.011(2), F.S. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature's records are public pursuant to section 11.0431, F.S.
[6] S. 286.011, F.S.
[7] S. 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.
[8] FLA. CONST., art. I, s. 24(c).
[9] FLA. CONST., art. I, s. 24(c).
[10] FLA. CONST., art. I, s. 24(c).

prohibit the showing of such information, but simply exempts them from the mandatory disclosure requirements in section 119.07(1)(a), F.S.[11]

Confidential Records

The term "confidential" is not defined in the Public Records Act; however, it is used in Article I, S. 24 of the Florida Constitution, which provides that every person has the right to inspect or copy any public record, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in the statute.[12]

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[13] The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.[14]

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[15] An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption; or
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt; or
- It protects trade or business secrets.[16]

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.[17]

The OGSR also requires specific questions to be considered during the review process.[18] In examining an exemption, the OGSR asks the Legislature to question the purpose and necessity of reenacting the exemption. If, in reenacting an exemption, the exemption is expanded, then a public necessity

[11] See, *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), rev. denied, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to s. 119.07(3)(d), F.S, [now s. 119.071(2)(c), F.S.] "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not prohibit the showing of such information." Id. at 686.

[12] *WFTV, Inc. v. School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), rev. denied, 892 So. 2d 1015 (Fla. 2004). See also, 04-09 Fla Op. Att'y Gen. (2004) and 86-97 Fla Op. Att'y Gen. (1986).

[13] S. 119.15, F.S. S. 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

[14] S. 119.15(3), F.S.

[15] S. 119.15(6)(b), F.S.

[16] Id.

[17] Id.

[18] S. 119.15(6)(a), F.S. The questions are: What specific records or meetings are affected by the exemption? Whom does the exemption uniquely affect, as opposed to the public? What is the identifiable public purpose or goal of the exemption? Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? Is the record or meeting protected by another exemption? Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

statement and a two-thirds vote for passage are required.[19] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will retain their exempt status unless provided for by law.[20]

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 make a contribution to his or her community.[21] The primary indicators used to evaluate an individual's mental health are:[22]

- **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 and/or impaired functioning.[23] 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.[24] This leaves the majority of the population with less than optimal mental health, for example: [25]

- One in four adults (61.5 million people) experiences mental illness in a given year;
- Approximately 6.7 percent (14.8 million people) live with major depression; and
- Approximately 18.1 percent (42 million people) live with anxiety disorders, such as panic disorder, obsessive-compulsive disorder (OCD), posttraumatic stress disorder (PTSD), generalized anxiety disorder and phobias.

Many people are diagnosed with more than one mental illness. For example, people who suffer from a depressive illness (major depression, bipolar disorder, or dysthymia) often have a co-occurring mental illness such as anxiety.[26]

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[19] FLA. CONST., art. I, s. 24(c).
[20] S. 119.15(7), F.S.
[21] *Mental Health Basics*, Centers for Disease Control and Prevention. http://www.cdc.gov/mentalhealth/basics.htm (last viewed on March 17, 2015).
[22] Id.
[23] Id.
[24] Id. Mental illness can range in severity from no or mild impairment to significantly disabling impairment. Serious mental illness is a mental disorder that has resulted in a functional impairment which substantially interferes with or limits one or more major life activities. *Any Mental Illness (AMI) Among Adults*, National Institute of Mental Health. http://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-adults.shtml (last viewed on March 17, 2015).
[25] *Mental Illness Facts and Numbers,* National Alliance on Mental Illness. http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&sqi=2&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.nami.org%2Ffactsheets%2Fmentalillness_factsheet.pdf&ei=dYMIVdrWOYmqgwTBIYDQDA&usg=AFQjCNEATQZ5TXJF063JkMNgg9ZnwZb_ZA&bvm=bv.88198703,d.eXY
[26] *Mental Health Disorder Statistics,* John Hopkins Medicine. http://www.hopkinsmedicine.org/healthlibrary/conditions/mental_health_disorders/mental_health_disorder_statistics_85,P00753/ (last viewed on March 17, 2015).

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.[27] 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.[28]

Involuntary Examination

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 voluntary or involuntary basis.[29] 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[30]:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination and 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.

The involuntary examination may be initiated in one of three ways:

- A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony. The order of the court shall be made a part of the patient's clinical record.
- A law enforcement officer must take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record.
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. The report and certificate shall be made a part of the patient's clinical record.[31]

Involuntary patients must be taken to either a public or private facility which 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 involuntary patients under emergency conditions for psychiatric evaluation and to provide short-term treatment.[32] The patient must be examined by the receiving facility within 72 hours of the initiation of the involuntary examination.[33]

[27] Ss. 394.451-394.47891, F.S.
[28] S. 394.459, F.S.
[29] Ss. 394.4625 and 394.463, F.S.
[30] S. 394.463(1), F.S.
[31] S. 394.463(2)(a), F.S.
[32] S. 394.455(26), F.S.
[33] S. 394.463(2)(g), F.S.

In calendar year 2014, there were 181,471 involuntary examinations initiated under the Baker Act.[34] The number of involuntary examinations initiated under the Baker Act has increased 81.9 percent from 2002 to 2014.[35] The increase in the number of involuntary examinations initiated is much greater that the Florida population increase during this same time.[36]

Involuntary Outpatient Placement

A person may be ordered to involuntary outpatient placement upon a finding of the court that by clear and convincing evidence:

- The person is 18 years of age or older;
- The person has a mental illness;
- The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
- The person has a history of lack of compliance with treatment for mental illness;
- The person has:
    - At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility, or has received mental health services in a forensic or correctional facility; or
    - Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months;
- The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and either he or she has refused voluntary placement for treatment or he or she is unable to determine for himself or herself whether placement is necessary;
- In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient placement in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being;
- It is likely that the person will benefit from involuntary outpatient placement; and
- All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.[37]

A petition for involuntary outpatient placement may be filed by the administrator of either a receiving facility or a treatment facility.[38] The petition must allege and sustain each of the criterion for involuntary outpatient placement and be accompanied by a certificate recommending involuntary outpatient placement by a qualified professional and a proposed treatment plan.[39]

The petition for involuntary outpatient placement must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed in the county where the patient will reside.[40] When the petition has been filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to DCF, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel.[41]

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[34] Annual Report of Baker Act Data: Summary of 2014 Data, prepared for the Agency for Health Care Administration by the College of Behavioral and Community Sciences, University of South Florida, available at http://bakeract.fmhi.usf.edu/document/BA_Annual_2014.pdf (last visited January 17, 2016).
[35] Id.
[36] Id.
[37] S. 394.4655(1), F.S.
[38] S. 394.4655(3)(a), F.S.
[39] S. 394.4655(3)(b), F.S.
[40] S. 394.4655(3)(c), F.S.
[41] Id.

Once a petition for involuntary outpatient placement has been filed with the court, the court must hold a hearing within five working days, unless a continuance is granted.[42] The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding.[43] The court must, within one working day of the filing of the petition appoint the public defender to represent the person who is the subject of the petition, unless that person is otherwise represented by counsel.[44]

At the hearing on involuntary outpatient placement, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment; if the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate[45] If the court concludes that the patient meets the criteria for involuntary outpatient placement it must issue an order for involuntary outpatient placement.[46] The order must specify the duration of involuntary outpatient treatment, up to six months, and the nature and extent of the patient's mental illness.[47] The order of the court and the treatment plan shall be made part of the patient's clinical record.[48]

If, at any time before the conclusion of the initial hearing on involuntary outpatient placement, it appears to the court that the person does not meet the criteria for involuntary outpatient placement but, instead, meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination.[49]

Involuntary Inpatient Placement

A person may be placed in involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

- He or she is mentally ill and because of his or her mental illness:
    - He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment; or is unable to determine for himself or herself whether placement is necessary; and
    - He or she is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or there is substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.[50]

The administrator of the receiving or treatment facility that is retaining a patient for involuntary inpatient treatment must file a petition for involuntary inpatient placement in the court in the county where the patient is located.[51] Upon filing, the clerk of the court must provide copies to DCF, the patient, the

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[42] S. 394.4655(6)(a)1., F.S.
[43] Id.
[44] S. 394.4655(4), F.S.
[45] S. 394.4655(6)(d), F.S.
[46] S. 394.4655(6)(b)1., F.S.
[47] Id.
[48] Id.
[49] S. 394.4655(6)(c), F.S. Additionally, if the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to the Marchman Act, the court may order the person to be admitted for involuntary assessment pursuant the statutory requirements of the Marchman Act.
[50] S. 394.467(1), F.S.
[51] Ss. 394.467(2)-(3), F.S.

patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located.[52]

The court proceedings for involuntary inpatient treatment closely mirror those for involuntary outpatient treatment.[53] However, unlike an order for involuntary outpatient placement, which statute makes part of the patient's clinical record, nothing in the laws governing involuntary inpatient placement makes the court's order part of the patient's clinical record.

Confidentiality of Involuntary Hospitalization Proceedings

Confidentiality of Clinical Records in Baker Act and Marchman Act Proceedings in Florida

The general rule in Florida is that civil court records are open for public inspection unless a law or a court order specifies otherwise. Because the Baker Act is a civil proceeding, the information that is not exempted from public record requirements contained in the court file is available to the public for inspection.

According to Florida law, only the clinical records of a patient being treated for mental illness under the Baker Act are confidential.[54] Clinical records are all parts of the patient's record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by a facility which pertains to the patient's hospitalization or treatment.[55] Additionally, under the Baker Act, court orders for involuntary examination[56] and for involuntary outpatient placement[57] must both be made part of the patient's clinical record.

All court records under the Baker Act, except clinical records, are open for public inspection. Therefore, all petitions filed under the Baker Act and orders for involuntary inpatient placement are open for public inspection unless a court orders otherwise.

Some Florida Judicial Circuits have taken action to make all documents, and the images of all documents, filed in Baker Act and Marchman Act[58] commitment or treatment cases confidential. Circuits have taken this action, in some cases, because the clinical records and other protected information in these cases are so interwoven and an integral part of the court file that it is administratively impractical to maintain only portions of the file as confidential.[59]

In the Eighth Judicial Circuit,[60] the parties' names and the court dockets are not confidential and are still accessible to the public, but the viewing of the documents within the court file is limited to:

- The parties to the case;
- The parties' attorneys;
- Any governmental agency or its representative authorized by law to view the clinical records;
- Any other person or entity authorized by law; and
- A person or entity authorized to view a record by written court order.[61]

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[52] S. 394.467(3), F.S.
[53] See ss. 394.467(6)-(7), F.S.
[54] S. 394.6415, F.S.
[55] S. 394.455(3), F.S.
[56] S. 394.463(2)(a)1., F.S.
[57] S. 394.4655(6)(b)1., F.S.
[58] The Marchman Act provides for voluntary and involuntary admission and treatment for substance abuse. See ch. 397.
[59] J. David Walsh, Chief Judge, Seventh Judicial Circuit, *Re: Confidentiality of Court Records REF: W-2011-104*, Jun. 6, 2011, available at https://www.clerk.org/pdf/Rule_2.420.pdf (last visited January 16, 2016).
[60] Robert E. Roundtree, Chief Judge, Eighth Judicial Circuit, *Administrative Order No. 7.12: Confidentiality of Certain Baker Act and Marchman Act Files*, Oct. 5, 2012, available at www.circuit8.org/web/ao/7.12%20(v1)(s)(p)%20Conf.%20of%20Certain%20Baker%20&%20Marchman%20Files.pdf (last visited December 16, 2015).
[61] Id.

Similarly, the Sixth Judicial Circuit has ordered that the Clerks of the Circuit Court are authorized and directed to seal and must maintain as confidential the case file and every record filed in both Baker Act and Marchman Act cases, including petitions for writs of habeas corpus.[62]

Confidentiality of Involuntary Hospitalizations because of Mental Health and Substance Abuse in Other States

A number of states provide that information relating to an involuntary hospitalization for substance abuse and/or mental health and the related court documents are confidential and exempt. Some states provide that court records that relate only to involuntary mental health treatment are confidential,[63] while others states also protect court records relating to substance abuse treatment as confidential.[64]

Effect of the Bill:

HB 1027 provides that petitions and orders for involuntary examination, involuntary outpatient treatment, and involuntary inpatient treatment under the Baker Act are confidential and exempt from s. 119.07(1) and article I, section 24 of the Florida Constitution. The information contained in these petitions will not be open for public inspection. The information in the petition may only be released to:

- A judge of the circuit;
- The respondent;
- A guardian;
- A health care surrogate or proxy;
- An attorney of record for the respondent; and
- Any other person as directed by order of the court

Additionally, the bill amends s. 394.4615, F.S., which provides for the confidentiality of clinical records, to require that all personal identifying information about an individual for whom a petition is filed or an is order entered pursuant to the Baker Act and filed with the clerk of the court be made confidential and exempt. The bill prohibits the clerk of the court from posting any personal identifying information on the court docket or in publicly accessible files.

The bill provides a statement of public necessity for the public records exemption. This statement provides legislative findings that the public disclosure of such information in the petition or order or docket would produce undue harm to an individual alleged to have a mental illness. Additionally, the bill provides that it is a public necessity to exempt all personal identifying information about an individual for whom a petition is filed or an order entered by a judge pursuant to the Baker Act in order to preserve the privacy of the person by preserving the privacy of information in the petition or order or docket that would otherwise be accessible to the public.

The bill also provides that the public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

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[62] J, Thomas McGrady, Chief Judge, Sixth Judicial Circuit, Administrative Order No. 2010-065 PA/PI-CIR, *Re: Sealing of Court Orders*, Sept. 30, 2010, http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2010/2010-065.htm (last visited December 17, 2015).

[63] For example, Iowa provides all that papers and records pertaining to any involuntary hospitalization or application for involuntary hospitalization of any person hospitalized with mental illness are confidential. Iowa Code s. 229.24(1). Similarly, Ohio provides that all records, and reports, other than court journal entries or court docket entries, identifying a person and pertaining to the person's mental health condition, assessment, provision of care or treatment, or payment for assessment, care or treatment must be kept confidential and cannot be disclosed. Ohio Rev.Code. s. 5119.28(A).

[64] For example, South Carolina provides that certificates, applications, records, and reports made for specified purposes, and directly or indirectly identifying a mentally ill or alcohol and drug abuse patient or former patient or individual whose commitment has been sought, must be kept confidential, and must not be disclosed. S.C. Code s. 44-22-100.(A). Additionally, in Michigan courts cannot acknowledge the existence of records pertaining to drug and alcohol screening and assessment, additional counseling, and treatment for substance abuse. Mich. Comp. Laws. s. 330.1261; 330.1285.

This bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.463, F.S., relating to involuntary examination.
Section 2: Amends s. 394.4655, F.S., relating to involuntary outpatient placement.
Section 3: Amends s. 394.467, F.S., relating to involuntary inpatient placement.
Section 4: Amends s. 394.4615, F.S, relating to clinical records; confidentiality.
Section 5: Provides a statement of public necessity.
Section 6: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There could be an indeterminate impact on circuit courts. Currently, circuit courts are tasked with maintaining the confidentiality of clinical records within Baker Act cases; under the bill, petitions for involuntary examination, involuntary outpatient placement, and involuntary inpatient placement, and orders for involuntary inpatient placement will also be confidential and the docket cannot contain any identifying information of the patient. Circuit courts may see an indeterminate insignificant increase in costs to keep additional records confidential and insure that identifying information is removed from their dockets.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending ss. 394.463, 394.4655, 394.467, and 394.4615, F.S.; providing exemptions from public records requirements for petitions to determine incapacity; listing persons to whom the clerk of the court shall allow access to the petition; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1.a. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him

or her to the nearest receiving facility for involuntary examination. The order of the court shall be made a part of the patient's clinical record. No fee shall be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order must send a copy of the order to the Agency for Health Care Administration on the next working day. The order shall be valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

b. The petition and any ex parte order entered by the court under this subparagraph are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. A petition made confidential and exempt by this sub-subparagraph shall be disclosed by the clerk of the court, upon request, to a judge of the circuit, the respondent, a guardian, a health care surrogate or proxy, an attorney of record for the respondent, and to any other person as directed by order of the court. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to

the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this report must send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this certificate must send a copy of the certificate to the Agency for Health Care Administration on the next working day.

Section 2. Paragraph (d) is added to subsection (3) of section 394.4655, Florida Statutes, to read:

394.4655 Involuntary outpatient placement.—

(3) PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.—

(d) The petition and any order entered by the court are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. A petition made confidential and exempt by this paragraph shall be disclosed by the clerk of the court, upon request, to a judge of the circuit, the respondent, a guardian, a health care surrogate or proxy, an attorney of record for the respondent, and to any other person as directed by order of the court. The clerk of the court may not post any personal identifying information on the docket or in publicly accessible files. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. Subsection (3) of section 394.467, Florida Statutes, is amended to read:

394.467 Involuntary inpatient placement.—

(3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—

(a) The administrator of the facility shall file a petition for involuntary inpatient placement in the court in the county where the patient is located. Upon filing, the clerk of the court shall provide copies to the department, the patient, the patient's guardian or representative, and the state attorney

and public defender of the judicial circuit in which the patient is located. No fee shall be charged for the filing of a petition under this subsection.

(b) The petition and any order entered by the court is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. A petition made confidential and exempt by this paragraph shall be disclosed by the clerk of the court, upon request, to a judge of the circuit, the respondent, a guardian, a health care surrogate or proxy, an attorney of record for the respondent, and to any other person as directed by order of the court. The clerk of the court may not post any personal identifying information on the docket or in publicly accessible files. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4. Subsection (12) is added to section 394.4615, Florida Statutes, to read:

394.4615 Clinical records; confidentiality.—

(12) All personal identifying information about an individual for whom a petition is filed or order entered by a judge pursuant to part I of chapter 394, and filed with the clerk of the court is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. A petition or order made confidential and exempt by this subsection shall be disclosed by the clerk of the court, upon request, to a judge of

the circuit, the respondent, a guardian, a health care surrogate or proxy, an attorney of record for the respondent, and to any other person as directed by order of the court. The clerk of the court may not post any personal identifying information on the docket or in publicly accessible files. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 5. The Legislature finds that it is a public necessity to exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution all personal identifying information about an individual for whom a petition is filed or order entered by a judge pursuant to part I of chapter 394, Florida Statutes, that is contained in such petitions or orders, or dockets concerning them, whether initial, amended, or supplementary, in order to preserve the privacy of the person by preserving the privacy of information in the petition or order or docket that would otherwise be accessible to the public. The Legislature finds that the public disclosure of such information in the petition or order or docket would produce undue harm to an individual alleged to have a mental illness.

Section 6. This act shall take effect July 1, 2016.

Amendment No.

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

Committee/Subcommittee hearing bill: Children, Families & Seniors Subcommittee

Representative Adkins offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 394.4615, Florida Statutes, is amended to read:

394.4615 ~~Clinical records;~~ confidentiality.—

(1) CLINICAL RECORDS.—

(a) ~~(1)~~ A clinical record shall be maintained for each patient. The record shall include data pertaining to admission and such other information as may be required under rules of the department. A clinical record is confidential and exempt from the provisions of s. 119.07(1). Unless waived by express and informed consent, by the patient or the patient's guardian or guardian advocate or, if the patient is deceased, by the

patient's personal representative or the family member who stands next in line of intestate succession, the confidential status of the clinical record shall not be lost by either authorized or unauthorized disclosure to any person, organization, or agency.

(b) ~~(2)~~ The clinical record shall be released when:

1. ~~(a)~~ The patient or the patient's guardian authorizes the release. The guardian or guardian advocate shall be provided access to the appropriate clinical records of the patient. The patient or the patient's guardian or guardian advocate may authorize the release of information and clinical records to appropriate persons to ensure the continuity of the patient's health care or mental health care.

2. ~~(b)~~ The patient is represented by counsel and the records are needed by the patient's counsel for adequate representation.

3. ~~(c)~~ The court orders such release. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the person to whom such information pertains.

4. ~~(d)~~ The patient is committed to, or is to be returned to, the Department of Corrections from the Department of Children and Families, and the Department of Corrections requests such records. These records shall be furnished without charge to the Department of Corrections.

(c) ~~(3)~~ Information from the clinical record may be released in the following circumstances:

1. ~~(a)~~ When a patient has declared an intention to harm other persons. When such declaration has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.

2. ~~(b)~~ When the administrator of the facility or secretary of the department deems release to a qualified researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.

For the purpose of determining whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan pursuant to s. 394.4655, the clinical record may be released to the state attorney, the public defender or the patient's private legal counsel, the court, and to the appropriate mental health professionals, including the service provider identified in s. 394.4655(6)(b)2., in accordance with state and federal law.

(d) ~~(4)~~ Information from clinical records may be used for statistical and research purposes if the information is

abstracted in such a way as to protect the identity of individuals.

(e) ~~(5)~~ Information from clinical records may be used by the Agency for Health Care Administration, the department, and the Florida advocacy councils for the purpose of monitoring facility activity and complaints concerning facilities.

(f) ~~(6)~~ Clinical records relating to a Medicaid recipient shall be furnished to the Medicaid Fraud Control Unit in the Department of Legal Affairs, upon request.

~~(7) Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt from the provisions of s. 119.07(1).~~

(g) ~~(8)~~ Any facility or private mental health practitioner who acts in good faith in releasing information pursuant to this section is not subject to civil or criminal liability for such release.

(h) ~~(9)~~ Nothing in this section is intended to prohibit the parent or next of kin of a person who is held in or treated under a mental health facility or program from requesting and receiving information limited to a summary of that person's treatment plan and current physical and mental condition. Release of such information shall be in accordance with the code of ethics of the profession involved.

(i) ~~(10)~~ Patients shall have reasonable access to their clinical records, unless such access is determined by the patient's physician to be harmful to the patient. If the

patient's right to inspect his or her clinical record is restricted by the facility, written notice of such restriction shall be given to the patient and the patient's guardian, guardian advocate, attorney, and representative. In addition, the restriction shall be recorded in the clinical record, together with the reasons for it. The restriction of a patient's right to inspect his or her clinical record shall expire after 7 days but may be renewed, after review, for subsequent 7-day periods.

(j) ~~(11)~~ Any person who fraudulently alters, defaces, or falsifies the clinical record of any person receiving mental health services in a facility subject to this part, or causes or procures any of these offenses to be committed, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) COURT RECORDS.—

(a) All pleadings, documents, and the images of all pleadings and documents filed with a court pursuant to Part I of Chapter 394 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Pleadings and documents made confidential and exempt by this subsection may be disclosed by the clerk of the court, upon request, to:

1. The petitioner.

2. The petitioner's attorney.

3. The respondent.

4. The respondent's attorney.

5. The respondent's guardian or guardian advocate, if applicable.

6. In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate.

7. The respondent's treating health care practitioner.

8. The respondent's health care surrogate or proxy.

9. The respondent's patient representative.

10. A person or entity authorized to view records upon a court order for good cause. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the respondent.

(b) The clerk of the court may not post any personal identifying information on the docket or in publicly accessible files.

(c) The exemption under this subsection applies to all documents filed with a court before, on, or after July 1, 2016.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt from the provisions of s. 119.07(1).

Section 2. The Legislature finds that it is a public necessity to exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, all pleadings and documents, and identifying information in the corresponding dockets, for an involuntary examination or treatment pursuant to part I of chapter 394, Florida Statutes, that is contained in such pleadings an documents, in order to preserve the privacy of the individual alleged to be suffering from mental illness. The personal health of an individual and his or her alleged mental illness are intensely private matters. Making pleadings and documents filed for involuntary examination or treatment pursuant to part I of chapter 394, Florida Statutes, confidential and exempt from disclosure will protect information of a sensitive personal nature, the release of which could cause unwarranted damage to the reputation of an individual. The Legislature finds that the public disclosure of such information in the pleadings and documents, or dockets concerning them, would produce undue harm to an individual alleged to have a mental illness. Further, the knowledge that sensitive personal information is subject to disclosure could have a chilling effect on the willingness of individuals to seek mental health treatment.

Section 3. This act shall take effect July 1, 2016.

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

Remove everything before the enacting clause and insert:
An act relating to public records; amending s 394.4615, F.S. providing exemptions from public records requirements for court proceedings for involuntary examination and treatment under Part I of Chapter 394, F.S.; listing persons to whom the clerk of the court shall allow access to the petition; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1125 Child Care Facilities
SPONSOR(S): McBurney
TIED BILLS: **IDEN./SIM. BILLS:** SB 1420

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

SUMMARY ANALYSIS

The federal government works with states to support low-income working families by providing access to affordable, high-quality child care through the federal Child Care and Development Block Grant (CCDBG). Florida uses CCDBG funds for its school readiness program. The school readiness program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities. Families use these subsidies to purchase child care services from school readiness providers (who in many cases are child care facilities regulated by the Department of Children and Families' Child Care program).

On November 19, 2014, Congress reauthorized the CCDBG program. Among its new requirements are increased health and safety requirements for providers receiving CCDBG funding, including requirements regarding background screening of employees. These requirements make sex offenders and individuals convicted of crimes such as murder and arson ineligible for employment by providers receiving CCDBG funding. The state must implement these requirements to continue receiving CCDBG funding.

Ch. 402 governs child care, including the background screening requirements for child care personnel. While child care personnel currently must pass a level 2 background screening which disqualifies individuals from employment based on similar crimes to those making individuals ineligible under the CCDBG, DCF (which conducts screenings of child care personnel) may grant exemptions from disqualification in many cases. If DCF grants exemptions, individuals with convictions for crimes such as murder and arson are allowed to work as child care personnel.

Another bill, HB 7053, implements the new CCDBG requirements, including applying these new background screening requirements to CCDBG-funded providers. However, some child care personnel are employed by child care facilities that do not receive CCDBG funding; these facilities and their employees will not be subject to the new federal regulations.

HB 1125 prohibits employment with a child facility who have been:

- Identified as a sex offender as described by 42 U.S.C. s. 9858f(c)(1)(C);
- Convicted of a felony as described in 42 U.S.C. s. 9858f(c)(1)(D); or
- Convicted of a violent misdemeanor as described in 42 U.S.C. s. 9858f(c)(1)(E).

This provides for the application of the new federal background screening restrictions under the CCDBG to all child care personnel employed by a child care facility, whether or not the child care facility receives school CCDBG funding.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Child Care and Development Block Grant

The Office of Child Care (OCC) of the United States Department of Health and Human Services supports low-income working families by providing access to affordable, high-quality child care. OCC works with state, territory and tribal governments to provide support for children and their families to promote family economic self-sufficiency and to help children succeed in school and life through affordable, high-quality early care and afterschool programs.[1]

School Readiness Program

Florida's Office of Early Learning (OEL)[2] provides state-level administration for the School Readiness program. The School Readiness program is a state-federal partnership between OEL and the Office of Child Care of the United States Department of Health and Human Services.[3] The School Readiness program receives funding from a mix of state and federal sources, including the federal Child Care and Development Block Grant (CCDBG), the federal Temporary Assistance for Needy Families (TANF) block grant, general revenue and other state funds.[4] The school readiness program provides subsidies for child care services and early childhood education for children of low-income families; children in protective services who are at risk of abuse, neglect, or abandonment; and children with disabilities.

The program utilizes a variety of providers to deliver program services, such as licensed and unlicensed child care providers and public and nonpublic schools.[5] The Florida Department of Children and Families' Office of Child Care Regulation (DCF), as the agency responsible for the state's child care provider licensing program, regulates many, but not all, child care providers that provide early learning programs.[6]

On November 19, 2014, the Child Care and Development Block Grant (CCDBG) Act of 2014 was signed into law. The new law prescribes health and safety requirements that apply to school readiness program providers and requires better information to parents and the general public about available child care choices.[7]

While Florida's school readiness programs meet many of the new federal requirements, there are specific requirements of the grant that will necessitate changes to Florida law. One of those changes is an increase in the requirements for screening all child care personnel to include searches of the National Sex Offender Registry, state criminal records, state sex offender registries, and child abuse and neglect registries of all states in which the child care personnel resided during the preceding 5

[1] Office of Child Care, *What We Do,* at http://www.acf.hhs.gov/programs/occ/about/what-we-do (last visited Nov. 13, 2015).
[2] In 2013, the Legislature established the Office of Early Learning in the Office of Independent Education and Parental Choice within the Department of Education (DOE).The office is administered by an executive director and is fully accountable to the Commissioner of Education but shall independently exercise all powers, duties, and functions prescribed by law, as well as adopt rules for the establishment and operation of the School Readiness program and the Voluntary Prekindergarten Education Program. Section 1, 2013-252, L.O.F., *codified as* s. 1001.213, F.S.
[3] Part VI, ch. 1002, F.S.; 42 U.S.C. ss. 618 & 9858-9858q.
[4] Specific Appropriation 88, s. 2, ch. 2014-51, L.O.F.
[5] Section 1002.88(1)(a), F.S.
[6] *See* ss. 402.301-319, F.S., and Part VI, ch. 1002, F.S.
[7] Office of Child Care, *CCDF Reauthorization*, at http://www.acf.hhs.gov/programs/occ/ccdf-reauthorization (last visited Nov. 13, 2015).

years.[8] It will also require that individuals who are sex offenders or convicted of certain crimes be ineligible for employment with child care providers receiving CCDBG funds.

Child Care Licensure

Pursuant to ch. 402, F.S., DCF is charged with the regulation of child care facilities, family day care homes, and large family child care homes, which includes those entities falling into those categories that are also school readiness providers. One of the statutory requirements is that these providers' personnel shall have good moral character based upon screening.[9] Additionally, some entities caring for children are not subject to regulation by DCF's child care program but are subject to background screening.[10] Screening must be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter.[11]

Level 2 Background Screening

A level 2 background screening includes but is not limited to fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.[12] The applicant has fingerprints taken by a vendor that submits the electronic fingerprints to FDLE for DCF. FDLE then runs statewide checks and submits the electronic file to the FBI for national checks.

Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to DCF. DCF then determines if the screening contains any disqualifying information for employment. DCF must ensure that the applicant has good moral character by determining that no applicant has been arrested for, is awaiting final disposition of, has been found guilty of, or entered a plea of nolo contendere or guilty to any offense prohibited under 52 particular statutes relating to offenses such as sexual misconduct, murder, assault, kidnapping, arson, exploitation, lewd and lascivious behavior, drugs, and domestic violence.[13] If the department finds that an individual has a history containing one of these offenses, they must disqualify that individual from employment in child care facilities.

Exemptions

Section 435.07, F.S., allows the Secretary of DCF to exempt applicants from disqualification based on different reasons, including a three-year lapse of time since completion of confinement or supervision for a felony, completion of confinement or supervision for a misdemeanor, legal downgrading of offenses that were felonies when committed but are now considered misdemeanors, and findings of delinquency.[14] DCF is allowed to provide exemptions from disqualification pursuant to s. 435.07, F.S. for child care personnel.[15] An individual who is considered a sexual predator,[16] career offender,[17] or sexual offender (unless not required to register)[18] cannot be exempted from disqualification.[19]

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[8] Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658H(b)
[9] S. 402.305(2), F.S.
[10] For example, a child care facility that is an integral part of a church or parochial schools meeting certain requirements. s. 402.316, F.S.
[11] Id.
[12] S. 435.04, F.S.
[13] S. 435.04(2), F.S.
[14] S. 435.07(1), F.S.
[15] S. 402.305(2)(b), F.S.
[16] S. 775.261, F.S.
[17] S. 775.261, F.S.
[18] S. 943.0435, F.S.
[19] S. 435.07(4)(b), F.S.

CCDBG Employment Ineligibility

Based on the new requirements of the CCDBG, in order to continue to receive federal funding, the state must make ineligible for employment by school readiness providers any person who is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry[20] or has been convicted of:

- Murder;
- Child abuse or neglect;
- A crime against children, including child pornography;
- Spousal abuse;
- A crime involving rape or sexual assault;
- Kidnapping;
- Arson;
- Physical assault or battery;
- A drug-related offense committed during the preceding 5 years; or
- A violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.[21]

However, these prohibitions on employment will not apply to child care facilities that are not school readiness providers and as such do not receive any CCDBG funds.

Effect of Proposed Changes

HB 1125 amends s. 402.305, F.S, to bar employment by child care facilities of persons who have been:

- Identified as a sex offender as described by 42 U.S.C. s. 9858f(c)(1)(C);
- Convicted of a felony as described in 42 U.S.C. s. 9858f(c)(1)(D); or
- Convicted of a violent misdemeanor as described in 42 U.S.C. s. 9858f(c)(1)(E).

This aligns the child care background screening requirements for all child care facilities with the federal requirements for school readiness providers, regardless of whether the child care facilities receives federal CCDBG funds.

The bill provides for an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.305, F.S., referencing child care facility licensing standards.
Section 2: Provides for an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[20] 42 U.S.C. s. 9858f(c)(1)(C)
[21] 42 U.S.C. s. 9858f(c)(1)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to child care facilities; amending s. 402.305, F.S.; prohibiting the employment of certain child care personnel by a child care facility; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 402.305, Florida Statutes, is amended to read:

402.305 Licensing standards; child care facilities.—

(2) PERSONNEL.—Minimum standards for child care personnel shall include minimum requirements as to:

(b) The department may grant exemptions from disqualification from working with children or the developmentally disabled as provided in s. 435.07. However, child care personnel who have been identified as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C), convicted of a felony as described in 42 U.S.C. s. 9858f(c)(1)(D), or convicted of a violent misdemeanor as described in 42 U.S.C. s. 9858f(c)(1)(E), may not be employed by a child care facility.

Section 2. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1125 (2016)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Children, Families & Seniors Subcommittee

Representative McBurney offered the following:

Amendment (with title amendment)

Remove lines 17-21 and insert:

the department may not grant such exemptions to individuals who have been identified as a sex offender as described in 42 U.S.C. s. 9858f(c)(1)(C), convicted of a felony as described in 42 U.S.C. s. 9858f(c)(1)(D), or convicted of a violent misdemeanor as described in 42 U.S.C. s. 9858f(c)(1)(E), and such individuals are disqualified from employment as child care personnel regardless of any prior exemptions from disqualification.

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

Amendment No.

Remove lines 2-4 and insert:

An act relating to eligibility for employment as child care personnel; amending 402.305, F.S.; prohibiting the granting of exemptions to employment as child care personnel to certain individuals; disqualifying such individuals from such employment regardless of any prior exemptions;

HB 1299

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1299 Public Assistance
SPONSOR(S): Eagle
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Florida's Temporary Cash Assistance (TCA) Program provides cash assistance to needy families with children that meet eligibility requirements. To be eligible for full-family TCA, applicants must participate in work activities unless they qualify for an exemption. The regional workforce boards support and monitor applicants' compliance with work activity requirements.

TCA recipients who fail to meet work activity requirements may be sanctioned through the withholding of cash assistance for a specified minimum period of time or until the participant complies, whichever is later. The sanctions are either full-family (where no members of the noncompliant recipient's family may receive TCA) or allow for child–only TCA (where any children under 16 may continue to receive TCA).

In Florida, TCA and other social welfare benefits are placed on Electronic Benefits Transfer (EBT) cards. Currently, there is no fee charged in Florida for replacement EBT cards, although such fees are allowed by federal regulations.

HB 1299 increases the penalties for the first three instances of noncompliance with the TCA work requirements to align with the food assistance program's sanctions and creates a fourth sanction. The bill:

- Increases the first sanction from 10 days to one month; this sanction remains full-family.
- Increases the second sanction from one month or until compliance, whichever is later, to three months or until compliance, whichever is later; and provides that TCA may be continued for a family in which the child or children are under 16 years old for the first three months of the sanction period even if participant takes longer to comply.
- Increases the third sanction from three months or until compliance, whichever is later, to six months or until compliance, whichever is later; and provides that TCA may be continued for a family in which the child or children are under 16 years old for the first six months of the sanction period even if participant takes longer to comply.
- Creates a fourth sanction of one year or until compliance, whichever is later, and that the individual must reapply to the program; and provides that TCA may be continued for a family in which the child or children are under 16 years old for the first year of the sanction period even if participant takes longer to comply.

The bill requires the Department of Economic Opportunity, in cooperation with the Department of Children and Families and CareerSource, to:

- Work with the participant to develop strategies on how to overcome barriers to compliance with the TCA work requirements that the recipient faces; and
- Inform the participant, in plain language, and have the participant agree to, in writing, what is expected of the applicant to continue to receive benefits; under what circumstances the applicant would be sanctioned; and potential penalties for noncompliance with work requirements, including how long benefits would not be available.

The bill also amends the Relative Caregiver program, which provides cash assistance to certain caregivers of children placed through the dependency system, to prohibit payment of TCA to a noncustodial parent who lives with the relative who is caring for the noncustodial parent's child and receiving Relative Caregiver funding.

The bill requires EBT cardholders to pay a fee for the fifth and every subsequent EBT card requested within a 12-month span. The bill allows the fee to be deducted from the cardholder's benefits and provides for a waiver of the fee upon a showing of good cause, such as that the card malfunctioned or the fee would cause extreme financial hardship.

The bill requires hospitals to implement procedures to biometrically confirm Medicaid patients' identities and compare them against those individuals' driver's license photos and Medicaid eligibility.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Temporary Assistance for Needy Families (TANF)

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

Florida's Temporary Cash Assistance Program

The Temporary Cash Assistance (TCA) Program provides cash assistance to families with children under the age of 18 or under age 19[1] if full time secondary school students, that meet the technical, income, and asset requirements. The purpose of the TCA Program is to help families become self-supporting while allowing children to remain in their own homes. In November 2015, 14,102 adults and 70,476 children received TCA.[2]

Full-Family vs. Child-Only TCA

Florida law specifies two categories of families who are eligible for TCA; those families that are work-eligible and entitled to receive TCA for the full-family, and those families who are entitled to receive child-only TCA. Within the full-family cases, the parent or parents are required to comply with work requirements to receive TCA for the parent(s) and child(ren). Additionally, there are two types of child-only TCA; the first category is where the child is living with a relative or situations the custodial parent is not eligible,[3] the second type is the Relative Caregiver Program, where the child has been adjudicated dependent has been placed with relatives by the court; these relatives are eligible for a payment that is higher than the typical child-only TCA.

The majority of cash assistance benefits are provided to child-only cases, through the Relative Caregiver Program or to work-eligible cases where the adult is ineligible due to sanction for failure to meet TCA work requirements. In November 2015, 36,443 of the 49,652 families receiving TCA were child-only cases.[4] In November 2015, there were 13,209 families receiving TCA through full-family cases containing an adult, 607 of which were two-parent families; these are the families who are subject to work requirements.[5]

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[1] Parents, children and minor siblings who live together must apply together. Additionally, pregnant women may also receive TCA, either in the third trimester of pregnancy if unable to work, or in the 9th month of pregnancy.
[2] Department of Children and Families, Monthly Flash Report Caseload Data: November 2015, http://eww.dcf.state.fl.us/ess/reports/docs/flash2005.xlsx (last visited January 17, 2016).
[3] Child-only families also include situations where a parent is receiving federal Supplemental Security Income (SSI) payments and situations where the parent is not a U.S. citizen and is ineligible due to their immigration status. Grandparents or other relatives receiving child-only payments are not subject to the TANF work requirement or the TANF time limit.
[4] *Supra*, note 2.
[5] Id.

Administration

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

- The Department of Children and Families (DCF) is the recipient of the federal TANF block grant. DCF monitors eligibility and disperses benefits.
- CareerSource Florida, formerly Workforce Florida, Inc.,[6] is the state's workforce policy and investment board. CareerSource Florida has planning and oversight responsibilities for all workforce-related programs.
- The Department of Economic Opportunity (DEO) is the designated agency for workforce programs, funding and personnel, and implements the policy created by CareerSource.[7] DEO is responsible for financial and performance reports ensuring compliance with federal and state measures and also provides training and technical assistance to Regional Workforce Boards.
- Regional Workforce Boards (RWBs) provide a coordinated and comprehensive delivery of local workforce services. The RWBs focus on strategic planning, policy development and oversight of the local workforce investment system within their respective areas and contract with one-stop career centers. The contracts with the RWBs are performance- and incentive- based.

Eligibility Determination

An applicant must meet all eligibility requirements to receive TCA benefits. The initial application for TANF is processed by DCF. The application may be submitted in person, online or through the mail.

DCF determines an applicant's eligibility. Additionally, to be eligible for full-family TCA, applicants must participate in work activities unless they qualify for an exemption. Exemptions from the work requirement are available for:

- An individual who receives benefits under the Supplemental Security Income program or the Social Security Disability Insurance program.
- An adult who is not defined as a work-eligible individual under federal law.
- A single parent of a child under 3 months of age, except that the parent may be required to attend parenting classes or other activities to better prepare for raising a child.
- An individual who is exempt from the time period pursuant to s. 414.105, F.S.

If no exemptions from work requirements apply, DCF refers the applicant to DEO.[8] Upon referral the participant must complete an in-take application and undergo assessment by RWB staff which includes:

- Identifying barriers to employment.
- Identifying the participant's skills that will translate into employment and training opportunities.
- Reviewing the participant's work history
- Identifying whether a participant needs alternative requirements due to domestic violence, substance abuse, medical problems, mental health issues, hidden disabilities, learning disabilities or other problems which prevent the participant from engaging in full-time employment or activities.

Once the assessment is complete, the staff member and participant create the Individual Responsibility Plan (IRP). The IRP includes:

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[6] On May 22, 2013, the WFI Board of Directors unanimously approved the brand charter, name, and logo establishing "CareerSource Florida" as the single, statewide unified brand for Florida's workforce system. This universal brand will apply directly to WFI, RWBs and One-Stop Career Centers, creating aligned brand names and logos system-wide (i.e. Workforce Florida Inc. is now CareerSource Florida and Gulf Coast Workforce Development Board is now CareerSource Gulf Coast).

[7] S. 445.007(13), F.S.

[8] This is an electronic referral through a system interface between DCF's computer system and DEO's computer system. Once the referral has been entered into the DEO system the information may be accessed by any of the RWBs or One-Stop Career Centers.

- The participant's employment goal;
- The participant's assigned activities;
- Services provided through program partners, community agencies and the workforce system;
- The weekly number of hours the participant is expected to complete; and
- Completion dates and deadlines for particular activities.

DCF does not disperse any benefits to the participant until DEO or the RWB confirms that the participant has registered and attended orientation.

Work Requirement

Individuals receiving TCA who are not otherwise exempt from work activity requirements must participate in work activities for the maximum number of hours allowable under federal law.[9] The number of required work or activities hours is determined by calculating the value of the cash benefits and then dividing that number by the hourly minimum wage amount.

Federal law requires individuals to participate in work activities for at least:

- 20 hours per week, or attend at a secondary school or the equivalent or participate in education directly related to employment if under the age of 20 and married or single head-of-household.
- 20 hours per week for single parents with a child under the age of six.
- 30 hours per week for all other single parents.
- 35 hours per week, combined, for two-parent families not receiving subsidized child care.
- 55 hours per week, combined, for two-parent families receiving subsidized child care..

Pursuant to federal rule[10] and state law,[11] the following activities may be used individually or in combination to satisfy the work requirements for a participant in the TCA program:

- Unsubsidized employment.
- Subsidized private sector employment.
- Subsidized public sector employment.
- On-the-job training.
- Community service programs.
- Work experience.
- Job search and job readiness assistance.
- Vocational educational training.
- Job skills training directly related to employment.
- Education directly related to employment.
- Attendance at school or course of study for graduate equivalency diploma.
- Providing child care services.[12]

RWB's currently have discretion to assign an applicant to a work activity, including job search, before receiving TCA. Some RWBs already require applicants to complete an initial job search as part of the application process.[13] Currently, Florida's TANF Work Verification Plan[14] requires participants to record

[9] S. 445.024(2), F.S.
[10] 45 C.F.R. § 261.30
[11] S. 445.024, F.S.
[12] S. 445.024(1)(a)-(l), F.S.
[13] Department of Children and Families, Agency Analysis of 2016 House Bill 563 (Nov. 20, 2015)(on file with Children, Families, and Seniors Subcommittee staff)
[14] DEPARTMENT OF CHILDREN AND FAMILIES ECONOMIC SELF-SUFFICIENCY PROGRAM OFFICE, *Temporary Assistance for Needy Families State Plan Renewal October 1, 2014 – September 30, 2017,* Nov. 14, 2014, available at www.dcf.state.fl.us/programs/access/docs/TANF-Plan.pdf (last visited December 17, 2015).

each on-site job contact and a representative of the employer or RWB provider staff to certify the validity of the log by signing each entry. If the applicant conducts a job search by phone or internet, the activity must be recorded on a job search report form and include detailed, specific information to allow follow-up and verification by the RWB provider staff.[15]

Sanctions for Noncompliance

RWBs can sanction TANF recipients who fail to comply with the work requirements by withholding cash assistance for a specified time period, which lengthens with repeated lack of compliance. The participant's noncompliance can result in sanctions, as follows:

- First noncompliance - cash assistance is terminated for the full-family for a minimum of 10 days or until the individual complies.
- Second noncompliance - cash assistance is terminated for the full-family for one month or until the individual complies, whichever is later.
- Third noncompliance - cash assistance is terminated for the full-family for three months or until the individual complies, whichever is later.

In Fiscal Year (FY) 2014-2015, the number of TCA families sanctioned for noncompliance with the work requirements breaks down as follows:

- 993 families were sanctioned for a first instance of noncompliance; of those families, only 193 families, or 19.4 percent, complied with work requirements to be reinstated in the program.[16]
- 466 families were sanctioned for a second instance of noncompliance; of those families, only 49 families, or 10.5 percent, complied with the work requirements to be reinstated in the program.[17]
- 489 families were sanctioned for a third instance of noncompliance; of those families, only 47 families, or 9.6 percent, complied with the work requirements to be reinstated in the program.[18]

For the second and subsequent instances of noncompliance, the TCA for the child or children in a family who are under age 16 may be continued (i.e. the case becomes a child-only case). Any such payments must be made through a protective payee and under no circumstances may temporary cash assistance or food assistance be paid to an individual who has not complied with program requirements. Data from 2014 indicates only six percent of those who regain eligibility after sanction do so via a child-only case.[19]

However, if a participant who was previously sanctioned fully complies with work activity requirements for at least six months, the participant must be reinstated as being in full compliance with program requirements for purpose of sanctions imposed under this section.[20] Once the participant has been reinstated, a subsequent instance of noncompliance would be treated as the first violation.

The Food Assistance Program, Supplemental Nutrition Assistance Program (SNAP), formerly called food stamps, also contains similar sanctions for failure to comply with its Employment and Training Program when receiving benefits. However, the SNAP sanctions are a longer duration. For the first instance of noncompliance, food assistance benefits are terminated for one month or until compliance, whichever is later; for the second instance, food assistance benefits are terminated for three months or until compliance, whichever is later; and for the third instance, food assistance benefits are terminated for six months or until compliance, whichever is longer.[21]

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[15] *Supra*, note 13 at 2.
[16] Email from Nicole Stookey, Deputy Director, Office of Legislative Affairs, Department of Children and Families, RE: TANF Follow-Up Questions (Nov. 30, 2015) (On file with Children, Families, and Seniors Subcommittee staff).
[17] Id.
[18] Id.
[19] Id.
[20] S. 414.065(1), F.S.
[21] Rule 65A-1.605(3), F.A.C.

Relative Caregiver Program

The Relative Caregiver Program provides TCA to individuals who meet eligibility rules and have custody of a relative child under age 18 who has been court ordered dependent by a Florida court and placed in their home by a DCF Child Welfare/Community Based Care contracted provider.[22] The intent of the Relative Caregiver Program is to provide relative caregivers who could not otherwise afford to take the child into their homes, a means to avoid exposing the child to the trauma of shelter or foster care.

The Relative Caregiver Program provides one type of child-only TCA. Payments are based on the child's age and any countable income.[23] DCF ceases to provide child-only Relative Caregiver Program benefits when the parent or step-parent resides in the home with the relative caregiver and the child. DCF ceases the benefits in this situation based on the requirement in s. 414.095(2)(a)5., F.S., that parents who live with their minor children to be included in the eligibility determination and households containing a parent are considered work-eligible households. Through rule 65C-28.008(2)(d), F.A.C., DCF terminates payments through the Relative Caregiver Program if the parent is in the home for 30 consecutive days.[24] However, at least one court has ruled that caregivers may continue to receive the Relative Caregiver Program benefits while the parent resides in the home, because the prohibition against the parent residing in the home is not in statute and DCF rules cannot be used to establish an eligibility guideline not included in the statute. Court orders in such cases result in DCF being required to make disallowed TANF expenditures.

Electronic Benefits Transfer (EBT) Card Program

Electronic Benefits Transfer (EBT) is an electronic system that allows a recipient to authorize transfer of their government benefits, including from the SNAP and TCA programs, to a retailer account to pay for products received.[25] The EBT card program is administered on the federal level by the Food and Nutrition Service (FNS) within the U.S. Department of Agriculture and at the state level by DCF. In Florida, benefits are deposited into a TCA or SNAP account each month; the benefits in the TCA or SNAP account are accessed using the Florida EBT Automated Community Connection to Economic Self Sufficiency (ACCESS) card.[26] Even though the EBT card is issued in the name of an applicant, any eligible member of the household is allowed to use the EBT card.[27] Additionally, recipients may designate an authorized representative as a secondary cardholder who can receive an EBT card and access the food assistance account. Authorized representatives are often someone responsible for caring for the recipient. The ACCESS Florida system allows recipients to designate one authorized representative per household.

Replacement of EBT Cards

When a recipient loses his or her EBT card, he or she must call the EBT vendor's customer service telephone number to request a replacement EBT card.[28] The vendor then deactivates the card, and

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[22] S. 39.5085(2), F.S.
[23] Rule 65C-28.008(2)(g), F.A.C.
[24] However, a relative may receive the RCP payment for a minor parent who is in his or her care, as well as for that minor parent's child, if both children have been adjudicated dependent and meet all other eligibility requirements.
[25] U.S. DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICES, *EBT: General Electronic Benefit Transfer (EBT) Information*, http://www.fns.usda.gov/ebt/general-electronic-benefit-transfer-ebt-information (last visited December 21, 2015)
[26] DEPARTMENT OF CHILDREN AND FAMILIES, *Welcome to EBT,* http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/welcome-ebt (last visited December 22, 2015)
[27] 7 C.F.R. § 273.2(n)(3).
[28] The Florida Legislature's Office of Program Policy Analysis & Government Accountability, *Supplemental Nutrition Assistance Program: DCF Has Mechanisms in Place to Facilitate Eligibility, Verify Participant Identity, and Monitor Benefit Use*, Dec. 3, 2015, p.8 (research memorandum on file with Children, Families, and Seniors Subcommittee staff)

sends the household a new card.[29] Federal regulations allow recipients to request an unlimited number of replacement EBT cards.[30] While states cannot limit the number of replacement cards, frequent requests for replacement cards can be an indicator of EBT card fraud, such as trafficking, which occurs when an EBT card containing benefits is exchanged for cash. FNS and DCF consider multiple replacement cards a preliminary indicator of trafficking.

FNS aims to preserve food assistance access for vulnerable populations (e.g., mentally ill and homeless people) who are at risk of losing their cards but who are not committing fraud,[31] while preventing others from trafficking and replacing their EBT cards. In the interest of preventing fraud, FNS regulations require states to monitor all client requests for EBT card replacements and send a notice, upon the fourth request in a 12-month period, alerting the household that their account is being monitored for potential suspicious activity.[32] In Fiscal Year 2014-15, DCF sent 13,967 letters to households that had requested four or more cards.[33] The letter informs the recipient that the card does not need to be replaced each month and that it is important to keep track of the card.[34] The letter also informs the recipient that this number of replacement requests is not normal and that the household's EBT behavior is being monitored.[35] Additionally, in Fiscal Year 2014-15, less than one-third of the households who requested four cards (4,653 households) requested yet another replacement card after receiving the letter, and the DCF Office of Public Benefits Integrity referred these cases to the Department of Financial Services Division of Public Assistance Fraud (DPAF) for potential fraud investigation.[36]

Federal regulations allow states to charge recipients for the cost to replace an excessive[37] number of cards. FNS allows states to charge for the cost of the EBT card after four replaced cards. Under DCF's EBT contract, the vendor reports that replacements costs $3.50 per card.[38] There are a number of other states that charge for replacement cards. Those states charge between $2.00 to $5.00[39] per replacement card with some exceptions for good cause or financial hardship.

Medicaid Fraud

Medicaid fraud means an intentional deception or misrepresentation made by a health care provider or a Medicaid recipient with the knowledge that the deception could result in some unauthorized benefit to him or herself or some other person.[40] It includes any act that constitutes fraud under federal or state law related to Medicaid.[41]

The Attorney General's Medicaid Fraud Control Unit investigates and prosecutes fraud involving providers that intentionally defraud the state's Medicaid program through fraudulent billing practices.[42] DPAF investigates Medicaid recipient fraud.[43]

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[29] Id.
[30] 7 C.F.R. § 276.4
[31] 7 C.F.R. § 274.6(b)(5)(iii).
[32] 7 C.F.R. § 274.6(b)(6); In Florida, after the EBT vendor provides a fourth replacement card to a household within a 12-month span, DCF sends a letter to the household.
[33] *Supra*, note 28.
[34] Id.
[35] Id.
[36] Id.
[37] Defined by federal regulation as in excess of four cards within a 12-month span.
[38] *Supra*, note 28.
[39] By way of example, Louisiana and Maryland charge $2.00, New Mexico charges $2.50, and Massachusetts charges $5.00.
[40] AGENCY FOR HEALTH CARE ADMINISTRATION, *Medicaid Fraud: Protect Your Tax Dollars*, http://ahca.myflorida.com/Executive/Inspector_General/complaints.shtml (last visited January 6, 2016).
[41] Id.
[42] FLORIDA OFFICE OF THE ATTORNEY GENERAL, *Medicaid Fraud Control Unit*, http://www.myfloridalegal.com/pages.nsf/Main/EBC480598BBF32D885256CC6005B54D1 (last visited January 6, 2016).
[43] DEPARTMENT OF FINANCIAL SERVICES, *Division of Public Assistance Fraud:* http://www.myfloridacfo.com/Division/PAF/ (last visited January 6, 2016).

Effect of the Bill

Temporary Cash Assistance

Sanctions for Noncompliance

HB 1299 increases the sanctions for TCA recipients who are subjected to the work requirements for the first three instances of noncompliance and creates a sanction for the fourth instance of noncompliance. The bill amends s. 414.065(1) and (2), F.S., to:

- Increase the first sanction from 10 days to one month; this sanction remains full-family.
- Increase the second sanction from one month or until compliance, whichever is later, to three months or until compliance, whichever is later; and provides that TCA may be continued for a family in which the child or children are under 16 years old for the first three months of the sanction period even if participant takes longer to comply.
- Increase the third sanction from three months or until compliance, whichever is later, to six months or until compliance, whichever is later; and provides that TCA may be continued for a family in which the child or children are under 16 years old for the first six months of the sanction period even if participant takes longer to comply.
- Create a fourth sanction of one year or until compliance, whichever is later, and that the individual must reapply to the program to resume receiving benefits; and provides that TCA may be continued for a family in which the child or children are under 16 years old for the first year of the sanction period even if participant takes longer to comply.

These changes align the sanctions for the first through third occurrences of noncompliance with TCA work requirements with the sanctions for noncompliance with the SNAP program's Employment and Training Program. However, the provisions that permit families with a child or children under 16 to continue receiving TCA for the minimum sanction period essentially negates the sanction. See section III.C., "Drafting Issues or Other Comments" for further discussion.

Work Plan

The bill requires that prior to receipt of TCA, DEO, DCF, or CareerSource must inform the participant, in plain language, and have the participant indicate agree to, in writing:

- What is expected of the applicant to continue to receive benefits;
- Under what circumstances the applicant would be sanctioned; and
- Potential penalties for noncompliance with work requirements, including how long benefits would not be available to the applicant.

The bill also requires that, prior to receipt of TCA, DEO, DCF, or CareerSource must work with the participant to develop strategies on how to overcome barriers to compliance with the TCA work requirements that the recipient faces.

Relative Caregiver Program

The bill amends s. 39.5085, F.S., to clarify that a caregiver may not receive payment through the Relative Caregiver Program if the parent or step-parent resides in the home with his or her child. Section 414.095(2)(a)5., F.S., requires parents and step-parents who live with their minor children to be included for eligibility determination and TCA regulations that define households containing a parent as a "work eligible" household.

EBT Cards

The bill requires EBT cardholders to pay a fee for the fifth and all subsequent EBT replacement cards requested within a 12-month span. DCF currently sends a letter with the fourth replacement card informing the cardholder that his or her case is being monitored for potential trafficking activity. By charging the fee beginning with the fifth card, DCF may inform the cardholder in the letter that it sends with the fourth replacement card about replacement fees for subsequent new cards.

The bill allows the fee to be deducted from the cardholder's benefits and provides for a waiver of the fee upon a showing of good cause, such as that the card malfunctioned or the fee would cause extreme financial hardship.

Medicaid Fraud

In an effort to combat Medicaid fraud, the bill requires hospitals to implement procedures to biometrically confirm a Medicaid patient's identity and compare against his or her driver's license photo and Medicaid eligibility. The bill provides that that the Department of Legal Affairs, the Agency for Health Care Administration, and the Department of Highway Safety and Motor Vehicles may contract with hospitals or their software providers to provide access to the driver's license database for the purpose of verifying patients' identities and Medicaid eligibility

B. SECTION DIRECTORY:

Section 1: Amends s. 414.069, F.S., relating to noncompliance with work requirements.
Section 2: Amends s. 445.024, F.S., relating to work requirements.
Section 3: Amends s. 402.82, F.S., relating to electronic benefits transfer program.
Section 4: Amends s. 39.5085, F.S., relating to the Relative Caregiver Program.
Section 5: Amends s. 16.59, F.S., relating to Medicaid fraud control.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The estimated card replacement fees recouped could approach $325,000 based on a $5.00 per card cost for 65,000 cards.[44]

2. Expenditures:

   The bill reduces annual expenditures for DCF through increased TCA work penalty periods; the total estimated annual savings from all work penalty period increases is $2,516,452.[45]

   DCF's EBT vendor estimates a cost of $105,280 to complete necessary system programming to implement the EBT replacement card provisions in the bill.[46] DCF estimates a cost of $774,400 to create a new fourth level TCA work sanction and implement new EBT card replacement provisions.[47]

[44] Department of Children and Families, Agency Bill Analysis for 2016 House Bill 1299, p. 4 (Jan 12. 2016) (On file with Children, Families, and Seniors Subcommittee Staff).
[45] Id. at p. 6.
[46] Id. at p. 7.
[47] Id.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Costs of replacement cards may be charged against an EBT cardholder's benefits. The cardholder's benefits will be reduced by the cost to replace his or her EBT card.

There is a potential for additional expenditures for hospitals to implement the new biometric measurements to verify identity of patients to combat Medicaid fraud.[48]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions that permit families with a child or children under 16 to continue receiving TCA, when sanctioned for noncompliance with the work requirements, for the minimum sanction period essentially negates the sanction and could have a negative impact on workforce participation rates. It appears that this was a drafting error that could be corrected by an amendment that specifies who in the family is eligible to receive TCA during the sanction period, presumably the child or children under 16.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[48] Id. at p. 6.

A bill to be entitled

An act relating to public assistance; amending s. 414.065, F.S.; revising penalties for noncompliance with the work requirements for temporary cash assistance; limiting the receipt of child-only benefits during periods of noncompliance with work requirements; amending s. 445.024, F.S.; requiring the Department of Economic Opportunity, in cooperation with CareerSource Florida, Inc., and the Department of the Department of Children and Families, to develop and implement a work plan agreement for participants in the temporary cash assistance program; requiring the plan to identify expectations, sanctions, and penalties for noncompliance with work requirements; amending s. 402.82, F.S.; requiring the Department of Children and Families to impose a replacement fee for electronic benefits transfer cards under certain circumstances; amending s. 39.5085, F.S.; revising eligibility guidelines for the Relative Caregiver Program with respect to relative and nonrelative caregivers; amending s. 16.59, F.S.; requiring biometric confirmation of Medicaid patients by hospitals by a specified date to reduce Medicaid fraud; authorizing the Department of Legal Affairs, the Agency for Health Care Administration, and the Department of Highway Safety and Motor Vehicles to

enter into certain contracts to provide access to their respective databases for verification of patient identities; providing an effective date.

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

Section 1. Subsection (1) and paragraph (a) of subsection (2) of section 414.065, Florida Statutes, are amended to read:

414.065 Noncompliance with work requirements.—

(1) PENALTIES FOR NONPARTICIPATION IN WORK REQUIREMENTS AND FAILURE TO COMPLY WITH ALTERNATIVE REQUIREMENT PLANS.—The department shall establish procedures for administering penalties for nonparticipation in work requirements and failure to comply with the alternative requirement plan. If an individual in a family receiving temporary cash assistance fails to engage in work activities required in accordance with s. 445.024, the following penalties shall apply. Prior to the imposition of a sanction, the participant shall be notified orally or in writing that the participant is subject to sanction and that action will be taken to impose the sanction unless the participant complies with the work activity requirements. The participant shall be counseled as to the consequences of noncompliance and, if appropriate, shall be referred for services that could assist the participant to fully comply with program requirements. If the participant has good cause for noncompliance or demonstrates satisfactory compliance, the

sanction shall not be imposed. If the participant has subsequently obtained employment, the participant shall be counseled regarding the transitional benefits that may be available and provided information about how to access such benefits. The department shall administer sanctions related to food assistance consistent with federal regulations.

(a)1. First noncompliance: temporary cash assistance shall be terminated for the family for a minimum of 1 month ~~10 days~~ or until the individual who failed to comply does so, whichever is later. Upon meeting this requirement, temporary cash assistance shall be reinstated to the date of compliance or the first day of the month following the penalty period, whichever is later.

2. Second noncompliance:

a. Temporary cash assistance shall be terminated for the family for 3 months ~~1 month~~ or until the individual who failed to comply does so, whichever is later. The individual shall be required to comply with the required work activity upon completion of the 3-month penalty period before reinstatement of temporary cash assistance. Upon meeting this requirement, temporary cash assistance shall be reinstated to the date of compliance or the first day of the month following the penalty period, whichever is later.

b. Temporary cash assistance may be continued for a family in which the child or children are under age 16 for the first 3 months through a protective payee as specified in subsection (2).

3. Third noncompliance:

a. Temporary cash assistance shall be terminated for the family for 6 ~~3~~ months or until the individual who failed to comply does so, whichever is later. The individual shall be required to comply with the required work activity upon completion of the 6-month ~~3-month~~ penalty period, before reinstatement of temporary cash assistance. Upon meeting this requirement, temporary cash assistance shall be reinstated to the date of compliance or the first day of the month following the penalty period, whichever is later.

b. Temporary cash assistance for a family in which the child or children are under age 16 may be continued for the first 6 months through a protective payee as specified in subsection (2).

4. Fourth noncompliance:

a. Temporary cash assistance shall be terminated for the family for 1 year, or until the individual who failed to comply does so, whichever is later. The individual shall be required to comply with the required work activity upon completion of the 1-year penalty period and reapply before reinstatement of temporary cash assistance. Upon meeting this requirement, temporary cash assistance shall be reinstated to the first day of the month following the penalty period.

b. Temporary cash assistance for a family in which the child or children are under age 16 may be continued for the first year through a protective payee as specified in subsection

(2).

(b) If a participant receiving temporary cash assistance who is otherwise exempted from noncompliance penalties fails to comply with the alternative requirement plan required in accordance with this section, the penalties provided in paragraph (a) shall apply.

If a participant fully complies with work activity requirements for at least 6 months, the participant shall be reinstated as being in full compliance with program requirements for purpose of sanctions imposed under this section.

(2) CONTINUATION OF TEMPORARY CASH ASSISTANCE FOR CHILDREN; PROTECTIVE PAYEES.—

(a) Upon the second or subsequent ~~third~~ occurrence of noncompliance, subject to the limitations in paragraph (1)(a), temporary cash assistance and food assistance for the child or children in a family who are under age 16 may be continued. Any such payments must be made through a protective payee or, in the case of food assistance, through an authorized representative. Under no circumstances shall temporary cash assistance or food assistance be paid to an individual who has failed to comply with program requirements.

Section 2. Subsections (3) through (7) of section 445.024, Florida Statutes, are renumbered as subsections (4) through (8), respectively, and a new subsection (3) is added to that section, to read:

445.024 Work requirements.—

(3) WORK PLAN AGREEMENT.—For each individual who is not otherwise exempt from work activity requirements, but before a participant may receive temporary cash assistance, the Department of Economic Opportunity, in cooperation with CareerSource Florida, Inc., and the Department of the Department of Children and Families, must:

(a) Inform the participant, in plain language, and require the participant to assent to, in writing:

1. What is expected of the participant to continue to receive temporary cash assistance benefits.

2. Under what circumstances the participant would be sanctioned for noncompliance.

3. Potential penalties for noncompliance with work requirements in s. 414.065, including how long benefits would not be available to the participant.

(b) Work with the participant to develop strategies to assist the participant in overcoming obstacles to compliance with the work activity requirements.

Section 3. Subsection (4) of section 402.82, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

402.82 Electronic benefits transfer program.—

(4) The department shall impose a fee for the fifth and each subsequent request for a replacement electronic benefits transfer card that a participant requests within a 12-month

period. The fee must be equal to the cost to replace the electronic benefits transfer card. The fee may be deducted from the participant's benefits. The department may waive the replacement fee upon a showing of good cause, such as the malfunction of the card or extreme financial hardship.

Section 4. Paragraph (a) of subsection (2) of section 39.5085, Florida Statutes, is amended to read:

39.5085 Relative Caregiver Program.—

(2)(a) The Department of Children and Families shall establish, ~~and~~ operate, and implement the Relative Caregiver Program ~~pursuant to eligibility guidelines established in this section as further implemented~~ by rule of the department. The Relative Caregiver Program shall, within the limits of available funding, provide financial assistance to:

1. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

2. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child, and a dependent half-brother or half-sister of that dependent child, in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement

with the relative under this chapter.

3. Nonrelatives who are willing to assume custody and care of a dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the nonrelative caregiver under this chapter. The court must find that a proposed placement under this subparagraph is in the best interest of the child.

4. The relative or nonrelative caregiver may not receive a Relative Caregiver Program payment if the parent or stepparent of the child resides in the home. However, a relative or nonrelative may receive the payment for a minor parent who is in his or her care and for the minor parent's child, if both the minor parent and the child have been adjudicated dependent and meet all other eligibility requirements. If the caregiver is currently receiving the payment, the payment must be terminated no later than the first day of the following month after the parent or stepparent moves into the home. Before the payment is terminated, the caregiver must be given 10 days' notice of adverse action.

The placement may be court-ordered temporary legal custody to the relative or nonrelative under protective supervision of the department pursuant to s. 39.521(1)(b)3., or court-ordered placement in the home of a relative or nonrelative as a permanency option under s. 39.6221 or s. 39.6231 or under former

s. 39.622 if the placement was made before July 1, 2006. The Relative Caregiver Program shall offer financial assistance to caregivers who would be unable to serve in that capacity without the caregiver payment because of financial burden, thus exposing the child to the trauma of placement in a shelter or in foster care.

Section 5. Section 16.59, Florida Statutes, is amended to read:

16.59 Medicaid fraud control.—

(1) The Medicaid Fraud Control Unit is created in the Department of Legal Affairs to investigate all violations of s. 409.920 and any criminal violations discovered during the course of those investigations. The Medicaid Fraud Control Unit may refer any criminal violation so uncovered to the appropriate prosecuting authority. The offices of the Medicaid Fraud Control Unit, the Agency for Health Care Administration Medicaid program integrity program, and the Divisions of Insurance Fraud and Public Assistance Fraud within the Department of Financial Services shall, to the extent possible, be collocated; however, positions dedicated to Medicaid managed care fraud within the Medicaid Fraud Control Unit shall be collocated with the Division of Insurance Fraud. The Agency for Health Care Administration, the Department of Legal Affairs, and the Divisions of Insurance Fraud and Public Assistance Fraud within the Department of Financial Services shall conduct joint training and other joint activities designed to increase

communication and coordination in recovering overpayments.

(2) In order to combat Medicaid fraud, by January 1, 2017, all hospitals that accept Medicaid payments must implement measures to biometrically confirm a patient's identity.

(a) These measures must verify the patient's identity against the patient's image contained within the Department of Highway Safety and Motor Vehicles' driver license database, if available, and verify the patient's eligibility to receive Medicaid payments.

(b) The Department of Legal Affairs, the Agency for Health Care Administration, and the Department of Highway Safety and Motor Vehicles may contract with hospitals or their software providers to provide access to the driver license database for the purpose of verifying a patient's identity and eligibility to receive Medicaid payments.

Section 6. This act shall take effect July 1, 2016.