Children, Families & Seniors Subcommittee

Monday, January 29, 2024
11:30 AM - 2:30 PM
Reed Hall (102 HOB)

Meeting Packet

Paul Renner
Speaker

Traci Koster
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Children, Families & Seniors Subcommittee

Start Date and Time: Monday, January 29, 2024 11:30 am

End Date and Time: Monday, January 29, 2024 02:30 pm

Location: Reed Hall (102 HOB)

Duration: 3.00 hrs

Consideration of the following bill(s):

HB 563 Persons with Lived Experience by Campbell
HB 631 Aftercare Services Under Road-To-Independence Program by Tramont
HB 1061 Community-based Child Welfare Agencies by McFarland

Consideration of the following proposed committee substitute(s):

PCS for HB 409 -- Temporary Cash Assistance Eligibility
PCS for HB 915 -- Outpatient Mental Health Services
PCS for HB 951 -- Behavioral Health
PCS for HB 1065 -- Substance Abuse Treatment
PCS for HB 1169 -- Coordinated Systems of Care for Children

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m. Friday, January 26, 2024.

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. Friday, January 26, 2024.

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 01/25/2024 3:53PM by Killings.Anola

HB 563

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 563 Persons with Lived Experience
SPONSOR(S): Campbell
TIED BILLS: **IDEN./SIM. BILLS:** SB 558

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

SUMMARY ANALYSIS

Homelessness can be defined in several different ways. Generally, a person is considered to be experiencing homelessness if they stay in a shelter live in transitional housing, or sleep in a place not meant for human habitation or outdoors.

The State Office on Homelessness within the Department of Children and Families (DCF) was established in 2001 as a central point of contact within state government on issues relating to homelessness. The State Office on Homelessness coordinates resources and programs across all levels of government and with private providers that serve the homeless pursuant to policies set by the Council on Homelessness and available funding. Continuums of Care (CoCs) coordinate local efforts to prevent and end homelessness at the local level. CoCs operate within catchment areas designated by the State Office on Homelessness, and receiving state and federal funding to implement programs and provide services.

Florida provides standard procedures for screening a prospective employee where the Legislature has determined it is necessary to conduct a criminal history background check to protect vulnerable persons.

All individuals subject to background screening must be confirmed to have not been arrested for and waiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for any of 52 disqualifying offenses outlined in current law. For otherwise qualified individuals who would be disqualified from employment due to their criminal history, current law establishes a process through which such individual can be exempt from disqualification.

DCF interprets current law as subjecting contractors and subcontractors to background screening as a condition of their contract with the department. As such, DCF requires employees of CoCs and their subcontractors to undergo level 2 background screening. However, individuals with lived experience of homelessness, who can be helpful in delivering homelessness services, may have crimes that raise difficulties in passing a background screening.

HB 563 establishes a modified background screening process for certain applicants seeking positions with the State Office on Homelessness or a CoC. The bill allows for an applicant meeting certain requirements to be certified as a "person with lived experience," and considered a qualified applicant eligible for the modified screening process. The bill requires DCF to accept or reject the exemption within 90 days of receiving the application.

The bill has an indeterminate, insignificant fiscal impact on state government, and no fiscal impact on local government.

The bill provides an effective date of July 1, 2024.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Homelessness

Homelessness can be defined in several different ways. Generally, a person is considered to be experiencing homelessness if that person stays in a shelter, lives in transitional housing, or sleeps in a place not meant for human habitation or outdoors.[1] To receive federally funded homelessness services, a person is considered homeless if he or she:[2]

- Is living in a place not meant for human habitation, in emergency shelter, in transitional housing, or exiting an institution where the person temporarily resided;[3]
- Will imminently lose a primary nighttime residence within 14 days and lacks resources or support networks to remain in permanent housing;[4]
- Is part of a family with children or an unaccompanied youth who is unstably housed and likely to continue in that state; or
- Is fleeing or attempting to flee from domestic violence, has no other residence, and lacks the resources or support networks to obtain permanent housing.

Annually, the United States Department of Housing and Urban Development (HUD) releases what is known as a point-in-time snapshot (PIT) or a count of the number of individuals who experience homeless on a single night. Based on the 2023 PIT, roughly 653,100 people in America experienced homelessness on a single night. Sixty percent experienced sheltered homelessness (i.e., living in emergency shelter, transitional housing, or a safe haven program) whereas 40 percent were unsheltered. From 2022 to 2023, the number of individuals experiencing homelessness increased by 12 percent, or roughly 70,650 additional individuals. This is the highest PIT count of persons experiencing homelessness since reporting began in 2007.[5]

Experiencing homelessness negatively effects a person's mental and physical health. Rates of mortality, mental illness, communicable diseases, sexually transmitted diseases, and substance abuse are higher among homeless populations.[6] Services and programs at the state and federal level provide support to individuals experiencing homelessness that attempt to address the associated effects of homelessness.[7]

Homelessness in Florida

[1] Centers for Disease Control and Prevention, *About Homelessness* (2022). Available at https://www.cdc.gov/orr/science/homelessness/about.html (Last visited January 25, 2024).
[2] 24 C.F.R. 578.3
[3] This includes a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground; a supervised publicly or privately operated shelter designed to provide temporary living arrangement; or exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
[4] Provided that the primary nighttime residence will be lost within 14 days of the date of application for homeless assistance; no subsequent residence has been identified; and the individual lacks the resources or support networks.
[5] U.S. Department of Housing and Urban Development, *The 2023 Annual Homelessness Assessment Report* (AHAR) to Congress (2023). Available at https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf (last visited January 25, 2024).
[6] Richards, J. & Kuhn, R., *Unsheltered Homelessness and Health: A Literature Review* (2022). American Journal of Preventative Medicine, 2(1). https://doi.org/10.1016/j.focus.2022.100043
[7] US Department of Health and Human Services, *Homelessness*. Available at https://www.hhs.gov/programs/social-services/homelessness/index.html (last visited January 26, 2024).

In a 2023 PIT count of Florida's homeless population, an estimated 30,809 individuals were experiencing homelessness, with 15,706 considered unsheltered homeless (i.e., living outside in a car, park, or another place not meant for human habitation). The 2023 PIT count represents a 34 percent increase from the 11,746 individuals who were experiencing homelessness in 2022.[8]

The State Office on Homelessness (Office) within the Department of Children and Families (DCF) was established in 2001 as a central point of contact within state government on issues relating to homelessness.[9] The Office coordinates resources and programs across all levels of government and with private providers that serve the homeless pursuant to policies set by the Council on Homelessness[10] and available funding.[11]

Continuums of Care

A Continuum of Care (CoC) is an entity coordinating community efforts to prevent and end homelessness in a geographic area designated by the Office.[12] CoCs are responsible for organizing and delivering housing and services to meet the needs of people who are homeless as they move to stable housing and self-sufficiency.[13] CoCs are composed of representatives from local organizations including, but not limited to:[14]

- Nonprofit homeless service providers;
- Victim services providers;
- Faith-based organizations;
- Governments;
- Businesses;
- Advocates;
- Public housing agencies;
- School districts;
- Social service providers;
- Mental health agencies;
- Hospitals;
- Universities;
- Affordable housing developers;
- Law enforcement; and
- Organizations that serve homeless and formerly homeless persons.

CoC lead agencies implement policies and provide direct services within their respective catchment areas. There are currently 27 CoC lead agencies distributed across the state.[15]

Each CoC must create a continuum of care plan to implement an effective and efficient housing crisis response system to prevent and end homelessness in its designated catchment area. A continuum of care plan must include all of the following:[16]

- Outreach to unsheltered individuals and families to link them with appropriate housing interventions;

[8] Department of Children and Families, *Council on Homelessness Annual Report* (2023). Available at https://www.myflfamilies.com/sites/default/files/2023-07/Florida%27s%20Council%20On%20Homelessness%20Annual%20Report%202023.pdf (last visited January 25, 2024).
[9] Ch. 2001-98, L.O.F.
[10] The Council on Homelessness is an inter-agency body which develops statewide policy and advises the State Office on Homelessness on how to reduce homelessness in the state. See, s. 420.622, F.S.
[11] S. 420.622(3), F.S.
[12] The catchment areas designated by the State Office must be consistent with the federally-recognized catchment areas designated by HUD as a condition for receiving federal homeless assistance grant funding. *See*, s. 420.6225, F.S.
[13] *Supra*, note 8.
[14] S. 420.621(1), F.S.
[15] *Supra*, note 8..
[16] S. 420.6225, F.S.

- A coordinated entry system that is compliant with federal requirements and is designed to coordinate intake, utilize common assessment tools, prioritize households for housing interventions, and refer households to the appropriate housing intervention;
- Emergency shelter, designed to provide safe temporary shelter while the household is in the process of obtaining permanent housing;
- Supportive services, designed to maximize housing stability once the household is in permanent housing;
- Permanent supportive housing, designed to provide long-term affordable housing and support services to persons with disabilities who are moving out of homelessness;
- Rapid ReHousing, as specified in s. 420.6265, F.S.;
- Permanent housing, including links to affordable housing, subsidized housing, long-term rental assistance, housing vouchers, and mainstream private sector housing; and
- An ongoing planning mechanism to end homelessness for all subpopulations of persons experiencing homelessness

CoCs receive state and federal funding through DCF.[17]

Background Screening

Florida provides standard procedures for screening a prospective employee[18] where the Legislature has determined it is necessary to conduct a criminal history background check to protect vulnerable persons.[19] Chapter 435, F.S., establishes procedures for criminal history background screening of prospective employees and outlines the screening requirements. There are two levels of background screening: level 1 and level 2.

- Level 1: Screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,[20] and may include criminal records checks through local law enforcement agencies. A Level 1 screening may be paid for and conducted through FDLE's website, which provides immediate results.[21]
- Level 2: Screening includes, at a minimum, fingerprinting for statewide criminal history records checks through 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.[22]

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.[23] Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.[24] For both level 1 and 2 screenings, the employer must submit the information necessary for screening to FDLE within five working days after receiving it.[25] The person whose background is being checked must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.[26]

After the background screening is completed, FDLE responds to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying

[17] *Id*.
[18] S. 435.02, F.S., defines "employee" to mean any person required by law to be screened pursuant to this chapter, including, but not limited to, persons who are contractors, licensees, or volunteers.
[19] Ch. 435, F.S.
[20] The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. Available at www.nsopw.gov (last visited January 25, 2024).
[21] Florida Department of Law Enforcement, *State of Florida Criminal History Records Check*. Available at http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx (last visited January 25, 2024).
[22] S. 435.04, F.S.
[23] S. 435.05(1)(a), F.S.
[24] Ss. 435.03(1) and 435.04(1)(a), F.S.
[25] S. 435.05(1)(b)-(c), F.S.
[26] S. 435.05(1)(d), F.S.

information.[27] If the employer or agency finds that an individual has a history containing one of these offenses, it must disqualify that individual from employment.

Criminal History Checks

Florida law authorizes and outlines a variety of specific elements required for Level 1 and Level 2 background screening; however, current law only establishes distinct requirements for determining whether an individual "passes" a screening in regard to an individual's criminal history.

All individuals subject to background screening must be confirmed to have not been arrested for and waiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the following 52 offenses prohibited under Florida law, or similar law of another jurisdiction:[28]

- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, F.S., relating to murder.
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, F.S., relating to vehicular homicide.
- Section 782.09, F.S., relating to killing of an unborn child by injury to the mother.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.
- Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, F.S., relating to sexual battery.
- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Chapter 796, F.S., relating to prostitution.
- Section 798.02, F.S., relating to lewd and lascivious behavior.
- Chapter 800, F.S., relating to lewdness and indecent exposure.
- Section 806.01, F.S., relating to arson.
- Section 810.02, F.S., relating to burglary.
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony.
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony.

[27] S. 435.05(1)(b), F.S.
[28] S. 435.04(2), F.S.

- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, F.S., relating to incest.
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, F.S., relating to negligent treatment of children.
- Section 827.071, F.S., relating to sexual performance by a child.
- Section 843.01, F.S., relating to resisting arrest with violence.
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer of means of protection or communication.
- Section 843.12, F.S., relating to aiding in an escape.
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, F.S., relating to obscene literature.
- Section 874.05, F.S., relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, F.S., relating to escape.
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.
- Section 985.711, F.S., relating to contraband introduced into detention facilities.

Current law required some positions to be screened for additional criminal offenses due to the nature of the position or the populations being served. For example, some positions under the authority of the Agency for Health Care Administration are screened for additional offenses, such as financial crimes like fraud.[29]

The criminal history check process does not limit disqualification based on when an offense was committed. As such, any history of a listed offense is considered disqualifying regardless of when the offense was committed. Only through the exemption process can some offenses be disregarded dependent on when they were committed.

Exemption from Disqualification

For otherwise qualified individuals who would be disqualified from employment due to their criminal history, there is a process established in current law through which such individual can be exempt from disqualification. Current law allows the Secretary of the appropriate state agency to exempt applicants from disqualification under certain circumstances:[30]

[29] *See*, s. 408.809, F.S.
[30] S. 435.07, F.S.

- Three years have elapsed since the individual has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a disqualifying felony; or
- The applicant has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a misdemeanor or an offense that was a felony at the time of commission but is now a misdemeanor.

Receiving an exemption allows that individual to be employed in a profession or workplace where background screening is statutorily required despite the disqualifying offense in that person's past. Certain criminal backgrounds, however, render a person ineligible for an exemption; a person who is considered a sexual predator,[31] career offender,[32] or registered sexual offender[33] is not eligible for exemption.[34]

Exemption Process

To seek exemption from disqualification, an employee must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification.[35] The disqualified employee must apply to DCF for an exemption from disqualification. Such application requests information regarding the individual, the facility and role they are applying for, details about their criminal offense, and the status of any court-ordered payments (e.g., fees, fines, costs of prosecution or restitution).[36]

To be exempted from disqualification and thus be able to work, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.[37] Clear and convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.[38] This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion. This evidence must create a firm belief and conviction of the truth of the facts presented and, considered as a whole, must convince DCF representatives without hesitancy that the requester will not pose a threat if allowed to hold a position of special trust relative to children, vulnerable adults, or to developmentally disabled individuals. Evidence that may support an exemption includes, but is not limited to:[39]

- Personal references;
- Letters from employers or other professionals;
- Evidence of rehabilitation, including documentation of successful participation in a rehabilitation program;
- Evidence of further education or training;
- Evidence of community involvement;
- Evidence of special awards or recognition;
- Evidence of military service; and
- Parenting or other caregiver experiences.

After the agency head receives a complete exemption request package from the applicant, the background screening coordinator searches available data, including, but not limited to, a review of records and pertinent court documents including case disposition and the applicant's plea in order to determine the appropriateness of granting the applicant an exemption. These materials, in addition to

[31] S. 775.21, F.S.
[32] S. 775.261, F.S.
[33] S. 943.0435, F.S.
[34] S. 435.07(4)(b), F.S.
[35] S. 397.4073(1)(f), F.S.
[36] Department of Children and Families, *Apply for an Exemption from Disqualification.* Available at https://www.myflfamilies.com/services/background-screening/apply-exemption-disqualification (last visited January 25, 2024).
[37] S. 435.07(3)(a), F.S.
[38] Department of Children and Families, *CF Operating Procedure 60-18, Personnel: Exemption from Disqualification* (2010). Available at https://www.myflfamilies.com/sites/default/files/2022-12/cfop_60-18_exemption_from_disqualification.pdf (last visited January 26, 2024).
[39] *Id*.

the information provided by the applicant, form the basis for a recommendation as to whether the exemption should be granted.[40]

After all reasonable evidence is gathered, the background screening coordinator consults with his or her supervisor, and after consultation with the supervisor, the coordinator and the supervisor will recommend whether the exemption should be granted. At DCF, the regional legal counsel's office reviews the recommendation to grant or deny an exemption to determine legal sufficiency; the criminal justice coordinator in the region in which the background screening coordinator is located also reviews the exemption request file and recommendation and makes an initial determination whether to grant or deny the exemption.[41]

If the regional criminal justice coordinator makes an initial determination that the exemption should be granted, the exemption request file and recommendations are forwarded to the regional director, who has delegated authority from the agency head to grant or deny the exemption. After an exemption request decision is final, a written response is provided to the applicant as to whether the request is granted or denied.[42]

If the agency head grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail. However, if the request is denied, notification of the decision is sent by certified mail, return receipt requested, to the applicant, addressed to the last known address and a separate letter of denial is sent by regular mail to the facility or employer. If the application is denied, the denial letter must set forth pertinent facts that the background screening coordinator, the background screening coordinator's supervisor, the criminal justice coordinator, and regional director, where appropriate, used in deciding to deny the exemption request. It must also inform the denied applicant of the availability of an administrative review pursuant to ch. 120, F.S.[43]

Background Screening for Employees of Homeless Service Providers

People with lived experience of homelessness typically have the best understanding of the reality of the work to prevent and end homelessness. From a programmatic perspective, people with lived experience of homelessness bring insight through a personal familiarity with the barriers people face, the gaps in services, and the interventions that are the most effective.[44] On a person-to-person level, people with lived experience are often more easily able to meet people where they are and truly understand their struggle.[45]

People who are experiencing homelessness present with complex needs to be addressed by service providers. This population is more likely to be experiencing mental illness, communicable diseases, sexually transmitted diseases, and substance abuse than the general population.[46] Homelessness is increasingly criminalized,[47] and people experiencing homelessness and extreme poverty may be driven to commit crimes as a means of survival. As a result, homeless individuals have frequent interactions with law enforcement, and more than half of people experiencing homelessness in the US have been previously incarcerated.[48] The existence of a criminal record creates barriers to permanent housing and employment once the underlying causes of a person's homelessness have been addressed.[49]

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[40] *Id*.
[41] *Id*.
[42] *Id.*
[43] *Id.*
[44] HUD Exchange, *Centering Lived Experience*. Available at https://www.hudexchange.info/programs/coc/centering-lived-experience/ (last visited January 26, 2024).
[45] United States Interagency Council on Homelessness, *The Value of Lived Experience in the Work to End Homelessness* (2018). Available at https://www.usich.gov/news-events/news/value-lived-experience-work-end-homelessness (last visited January 26, 2024).
[46] *Supra*, note 6.
[47] United States Interagency Council on Homelessness. *Collaborate, Don't Criminalize: How Communities Can Effectively and Humanely Address Homelessness* (2022). Available at https://www.usich.gov/news-events/news/collaborate-dont-criminalize-how-communities-can-effectively-and-humanely-address (last visited January 26, 2024).
[48] US Justice Department, Bureau of Justice Assistance, *Responding to Homelessness: Police-Mental Health Collaboration Toolkit*. Available at https://bja.ojp.gov/program/pmhc/responding-homelessness#3-0 (last visited January 26, 2024).
[49] *Id*.

DCF interprets current law as subjecting contractors and subcontractors to background screening as a condition of their contract with the department. As such, DCF requires employees of CoCs and their subcontractors to undergo Level 2 background screening as a prerequisite to employment.[50] This presents a barrier to CoCs hiring people with lived experience of homelessness who may have a criminal history as a result of their lived experience.

Potential employees who are disqualified through background screening are eligible for exemption through the agency as described above.[51] Obtaining an exemption from disqualification is a lengthy and time-consuming process. Individual exemption requests can take upwards of six months to process and receive final approval through the department; a period of time which an individual is not able to work in the role which they have been hired for. This results in qualified individuals with relevant lived experiences to the population they're seeking to serve being screened out and further limiting the pool of eligible employees.[52]

Effect of the Bill

HB 563 creates a category of "persons with lived experience" who are eligible to apply to for employment with the State Office or a CoC (hiring entity) through a modified screening process. Under the bill, persons with lived experience include individuals who are currently homeless, or have been homeless in the past and receives or received homeless services, including persons who have accessed or sought homeless services while fleeing domestic violence.

The bill allows the hiring entity to certify that the applicant is a qualified applicant with relevant lived experience. The bill requires that after the hiring entity has verified that the applicant is a person with lived experience, the hiring entity must submit a signed attestation, under penalty of perjury, to FDLE for a background check, along with any other required information, attesting that the applicant is a qualified applicant

The qualified applicant is then subject to a modified background screening which must ensure that the applicant has not been arrested for and is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has not been adjudicated delinquent and the record has been sealed or expunged for:

- Any felony during the previous three years; or
- Any offense prohibited under any of the following laws of Florida or similar laws of another jurisdiction:
    - Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
    - Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
    - Section 409.920, relating to Medicaid provider fraud, if the offense was a felony of the first or second degree.
    - Section 415.111, relating to criminal penalties for abuse, neglect, or exploitation of vulnerable adults.
    - Any offense that constitutes domestic violence, as that term is defined in s. 741.28.
    - Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this paragraph.
    - Section 782.04, relating to murder.
    - Section 782.07, relating to manslaughter or aggravated manslaughter of an elderly person, a disabled adult, a child, an officer, a firefighter, an emergency medical technician, or a paramedic.
    - Section 782.071, relating to vehicular homicide.

[50] Department of Children and Families, *Agency Bill Analysis for HB 563* (2024). On file with the Children, Families & Seniors Subcommittee.
[51] *See*, s. 435.07, F.S.
[52] Correspondence with Leeanne Sacino, Executive Director of the Florida Coalition to End Homelessness. On file with the Childre n, Families & Seniors Subcommittee.

- Section 782.09, relating to killing of an unborn child by injury to the mother.
- Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 787.01, relating to kidnapping.
- Section 787.02, relating to false imprisonment.
- Section 787.025, relating to luring or enticing a child.
- Section 787.04(2), relating to leading, taking, enticing, or removing a child beyond the state limits, or concealing the location of a child, with criminal intent pending custody proceedings.
- Section 787.04(3), relating to leading, taking, or removing a child beyond the state lines, or concealing the location of a child, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a child.
- Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), relating to possessing an electric weapon or device, a destructive device, or any other weapon on school property.
- Section 794.011, relating to sexual battery.
- Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, relating to unlawful sexual activity with certain minors.
- Section 794.08, relating to female genital mutilation.
- Section 796.07, relating to procuring another to commit prostitution, except for those offenses expunged pursuant to s. 943.0583.
- Section 798.02, relating to lewd and lascivious behavior.
- Chapter 800, relating to lewdness and indecent exposure.
- Section 806.01, relating to arson.
- Section 810.02, relating to burglary.
- Section 810.14, relating to voyeurism, if the offense is a felony.
- Section 810.145, relating to video voyeurism, if the offense is a felony.
- Section 812.13, relating to robbery.
- Section 812.131, relating to robbery by sudden snatching.
- Section 812.133, relating to carjacking.
- Section 812.135, relating to home-invasion robbery.
- Section 817.034, relating to communications fraud, if the offense is a felony of the first degree.
- Section 817.234, relating to false and fraudulent insurance claims, if the offense is a felony of the first or second degree.
- Section 817.50, relating to fraudulently obtaining goods or services from a health care provider and false reports of a communicable disease.
- Section 817.505, relating to patient brokering.
- Section 817.568, relating to fraudulent use of personal identification, if the offense was a felony of the first or second degree.
- Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, relating to incest.
- Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, relating to negligent treatment of children.
- Section 827.071, relating to sexual performance by a child.
- Section 831.30, relating to fraud in obtaining medicinal drugs.
- Section 831.31, relating to the sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver of any counterfeit controlled substance, if the offense was a felony.
- Section 843.01, relating to resisting arrest with violence.

- Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- Section 843.12, relating to aiding in an escape.
- Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, relating to obscenity.
- Section 874.05, relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the first or second degree or greater severity.
- Section 895.03, relating to racketeering and collection of unlawful debts.
- Section 896.101, relating to the Florida Money Laundering Act.
- Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, relating to escape.
- Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, relating to introduction of contraband into a correctional facility.
- Section 985.701, relating to sexual misconduct in juvenile justice programs.
- Section 985.711, relating to contraband introduced into detention facilities.

The bill allows an applicant that is disqualified through the modified background screening process to apply to DCF for an exemption pursuant to s. 435.07, F.S. The bill requires DCF to accept or reject the exemption within 90 days of receiving the application.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 420.6276, F.S., relating to persons with lived experience; background screenings.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill will have an insignificant, indeterminant impact on DCF which can be absorbed by existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rule-making authority is not necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear to whom the perjury clause under the bill would apply.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to persons with lived experience; creating s. 420.6276, F.S.; providing legislative intent; providing definitions; providing that a person with lived experiences seeking a position of employment with certain entities may request a certification attesting that he or she is a qualified applicant for background screening purposes; requiring certain entities to submit a signed attestation, under penalty of perjury, and any other required information to the Department of Law Enforcement for background screening; prescribing screening requirements; providing an exemption from disqualification; providing an effective date.

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

Section 1. Section 420.6276, Florida Statutes, is created to read:

420.6276 Persons with lived experience; background screenings.—

(1) The Legislature finds that the ability to provide adequate services to persons who are homeless is limited because there is a shortage of health and human services professionals. A person with lived experience of homelessness is uniquely

qualified to provide effective support services to the homeless population because of their shared life experiences. However, a person with lived experience may have a criminal history that prevents such person from meeting certain background screening requirements, which disqualifies him or her from employment.

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

(a) "Homeless services" means any services provided to a person who is homeless through a continuum of care.

(b) "Person with lived experience" means a person who is currently homeless, as that term is defined in 24 C.F.R. s. 578.3, or has been homeless in the past and receives or received homeless services, including persons who have accessed or sought homeless services while fleeing domestic violence.

(c) "Qualified applicant" means a person applying for a position of employment who has been certified by the State Office on Homelessness or a continuum of care lead agency as a person with lived experience.

(3) A person with lived experience who is applying for a position of employment with the State Office on Homelessness or a continuum of care lead agency may request from the entity to which he or she is applying, a certification stating that the person is a qualified applicant for background screening purposes. After verifying that the applicant is a person with lived experience, the office or continuum of care lead agency must submit a signed attestation, under penalty of perjury, to

the Department of Law Enforcement, along with any other information required under chapter 435, attesting that the applicant is a qualified applicant.

(4)(a) The background screening conducted under s. 435.04 must ensure that a qualified applicant has not, during the preceding 3 years, been arrested for and is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has not been adjudicated delinquent and the record has been sealed or expunged for, any felony.

(b) The background screening conducted under s. 435.04 must ensure that a qualified applicant has not been arrested for and is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has not been adjudicated delinquent and the record has been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

1. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

2. Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

3. Section 409.920, relating to Medicaid provider fraud,

if the offense was a felony of the first or second degree.

4. Section 415.111, relating to criminal penalties for abuse, neglect, or exploitation of vulnerable adults.

5. Any offense that constitutes domestic violence, as that term is defined in s. 741.28.

6. Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this paragraph.

7. Section 782.04, relating to murder.

8. Section 782.07, relating to manslaughter or aggravated manslaughter of an elderly person, a disabled adult, a child, an officer, a firefighter, an emergency medical technician, or a paramedic.

9. Section 782.071, relating to vehicular homicide.

10. Section 782.09, relating to killing of an unborn child by injury to the mother.

11. Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.

12. Section 787.01, relating to kidnapping.

13. Section 787.02, relating to false imprisonment.

14. Section 787.025, relating to luring or enticing a child.

15. Section 787.04(2), relating to leading, taking, enticing, or removing a child beyond the state limits, or concealing the location of a child, with criminal intent pending custody proceedings.

16. Section 787.04(3), relating to leading, taking, or removing a child beyond the state lines, or concealing the location of a child, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a child.

17. Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.

18. Section 790.115(2)(b), relating to possessing an electric weapon or device, a destructive device, or any other weapon on school property.

19. Section 794.011, relating to sexual battery.

20. Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.

21. Section 794.05, relating to unlawful sexual activity with certain minors.

22. Section 794.08, relating to female genital mutilation.

23. Section 796.07, relating to procuring another to commit prostitution, except for those offenses expunged pursuant to s. 943.0583.

24. Section 798.02, relating to lewd and lascivious behavior.

25. Chapter 800, relating to lewdness and indecent exposure.

26. Section 806.01, relating to arson.

27. Section 810.02, relating to burglary.

28. Section 810.14, relating to voyeurism, if the offense is a felony.

29. Section 810.145, relating to video voyeurism, if the offense is a felony.

30. Section 812.13, relating to robbery.

31. Section 812.131, relating to robbery by sudden snatching.

32. Section 812.133, relating to carjacking.

33. Section 812.135, relating to home-invasion robbery.

34. Section 817.034, relating to communications fraud, if the offense is a felony of the first degree.

35. Section 817.234, relating to false and fraudulent insurance claims, if the offense is a felony of the first or second degree.

36. Section 817.50, relating to fraudulently obtaining goods or services from a health care provider and false reports of a communicable disease.

37. Section 817.505, relating to patient brokering.

38. Section 817.568, relating to fraudulent use of personal identification, if the offense was a felony of the first or second degree.

39. Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.

40. Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person

or disabled adult.

41. Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.

42. Section 826.04, relating to incest.

43. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

44. Section 827.04, relating to contributing to the delinquency or dependency of a child.

45. Former s. 827.05, relating to negligent treatment of children.

46. Section 827.071, relating to sexual performance by a child.

47. Section 831.30, relating to fraud in obtaining medicinal drugs.

48. Section 831.31, relating to the sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver of any counterfeit controlled substance, if the offense was a felony.

49. Section 843.01, relating to resisting arrest with violence.

50. Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.

51. Section 843.12, relating to aiding in an escape.

52. Section 843.13, relating to aiding in the escape of

juvenile inmates in correctional institutions.

53. Chapter 847, relating to obscenity.

54. Section 874.05, relating to encouraging or recruiting another to join a criminal gang.

55. Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the first or second degree or greater severity.

56. Section 895.03, relating to racketeering and collection of unlawful debts.

57. Section 896.101, relating to the Florida Money Laundering Act.

58. Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

59. Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.

60. Section 944.40, relating to escape.

61. Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

62. Section 944.47, relating to introduction of contraband into a correctional facility.

63. Section 985.701, relating to sexual misconduct in juvenile justice programs.

64. Section 985.711, relating to contraband introduced into detention facilities.

(5) If a qualified applicant is disqualified under subsection (4), the applicant may request an exemption from disqualification under s. 435.07 from the department. The department must make a determination to grant or deny an exemption within 90 days after the qualified applicant submits his or her application for employment.

Section 2. This act shall take effect July 1, 2024.

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 Campbell offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present subsection (6) of section 420.621, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

420.621 Definitions.—As used in ss. 420.621-420.628, the term:

(6) "Person with lived experience" means any person with current or past experience of homelessness as defined in 24 C.F.R. s. 578.3, including individuals who have accessed or sought homeless services while fleeing domestic violence.

Section 2. Section 420.6241, Florida Statutes, is created to read:

420.6241 Person with lived experience.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the ability to provide adequate homeless services is limited due to a shortage of professionals and paraprofessionals in the field. Persons with the lived experience of homelessness are qualified to provide effective support services because they share common life experiences with the people they assist. A person with lived experience may have a criminal history that prevents him or her from meeting background screening requirements.

(2) QUALIFICATIONS.—A person may seek certification as a person with lived experience if he or she has received homeless services. A Continuum of Care lead agency serving the homeless will include documentation of the homeless services received when requesting a background check of the applicant.

(3) DUTIES OF THE DEPARTMENT.—The department shall ensure that an applicant's background screening required for achieving certification is conducted as provided in subsection (4).

(4) BACKGROUND SCREENING.—

(a) The background screening conducted under this subsection must ensure that the qualified applicant, during the previous 3 years, has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to,

or been adjudicated delinquent and the record has not been sealed or expunged for, any felony.

(b) The background screening conducted under this subsection must ensure that the qualified applicant has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following state laws or similar laws of another jurisdiction:

1. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.

2. Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

3. Section 409.920, relating to Medicaid provider fraud, if the offense was a felony of the first or second degree.

4. Section 415.111, relating to abuse, neglect, or exploitation of vulnerable adults.

5. Any offense that constitutes domestic violence as defined in s. 741.28.

6. Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this paragraph.

7. Section 782.04, relating to murder.

8. Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or a disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

9. Section 782.071, relating to vehicular homicide.

10. Section 782.09, relating to killing an unborn child by injury to the mother.

11. Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.

12. Section 787.01, relating to kidnapping.

13. Section 787.02, relating to false imprisonment.

14. Section 787.025, relating to luring or enticing a child.

15. Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

16. Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond state limits, or concealing the location of a minor, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a minor.

17. Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.

18. Section 790.115(2)(b), relating to possessing an electric weapon or device, a destructive device, or any other weapon on school property.

19. Section 794.011, relating to sexual battery.

20. Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.

21. Section 794.05, relating to unlawful sexual activity with certain minors.

22. Section 794.08, relating to female genital mutilation.

23. Section 796.07, relating to procuring another to commit prostitution, except for those offenses expunged pursuant to s. 943.0583.

24. Section 798.02, relating to lewd and lascivious behavior.

25. Chapter 800, relating to lewdness and indecent exposure.

26. Section 806.01, relating to arson.

27. Section 810.02, relating to burglary, if the offense was a felony of the first degree.

28. Section 810.14, relating to voyeurism, if the offense was a felony.

29. Section 810.145, relating to video voyeurism, if the offense was a felony.

30. Section 812.13, relating to robbery.

31. Section 812.131, relating to robbery by sudden snatching.

32. Section 812.133, relating to carjacking.

33. Section 812.135, relating to home-invasion robbery.

34. Section 817.034, relating to communications fraud, if the offense was a felony of the first degree.

35. Section 817.234, relating to false and fraudulent insurance claims, if the offense was a felony of the first or second degree.

36. Section 817.50, relating to fraudulently obtaining goods or services from a health care provider and false reports of a communicable disease.

37. Section 817.505, relating to patient brokering.

38. Section 817.568, relating to fraudulent use of personal identification, if the offense was a felony of the first or second degree.

39. Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or a disabled adult.

40. Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or a disabled person.

41. Section 825.103, relating to exploitation of an elderly person or a disabled adult, if the offense was a felony.

42. Section 826.04, relating to incest.

43. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.

44. Section 827.04, relating to contributing to the delinquency or dependency of a child.

45. Former s. 827.05, relating to negligent treatment of children.

46. Section 827.071, relating to sexual performance by a child.

47. Section 831.30, relating to fraud in obtaining medicinal drugs.

48. Section 831.31, relating to the sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

49. Section 843.01, relating to resisting arrest with violence.

50. Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer of the means of protection or communication.

51. Section 843.12, relating to aiding in an escape.

52. Section 843.13, relating to aiding in the escape of juvenile inmates of correctional institutions.

53. Chapter 847, relating to obscenity.

54. Section 874.05, relating to encouraging or recruiting another to join a criminal gang.

55. Chapter 893, relating to drug abuse prevention and control, if the offense was a felony of the second degree or greater severity.

56. Section 895.03, relating to racketeering and collection of unlawful debts.

57. Section 896.101, relating to the Florida Money Laundering Act.

58. Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.

59. Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate, resulting in great bodily harm.

60. Section 944.40, relating to escape.

61. Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

62. Section 944.47, relating to introduction of contraband into a correctional institution.

63. Section 985.701, relating to sexual misconduct in juvenile justice programs.

64. Section 985.711, relating to introduction of contraband into a detention facility.

(5) EXEMPTION REQUESTS.—An applicant who desires to become a certified person with lived experience but is disqualified under subsection (4) may apply to the department for an exemption from disqualification pursuant to s. 435.07, as

applicable. The department shall accept or reject an application for exemption within 90 days after receiving the application.

Section 3. This act shall take effect July 1, 2024.

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 persons with lived experience; amending s. 420.621, F.S.; defining the term "person with lived experience"; creating s. 420.6241, F.S.; providing legislative findings and intent; providing qualifications for certification as a person with lived experience; requiring the Department of Children and Families to conduct background screening; specifying disqualifying offenses for a person applying for certification; authorizing a person who does not meet background screening requirements to request an exemption from disqualification from the department; providing an effective date.

HB 631

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 631 Aftercare Services Under Road-To-Independence Program
SPONSOR(S): Tramont
TIED BILLS: **IDEN./SIM. BILLS:** SB 564

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

SUMMARY ANALYSIS

The Florida Department of Children and Families (DCF) contracts with Community-Based Care Lead Agencies (CBCs) to provide child protection and child welfare services to children and families in Florida. While the appropriate care of children is ultimately the responsibility of the state, DCF protects the best interests of children by achieving certain outcomes in conjunction with the CBCs. These outcomes include helping children receive appropriate services to meet their educational needs and to develop the capacity for independent living and competence as an adult.

Young adults who age out of the foster care system more frequently have challenges achieving self-sufficiency compared to young adults who never came to the attention of the foster care system.

Federal and state programs currently offer financial assistance to eligible young adults who desire the acquisition of skills, education, and necessary support to become self-sufficient and exit foster care. Aftercare services are intended to bridge gaps in an eligible young adult's progress towards self-sufficiency; eligibility is focused on individuals who have aged out of foster care at 18 and are younger than age 23. DCF or a CBC determines the specific Aftercare services provided to eligible young adults after an assessment.

HB 631 expands access to Aftercare services for young adults formerly in the child welfare system. Under the bill, any young adult who, having been placed by a court pursuant to dependency statutes, has lived in out-of-home care for at least 6 months after he or she turned 14 years of age will be eligible as long as the young adult is at least 18 years of age but not 23 years of age. Services may not duplicate certain other DCF independent living services the young adult receives.

The bill also authorizes DCF to distribute federal funds to all young adults deemed eligible by the federal funding source in the event of a state of emergency declared by the Governor or the President of the United States.

The bill has an indeterminate fiscal impact on state government and no fiscal impact to local governments.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Department of Children and Families

The Florida Department of Children and Families (DCF) contracts with Community-Based Care Lead Agencies (CBCs) to provide child protection and child welfare services to children and families in Florida.[1] There are 18 lead agencies that each cover specific geographic areas within the 20 Judicial Circuits in Florida. Several lead agencies cover more than one geographic area, and areas may include one or more counties. DCF contracts with community-based care lead agencies (CBCs) for case management, out-of-home services, and related services. The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs in turn contract with a number of subcontractors for case management and direct care services to children and their families.

While the appropriate care of children is ultimately the responsibility of the state, DCF protects the best interests of children by achieving certain outcomes in conjunction with the CBCs. These outcomes include helping children receive appropriate services to meet their educational needs and to develop the capacity for independent living and competence as an adult.[2]

Out-of-Home Care

When children cannot safely remain at home with parents, Florida's child welfare system finds safe out-of-home placements for children. Through December 2023, there were 19,334 children and young adults in out-of-home care in Florida.[3] After a placement assessment to determine the most appropriate out-of-home placement, a child may be placed in licensed care or with a relative or a non-related individual known to the child, termed "fictive kin". Licensed care includes licensed foster parents and group homes or other licensed residential setting.[4]

Transition to Adulthood

Young adults who age out of the foster care system more frequently have challenges achieving self-sufficiency compared to young adults who never came to the attention of the foster care system. Young adults who age out of the foster care system are less likely to earn a high school diploma or GED and more likely to have lower rates of college attendance.[5] They have more mental health problems, have a higher rate of involvement with the criminal justice system, and are more likely to have difficulty achieving financial independence.[6] These young adults also have a higher need for public assistance and are more likely to experience housing instability and homelessness.[7]

In federal fiscal year 2021, the federal Children's Bureau within the U.S. Department of Health & Human Services reported 46,694 teens and young adults entered foster care in the United States,[8] with

[1] S. 409.986(1)(a), F.S.
[2] S. 409.986(2), F.S.
[3] Office of Child and Family Well-Being, *Monthly Trends*, Florida Department of Children and Families, (last updated Jan. 10, 2024) https://www.myflfamilies.com/ocfw-dashboard (last visited Jan. 27, 2024).
[4] Ss. 39.4022(6), 39.523(2), F.S.
[5] Gypen, L., Vanderfaeillie, J., et al., "Outcomes of Children Who Grew Up in Foster Care: Systematic-Review", *Children and Youth Services Review*, vol. 76, pp. 74-83, http://dx.doi.org/10.1016/j.childyouth.2017.02.035 (last visited November 30, 2023).
[6] *Id*.
[7] *Id*.
[8] Children's Bureau, *The Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2021 data*, U.S. Department of Health and Human Services, p. 2, June 28, 2022, https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf (last accessed Dec. 3, 2023).

2,167 teens and young adults entering Florida's foster care system.[9] The Children's Bureau also collects information and outcomes on youth and young adults currently or formerly in foster care who received independent living services supported by federal funds.[10] To this end, the Children's Bureau's National Youth in Transition Database (NYTD) representation tracks the independent living services each state provides to foster youth in care and assesses each state's performance in providing independent living and transition services.

DCF will establish its fifth NYTD report (Oct. 2022 – Sept. 2023) that surveys youth in Florida's foster care system beginning on their 17th birthday.[11] In the interim, the most recent Florida NYTD available on DCF's website is the 2018 report.[12] In the chart below, the 2018 Florida NYTD documented outcomes related to education, employment, housing, finances and transportation, health and well-being, and connections:[13]

Outcomes of Young Adults who Aged Out of Care	
Area	**Outcome**
Education	• 74% were enrolled in and attending high school, GED classes, post-high school vocational training, or college. • 12% experienced barriers that prevented them from continuing education. The top three reported barriers included the need to work full-time, not having transportation, and having academic difficulties.
Employment	• 15% were employed full-time (35 hours per week or more). • 26% were employed part-time. • 78% had a paid job over the last year. • 22% completed an apprenticeship, internship, or other on-the-job training, either paid or unpaid.
Housing	• The top three current living situations included living in their own apartment, house, or trailer; living with friends or a roommate; and living in a group care setting (including a group home or residential care facility). • 41% had to couch surf or move from house to house because they did not have a permanent place to stay. • 27% experienced some type of homelessness in the past year.[14]
Financial & Transportation	• 46% received public food assistance. • 10% received social security payments (Supplemental Security Income, Social Security Disability Insurance, or dependents' payments). • 83% had a reliable means of transportation to school/work. • 76% had an open bank account.

[9] Children's Bureau, *The Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2021 data: Florida* , U.S. Department of Health and Human Services, p. 1, June 28, 2022, https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-tar-fl-2021.pdf (last accessed Dec. 3, 2023).
[10] Children's Bureau, *Data and Statistics: National Youth in Transition Database*, U.S. Department of Health & Human Services, https://www.acf.hhs.gov/cb/data-research/data-and-statistics-nytd#FL_26606 (last visited Dec. 3, 2023).
[11] Florida Department of Children and Families, *Independent Living Services Annual Report*, Office of Child Welfare, Feb. 2023, p. 15 https://www.myflfamilies.com/sites/default/files/2023-07/Independent_Living_Services_Report_2022.pdf (last visited Dec. 4, 2023).
[12] Florida Department of Children and Families, *Annual Reports for Independent Living*, Child and Family Services, https://www.myflfamilies.com/services/child-family/independent-living/annual-reports-for-independent-living (last visited Dec. 4, 2023).
[13] Florida Department of Children and Families, *Florida National Youth in Transition Database, 2018 Survey Data Report*, https://www.myflfamilies.com/sites/default/files/2023-06/2018%20Florida%20NYTD%20Statewide%20Report%20Final.pdf (last visited Dec. 4, 2023).
[14] *Id*.

Health & Well-Being	• 85% were on Medicaid. • 18% had children. • 34% had not received medical care for a physical health problem, treatment for a mental health problem, or dental care in the past two years for some health problem needing to be addressed. • 24% were confined in a jail, prison, correctional facility, or juvenile detention facility within the past two years.
Connections	• 85% had at least one adult in their life, other than their case manager, to go to for advice or emotional support. • 67% had a close relationship with biological family members.

The Federal John H. Chafee Foster Care Program for Successful Transition to Adulthood

The John H. Chafee Foster Care Program for Successful Transition to Adulthood (the Chafee program) provides funding to support young adults in or formerly in foster care in their transition to adulthood. The program is funded through formula grants awarded to child welfare agencies in States (including the District of Columbia, Puerto Rico and the U.S. Virgin Islands) and participating Tribes. The program is funded at $143 million a year.[15]

Chafee funds are used to assist young adults in a wide variety of areas designed to support a successful transition to adulthood. Activities and programs include, but are not limited to, help with education, employment, financial management, housing, emotional support and assured connections to caring adults. Specific services and supports are determined by the child welfare agency, vary by State, locality and agency, and are often based on the individual needs of the young person. Many State or local agencies contract with private organizations to deliver services to young people.[16]

Eligibility for the program, as outlined in federal law, includes:

- Youth in foster care, ages 14 and older
- Young people in or formerly in foster care, ages 18 to 21, or 23 in some jurisdiction
- Youth who left foster care through adoption or guardianship at age 16 or older
- Youth "likely to age out of foster care" to receive assistance to participate in age appropriate and normative activities

States and Tribes may have additional requirements for eligibility.[17]

In 2022, the federal government allotted $7,175,951 in federal Chafee dollars to Florida for the purpose of independent living services.[18]

[15] Administration for Children and Families, *John H. Chafee Foster Care Program for Successful Transition to Adulthood*, U.S. Department of Health and Human Services, (last updated July 3, 2024) https://www.acf.hhs.gov/cb/grant-funding/john-h-chafee-foster-care-independence-program (last visited Jan. 26, 2024).
[16] *Id.*
[17] *Id.*
[18] Administration for Children and Families, *FY 2022 Allotment for Chafee Foster Care Program for Successful Transition to Adulthood Grants*, U.S. Department of Health and Human Services, Attachment A, p. 8 (Feb. 9, 2023) https://www.acf.hhs.gov/sites/default/files/documents/cb/pi2301.pdf (last visited Jan. 26, 2024).

Florida Programs for Older Youth and Young Adults

Florida uses the federal Chafee funding, along with other funding such as Title IV-E and state General Revenue, for programs and services for older youth in foster care and young adults formerly in foster care. Such programs include:

- Extended foster care.
- Road-to-Independence programs:
  - Postsecondary Supports and Services, and
  - Aftercare.
- DCF's Office of Continuing Care.

Extended foster care and the Road-to-Independence programs have different eligibility requirements and benefits.

Extended Foster Care

A young adult who is living in licensed care on his or her 18th birthday and who has not achieved permanency may choose to remain under court supervision and the care of DCF through extended foster care.[19] If the young adult chooses to remain in care beyond his or her 18th birthday, then the young adult's permanency goal becomes transitioning to independence.[20] To this end, a young adult who chooses extended foster care must participate in one of four self-sufficiency activities. These four self-sufficiency activities include:

1. Completing secondary education or a program leading to an equivalent credential;
2. Being enrolled in an institution that provides postsecondary or vocational education;
3. Participating in a program or activity designed to promote or eliminate barriers to employment; or
4. Being employed for at least 80 hours per month.

However, the child may be excused from the self-sufficiency activities if the child has a documented physical, intellectual, emotional, or a psychiatric condition that limits the child's full-time participation.[21]

In addition to one or more self-sufficiency activities, the young adult in extended foster care must independently reside in a supervised living environment that DCF or a CBC approved. In other words, the young adult must continue to receive supervision, case management, and supportive services from DCF or a CBC but live independently in an environment that offers developmentally appropriate freedom and responsibility to prepare the young adult for adulthood.[22] Meanwhile, the court maintains jurisdiction to ensure that DCF and CBCs provide services and coordinate with, and maintain oversight of, other agencies involved in implementing the young adult's case plan, individual education plan, and transition plan.[23]

A supervised living arrangement may include a licensed foster home, licensed group home, college dormitory, shared housing, apartment, or another housing arrangement approved by CBC that is acceptable to the young adult. A young adult may continue to reside with the same licensed foster family or group care provider with whom he or she was residing at the time he or she reached the age of 18 years.[24] Through December 2023, 785 young adults (18-22) were in out-of-home care in Florida.[25]

[19] S. 39.6251(1), F.S.
[20] S. 39.6251(3), F.S.
[21] S. 39.6251(2), F.S.
[22] S. 39.6251(4)(a), F.S.
[23] S. 39.6251(8), F.S.
[24] S. 39.6251(4)(a), F.S.
[25] *Supra*, FN 3.

A young adult ages out of extended foster care when he or she turns 21 (or 22 if the young adult has a disability), achieves permanency, or knowingly and voluntarily withdraws consent to participate in extended foster care – whichever comes first.[26]

Florida's Road-to-Independence Program

Current law offers financial assistance to eligible young adults who desire the acquisition of skills, education, and necessary support to become self-sufficient and exit foster care. Eligible young adults access financial assistance through postsecondary education services and support (PESS) or aftercare services.[27]

PESS

The PESS stipend helps eligible young adults seek higher education and self-sufficiency. A young adult becomes PESS eligible once eight criteria are met:

1. A former foster youth who is in one of three situations:
    a. Turned 18 years of age while in the legal custody of DCF,
    b. Adopted from foster care after the age of 16 after spending at least 6 months in licensed care within the 12 months immediately preceding the adoption, or
    c. Placed with a court-approved permanent guardian after the age of 16 after spending at least 6 months in licensed care within the 12 months immediately preceding the permanent guardianship.
2. Spent at least 6 months in licensed care before reaching their 18th birthday.
3. Earned a standard high school diploma or its equivalent.
4. Admitted for enrollment as a full-time student[28] at an eligible Florida Bright Futures postsecondary educational institution.
5. Reached the age of 18 but is not yet 23 years of age.
6. Applied for other grants and scholarships that the eligible young adult qualifies for.
7. Submitted a complete and error-proof Free Application for Federal Student Aid.
8. Signed an agreement to allow DCF and the CBC lead agency access to school records.[29]

After establishing eligibility, DCF determines the PESS stipend amount. Generally, the PESS stipend amount is $1,720/month. However, if the young adult remains in foster care while attending a postsecondary school and resides in a licensed foster home, the monthly PESS stipend amount is the established room and board rate for foster parents. If the young adult remains in foster care while attending a postsecondary school and resides in a licensed group home, the monthly PESS stipend amount is negotiated between the CBC lead agency and the licensed group home provider.[30]

Before an eligible young adult receives the PESS stipend, DCF or its contracted agency must assess the young adult's financial literacy and existing competencies necessary for successful independent living and the completion of postsecondary education.[31] Eligible young adults receive financial assistance during the months when they are enrolled in a postsecondary education institution.[32]

Aftercare Services

[26] S. 39.6251(5), F.S.
[27] S. 409.1451(1)(c), F.S.
[28] Students may enroll part-time if they have a recognized disability or if they secure approval from their academic advisor relating to a challenge or circumstance preventing full-time enrollment. Otherwise, full-time enrollment requires 9 credit hours or the vocational school equivalent.
[29] S. 409.1451(2)(a), F.S.
[30] S. 409.1451(2)(b), F.S.
[31] S. 409.1451(2)(d), F.S.
[32] S. 409.1451(2)(b), F.S.

Aftercare services are intended to bridge gaps in an eligible young adult's progress towards self-sufficiency. A young adult establishes eligibility for aftercare services if the young adult meets three four criteria:

1. Reached the age of 18 while in licensed foster care
2. Is currently at least 18 years old, but is not yet 23 years of age.
3. Is not in Extended Foster Care pursuant to s. 39.6251, F.S.
4. Temporarily not receiving a PESS stipend.[33]

Aftercare funding is also available to current PESS recipients under some emergency situations.[34]

The requirement that a young adult have reached the age of 18 in licensed care is in DCF rule.[35] This rule is consistent with the 2012 statutes, which required Aftercare recipients to have aged out of foster care. A 2013 revision to the Road-to-Independence program statute was included in a bill focusing on services for young adults who aged out of foster care or were adopted in their later teens; this revision removed the requirement that a young adult must have aged out of foster care to receive Aftercare services, though the intent language of the section refers to both individuals who have spent time in foster care and those who have aged out of care.[36]

Thus under DCF rule, an individual must have been living in a licensed foster home or other licensed residential setting at age 18 to receive Aftercare funding, or receive PESS and have a qualifying emergency situation. This excludes individuals who had spent time in the dependency system but reached permanency such that they did not age out of care (meaning they were not in a licensed foster home or other licensed residential setting when they turned age 18). For example, young adults who were adopted as older teens but no longer are being supported by their adoptive parents are ineligible for Aftercare services; neither are young adults who achieve reunification with a parent as an older teen.

Aftercare services include, but are not limited to, the following:

1. Mentoring and tutoring.
2. Mental health services and substance abuse counseling.
3. Life skills classes, including credit management and preventive health activities.
4. Parenting classes.
5. Job and career skills training.
6. Counselor consultations.
7. Temporary financial assistance for necessities.
8. Temporary financial assistance for emergencies like automobile repairs or large medical expenses.
9. Financial literary skills training.[37]

DCF or a CBC lead agency determines the specific Aftercare services provided to eligible young adults after an assessment.[38] The resulting aftercare services plan is reassessed every 90 days.[39] Subject to available funding, Aftercare services are available to PESS stipend grantees who experience an emergency situation and whose resources are insufficient to meet the emergency situation.[40]

[33] S. 409.1451(3)(a), F.S.; R. 65C-42.003(1), F.A.C.
[34] S. 409.1451(3)(a)2., F.S.
[35] R. 65C-42.003(1), F.A.C.
[36] Ch. 13-178, L.O.F.
[37] S. 409.1451(3)(b), F.S.
[38] S. 409.1451(3)(b), F.S.; R. 65C-42.003(6), F.A.C.
[39] R. 65C-42.003(8), F.A.C.
[40] S. 409.1451(3)(a), F.S.

In total, DCF reports in the table below that Florida spent the following amounts on Aftercare services for the past three fiscal years.[41]

Fiscal Year (FY)	Eligible Population	Actual Participants	Participation Rate	Per Youth Expenditure (rounded)	Total Expenditures
2020-2021	3,119	316	10%	$2,625	$829,726
2021-2022	3,045	371	12%	$3,841	$1,425,261
2022-2023	3,034	421	14%	$4,385	$1,846,401

DCF reports that Florida experienced a 13% increase in the total number of young adults receiving independent living services for state fiscal year (SFY) 2022-2023 compared to SFY 2021-2022.

The table below itemizes the number of young adults served in each Independent Living program by each CBC Lead Agency during the past two state fiscal years (SFYs): [42]

Lead Agency	2021-2022			2022-2023		
	Aftercare	EFC	PESS	Aftercare	EFC	PESS
Brevard Family Partnership	28	33	14	27	104	11
ChildNet Inc	22	166	112	24	166	112
ChildNet Palm Beach	14	126	68	11	118	62
Children's Network of SW Florida	8	41	58	8	65	34
Citrus Health Network	39	229	198	48	269	186
Communities Connected for Kids	16	28	25	11	28	26
Community Partnership for Children	8	49	37	16	76	47
Family Support Services Suncoast	42	104	62	49	105	55
Children's Network Hillsborough	57	87	40	57	146	60
Embrace Families	32	117	58	38	145	57
Families First Network	12	98	28	11	100	19
St Johns County Commission	5	12	8	0	12	8
Family Support Services	36	97	33	23	107	31
Heartland for Children	32	79	23	37	91	29
Kids Central Inc	39	28	27	54	54	39
Kids First of Florida Inc	0	16	10	0	27	13
NWF Health Network-East	16	55	35	19	67	27
Partnership for Strong Families	10	16	12	6	16	5
Safe Children Coalition	17	37	16	29	37	16
Statewide	**433**	**1,418**	**864**	**467**	**1,733**	**857**

Office of Continuing Care

The Office of Continuing Care at DCF helps individuals who have aged out of the child welfare system, until age 26. The office provides ongoing support and care coordination needed for young adults to achieve self-sufficiency. Duties of the office include, but are not limited to:

[41] Florida Department of Children and Families, *Agency Analysis for 2024 Senate Bill 564*, p. 2. SB 564 (2024) is the companion bill to HB 631 (2024).

[42] Department of Children and Families, *Department of Children and Families Response to the Independent Living Services Advisory Council 2023 Annual Report*, p. 6 (Dec. 31, 2023) https://www.myflfamilies.com/services/child-family/lmr (last visited Jan. 4, 2023).

- Informing young adults who age out of the foster care system of the purpose of the office, the types of support the office provides, and how to contact the office.
- Serving as a direct contact to the young adult in order to provide information on how to access services to support the young adult's self-sufficiency, including but not limited to, food assistance, behavioral health services, housing, Medicaid, and educational services.
- Assisting in accessing services and supports for the young adult to attain self-sufficiency, including, but not limited to, completing documentation required to apply for services.
- Collaborating with CBC's to identify local resources that can provide support to young adults served by the office.
- Developing and administering the Step into Success Workforce Education and Internship Pilot Program for foster youth and former foster youth as required under s. 409.1455.[43]

Effect of the Bill

Aftercare

HB 631 expands access to Aftercare services to a broader population of young adults who were involved in Florida's child welfare system. Under the bill, the following individuals are eligible:

- were placed by a court under Florida's dependency statutes,
- lived in out-of-home care (including licensed placements and placements with family members or fictive kin) for at least 6 months after turning 14 years of age, and
- are at least 18 years of age but not 23 years of age.

Therefore, the bill allows more young adults who were formerly in care, regardless of the out-of-home placement type they were in or whether they achieved permanency before age 18, to receive Aftercare services.

While the bill allows a young adult to receive Aftercare services even if the young adult simultaneously benefits from PESS or is in EFC, the bill prohibits duplicative services and supports.

Distribution of Funding in Emergencies

In the event of a state of emergency declared by the Governor or the President of the United States, the bill allows DCF to distribute federal funds to all young adults deemed eligible by the funding source, even if these eligibility standards are different than those of the PESS program or Aftercare. This means that young adults who would not meet the eligibility criteria of those programs could receive federal funding if DCF distributes funding to those who are not otherwise eligible.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amending s. 409.1451, F.S., relating to the road-to-independence program.
Section 2: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[43] S. 414.56, F.S.

2. Expenditures:

Indeterminate. Aftercare services have been subject to available funding; thus, if funding is not increased, even if more individuals are eligible, there will be no additional expenditure.

It is unknown whether DCF will spend federal funds during an official state of emergency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some individuals who do not currently receive Aftercare services may be able to receive them in the future.

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:

DCF has sufficient rulemaking authority to carry out the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to aftercare services under the Road-to-Independence Program; amending s. 409.1451, F.S.; revising the eligibility requirements for a young adult to receive aftercare services; limiting the aftercare services available to young adults under certain circumstances; authorizing the Department of Children and Families to distribute federal funds to young adults, regardless of their eligibility, under certain circumstances; providing an effective date.

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

Section 1. Subsection (11) of section 409.1451, Florida Statutes, is renumbered as subsection (12), paragraph (a) of subsection (3) is amended, and a new subsection (11) is added to that section, to read:

409.1451 The Road-to-Independence Program.—

(3) AFTERCARE SERVICES.—

(a)~~1.~~ Aftercare services are available to a young adult who has reached 18 years of age but is not yet 23 years of age who, having been placed by a court pursuant to chapter 39, has lived in out-of-home care for at least 6 months after he or she turned 14 years of age. A young adult who receives services and support under subsection (2) or s. 39.6251 is only eligible for

aftercare services that are not otherwise covered or provided under subsection (2) or s. 39.6251. ~~and is:~~

~~a. Not in foster care.~~

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

~~2. Subject to available funding, aftercare services as specified in subparagraph (b)8. are also available to a young adult who is between the ages of 18 and 22, is receiving financial assistance under subsection (2), is experiencing an emergency situation, and whose resources are insufficient to meet the emergency situation. Such assistance shall be in addition to any amount specified in paragraph (2)(b).~~

(11) Notwithstanding the eligibility criteria or availability of services and support under subsections (2) and (3), the department may distribute federal funds to all young adults deemed eligible by the funding source in the event of a state of emergency declared by executive order or proclamation of the Governor pursuant to chapter 252 or the President of the United States.

Section 2. This act shall take effect July 1, 2024.

HB 1061

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1061 Community-based Child Welfare Agencies
SPONSOR(S): McFarland
TIED BILLS: **IDEN./SIM. BILLS:** SB 536

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

SUMMARY ANALYSIS

Florida's model for providing child welfare services is unique in the nation. No other state outsources its child welfare services to private organizations to the extent that Florida does. Accordingly, the performance of those private organizations – community based-care lead agencies (CBCs) and their subcontractors – has a great impact on the health, safety, and well-being of the thousands of children and families served by Florida's child welfare system.

While most CBC's are deemed by DCF to overall meet or exceed performance standards, deficiencies remain, particularly in the well-being of children in care. Additionally, a recent forensic audit of 6 CBC's identified the following financial and managerial concerns with one or more of the 6 CBC's:

- Non-compliant contract procurement for related and non-related entities.
- Receipt of Paycheck Protection Program Loans that were not properly reimbursed to the State.
- Board approval of deficit budgets.
- Allocated officer compensation in excess of mandatory caps.
- Non-compliance with Cost Allocation Plans.

HB 1061 strengthens the child welfare system in the following ways:

- Procurement of CBC's: The bill prohibits renewal of CBC contracts by DCF, though it allows DCF to extend a CBC contract for one year.
- Contractual Obligations: The bill restricts the ability of CBCs to transact with third-party entities that are directly or indirectly related to CBC board members, officers, and directors, and certain relatives. The bill expands the minimum data points that the CBCs must publish on its website every month.
- Actuarially-sound funding model: Effective July 1, 2025, the bill eliminates the current equity allocation model and replaces it with a new actuarially sound, tiered payment model that adjusts for workload fluctuations and incentivizes prevention, family preservation, and permanency.
- CBC Procurements: The bill requires DCF to establish by contract financial penalties or sanctions that DCF must enforce when a CBC is not compliant with applicable local, state, or federal law for the procurement of commodities or contractual services.
- CBC Receivership: The bill lowers the threshold levels that authorize DCF to petition the court for a receivership of a CBC.
- Remedies for Noncompliance or Inadequate Performance: The bill establishes contractual actions that DCF may enforce against a CBC if the CBC fails to comply with contract terms or experiences performance deficiencies.

The bill has an indeterminate, negative fiscal impact on state government and no impact on local government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Child Welfare System

Chapter 39, F.S., creates the dependency system charged with protecting child welfare. The Florida Legislature has declared four main purposes of the dependency system:[1]

- to provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development;
- to ensure secure and safe custody;
- to promote the health and well-being of all children under the state's care; and
- to prevent the occurrence of child abuse, neglect, and abandonment.

Florida's dependency system identifies children and families in need of services through reports to the central abuse hotline and child protective investigations. The Department of Children and Families (DCF) works with those families to address the problems endangering children, if possible. DCF's practice model is based on the safety of the child within the home by using in-home services, such as parenting coaching and counseling, to maintain and strengthen that child's natural supports in his or her environment. If the problems are not addressed, the child welfare system finds safe out-of-home placements for these children.

Community Alliances

DCF is required to establish community alliances to serve as a catalyst for community resource development and promote prevention and early intervention, among other obligations.[2] Each community alliance may encompass more than one county when such arrangement is determined to provide for more effective representation.[3]

Community Alliances include local stakeholders and representatives in each county to encourage and maintain community participation and oversight of community-based care lead agencies (CBCs).[4] Community alliances are composed of representatives from:

- DCF.
- the county government.
- the school district.
- the county United Way.
- the county sheriff's office.
- the circuit court corresponding to the county.
- the county children's board, if one exists.
- a faith-based organization involved in efforts to prevent child maltreatment, strengthen families, and promote adoption.[5]

The community alliance must adopt bylaws and may increase the membership of the alliance if such increase is necessary to adequately represent the diversity.[6] The additional members may include state

[1] S. 39.001(1)(a), F.S.
[2] S. 20.19(5)(b), F.S.
[3] S. 20.19(5)(a), F.S.
[4] *Id*.
[5] S. 20.19(5)(d), F.S.
[6] S. 20.19(5)(e), F.S.

attorneys, public defenders, their designees, or individuals from funding organizations, community leaders or individuals who have knowledge of community-based service issues.[7]

DCF's procurement team for CBC contracts must include individuals from the community alliance in the area to be served under the contract.[8]

Community-Based Care Lead Agencies

Florida's model for providing child welfare services is unique in the nation. No other state outsources its child welfare services to private organizations to the extent that Florida does. Accordingly, the performance of those private organizations—community based-care lead agencies, or CBCs-- has great impact on the health, safety, and well-being of the thousands of children and families served by Florida's child welfare system. DCF's effective management and oversight of contractors is critical to the successful functioning of the child welfare system.

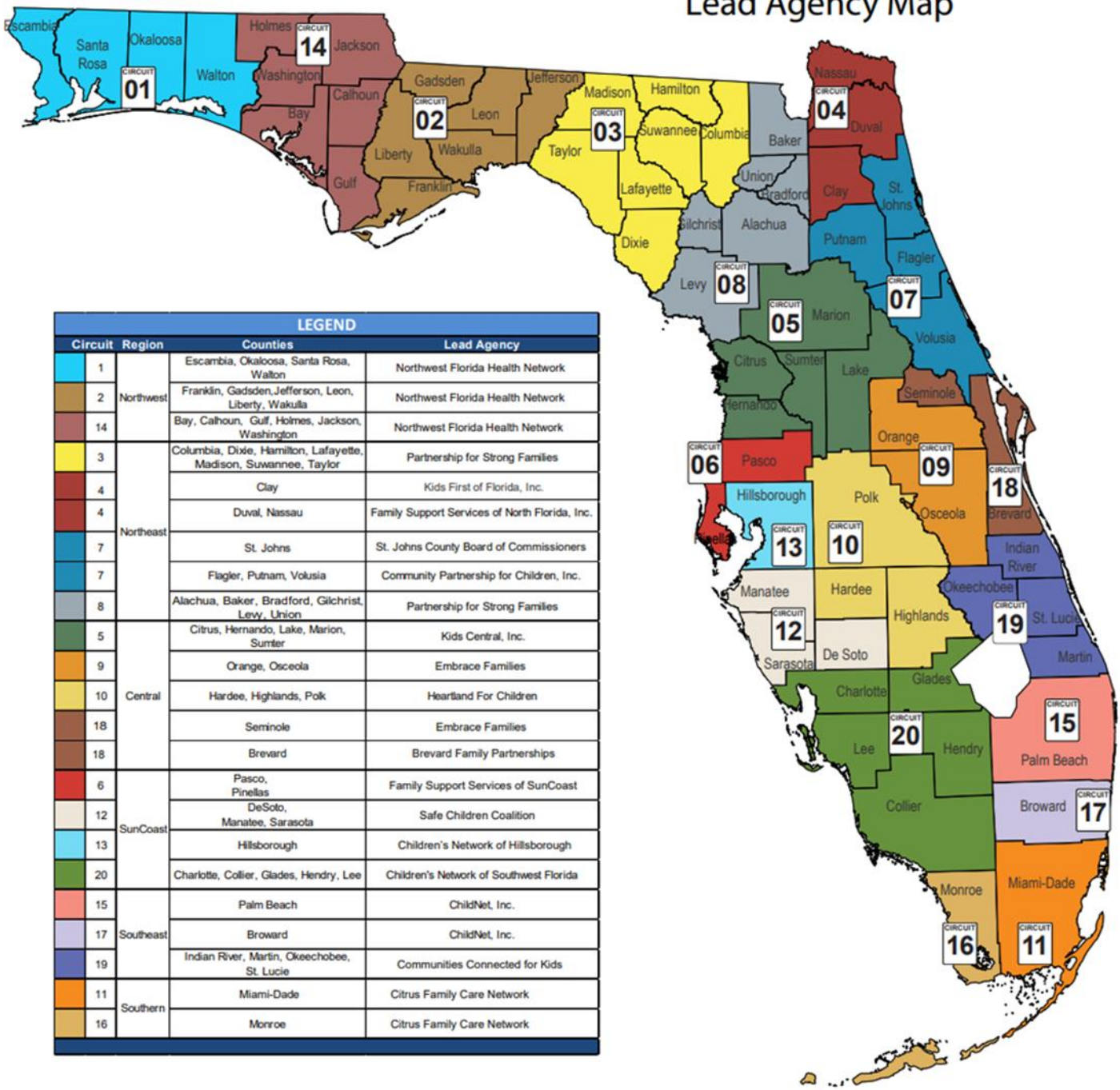
The Department of Children and Families (DCF) competitively contracts with CBCs as required by chapters 287 and 409 to provide child protection and child welfare services to children and families in Florida. These contracts generally cover case management, out-of-home services, and related services. The outsourced provision of child welfare services is intended to increase local community ownership of service delivery and design. CBCs in turn contract with a number of subcontractors for case management and direct care services to children and their families. DCF remains responsible for a number of child welfare functions, including operating the central abuse hotline, performing child protective investigations, and providing children's legal services. Ultimately, DCF is responsible for program oversight and the overall performance of the child welfare system. [9]

At present, there are 18 CBCs that each cover specific geographic areas within the 20 Judicial Circuits in Florida. The geographic size of the CBC's varies widely. While a few serve only one county, ranging from St. Johns County to Broward County, several CBCs cover multiple counties, with one CBC (Partnership for Strong Families) encompassing 13 rural counties. The following map illustrates DCF Regions, Judicial Circuits, and CBC geographic areas.[10]

[7] *Id*.
[8] S. 409.987(5), F.S.
[9] S. 409.996, F.S.
[10] Florida Department of Children and Families, *A Comprehensive, Multi-Year Review of the Revenues, Expenditures, and Financial Position of All Community-Based Care Lead Agencies with System of Care Analysis*, p. 2 (Dec. 1, 2023) https://www.myflfamilies.com/services/child-family/lmr (last visited Jan. 6, 2024).

Community-Based Care

Lead Agency Map



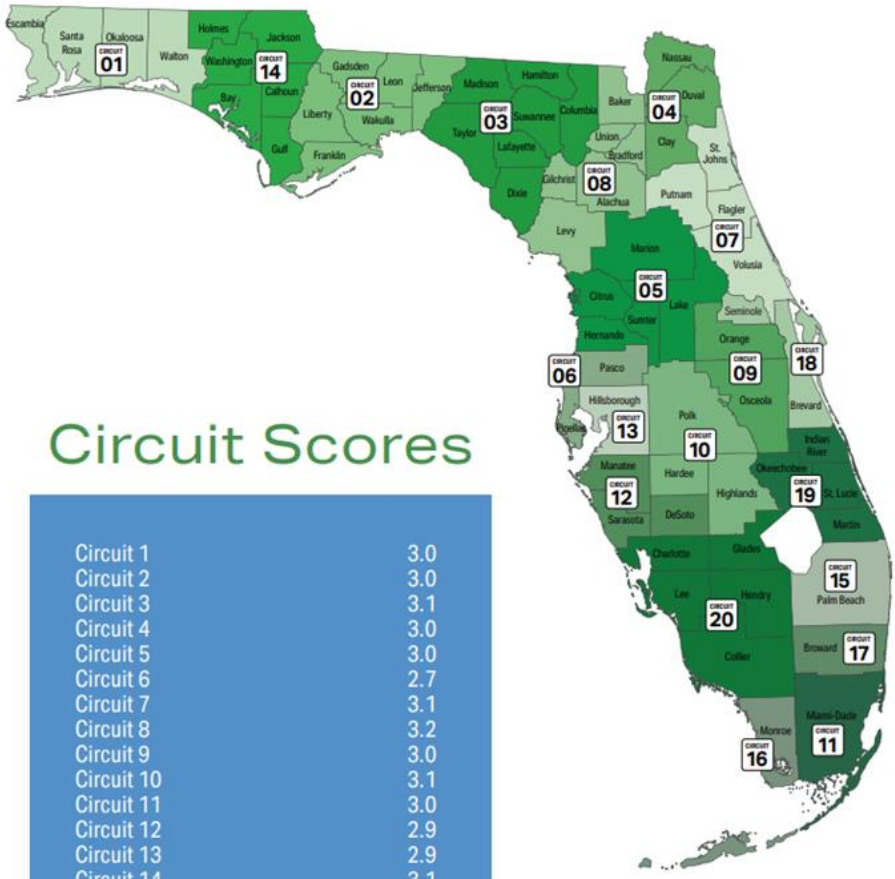
LEGEND

Circuit	Region	Counties	Lead Agency
1	Northwest	Escambia, Okaloosa, Santa Rosa, Walton	Northwest Florida Health Network
2		Franklin, Gadsden, Jefferson, Leon, Liberty, Wakulla	Northwest Florida Health Network
14		Bay, Calhoun, Gulf, Holmes, Jackson, Washington	Northwest Florida Health Network
3	Northeast	Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, Taylor	Partnership for Strong Families
4		Clay	Kids First of Florida, Inc.
4		Duval, Nassau	Family Support Services of North Florida, Inc.
7		St. Johns	St. Johns County Board of Commissioners
7		Flagler, Putnam, Volusia	Community Partnership for Children, Inc.
8		Alachua, Baker, Bradford, Gilchrist, Levy, Union	Partnership for Strong Families
5	Central	Citrus, Hernando, Lake, Marion, Sumter	Kids Central, Inc.
9		Orange, Osceola	Embrace Families
10		Hardee, Highlands, Polk	Heartland For Children
18		Seminole	Embrace Families
18		Brevard	Brevard Family Partnerships
6	SunCoast	Pasco, Pinellas	Family Support Services of SunCoast
12		DeSoto, Manatee, Sarasota	Safe Children Coalition
13		Hillsborough	Children's Network of Hillsborough
20		Charlotte, Collier, Glades, Hendry, Lee	Children's Network of Southwest Florida
15	Southeast	Palm Beach	ChildNet, Inc.
17		Broward	ChildNet, Inc.
19		Indian River, Martin, Okeechobee, St. Lucie	Communities Connected for Kids
11	Southern	Miami-Dade	Citrus Family Care Network
16		Monroe	Citrus Family Care Network

Accordingly, the child population of the area served by each CBC varies, and the number of children and families served by each CBC varies.

Florida Child Welfare System Performance Serving Children

The DCF infographic below scores the health of Florida's child welfare system at the circuit level.[11] DCF identifies areas with the most significant systemic impact on improving permanency and well-being[12] and evaluates progress toward achieving permanency, safety, and well-being for children in the welfare system. The overall score for each of the 20 circuits aggregates individual circuit performance scores on permanency, safety, and well-being. For FY21-22, the overall median score is 3.1 out of a possible 5, and 85% of circuits earned a 3.0 or higher.[13] A score over 3.50 indicates the circuit's performance exceeds established standards.[14] A score between 3.00-3.349 indicates the circuit's performance meets established standards.[15] A score of 2.00-2.99 indicated the circuit's performance does not meet established standards.[16] In FY 2021-2022, DCF gave 17 of 20 circuits a score of 3 or higher, indicating that the circuit's performance exceeds established standards. However, there were still deficiencies. Every CBC except one was rated below expectations or poor for the well-being of children in care.



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[11] Florida Department of Children and Families, *Annual Accountability Report on the Health of Florida's Child Welfare System: Fiscal Year 2021-2022,* p. 6 (Dec. 12, 2022) https://www.myflfamilies.com/sites/default/files/2022-12/Accountability_System_Report_2022-revision12DEC22.pdf (last visited Nov. 28, 2023).
[12] *Id*. at p. 3.
[13] *Id*. at p. 2.
[14] *Id*. at p. 7.
[15] *Id*.
[16] *Id*.
[17] *Id*. at pg. 6.

CBC Funding

The source of CBC revenues are predominately federal and state funds appropriated by the Florida Legislature. Nearly all federal funding for child welfare purposes comes from the Social Security Act[18] and the Child Abuse Prevention and Treatment Act (CAPTA). Each of these federal sources generally require state matching funds.[19] Historically, CBCs could use Title IV-E funds in a variety of state-specific, innovative ways because the federal government approved a waiver allowing Florida to experiment. However, the federal government terminated the Title IV-E waiver authority it had allowed states on September 30, 2019.[20] This has led to significant change in levels and the mix of federal and state funds over the last five years.

CBC appropriations from federal and state sources grew from $951.9 million in Fiscal Year (FY) 2018-19 to $1.3 billion for FY 2023-24.[21] The Legislature appropriates funds from both state and federal sources to CBC's through DCF.

State law specifies calculation of annual CBC funding. The Legislature first established a CBC funding formula in law in 2011 and has changed over time.[22] Before this statutory formula, the allocation of new state or federal funds to lead agencies was based primarily on the number of children in care with direction to the department through proviso language in the General Appropriations Act, though at the time of the formula's enactment, the Legislature had begun considering additional factors such as those now in the formula.[23]

Under the current formula, 100 percent of the recurring core services funding for each community-based care lead agency are based on the prior year recurring base of core services funds, and any new funds are allocated according to a statutory formula.

Generally, all funds allocated to a CBCs are considered "core service funds", except for:

1. Funds appropriated for independent living.
2. Funds appropriated for maintenance adoption subsidies.
3. Funds allocated by DCF for protective investigations training.
4. Nonrecurring funds (e.g., risk pool appropriations, back of the bill authorizations designed in the General Appropriations Act, Legislative Budget Commission actions, and prior year excess federal earnings).[24]
5. Designated mental health wrap-around services.
6. Funds for special projects for a designated CBC.
7. Funds appropriated for the Guardianship Assistance Program under s. 39.6225, F.S.

Unless otherwise specified in the General Appropriations Act, any new core service funds are allocated according to the equity allocation model on the following weighted basis:

- 70% of new funding must be allocated among all CBCs.
- 30% of new funding must be allocated among the CBCs that are funded below their equitable share.[25]

[18] Relevant provisions of the Social Security Act include the Title IV-A Temporary Assistance for Needy Families (TANF) block grant, Title IV-B child welfare services, Title IV-B promoting safe and stable families, Title IV-E funds for foster care, Title IV-E funds for adoption assistance, independent living and education, training and voucher funds , and the Title XX Social Services Block Grant.
[19] In addition, a local match is required for the Title IV-B promoting safe and stable families fund.
[20] Florida Department of Children and Families, *A Comprehensive, Multi-Year Review of the Revenues, Expenditures, and Financial Position of All Community-Based Care Lead Agencies with System of Care Analysis*, p. 3 (Dec. 1, 2023) https://www.myflfamilies.com/services/child-family/lmr (last visited Jan. 6, 2024).
[21] *Supra*, FN 10 at 3.
[22] Ch. 2011-62, L.O.F.
[23] Florida Senate Analysis of 2011 Senate Bill 2146, p. 3 (April 1, 2011) https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=2011s2146.bc.DOCX&DocumentType=Analysis&BillNumber=2146&Session=2011 (last visited Jan. 26, 2024).
[24] *Supra*, FN 3 at 4-5. At the time of DCF's annual report, the carry-forward balance for FY 2023-24 was not yet determined.
[25] S. 409.991(4), F.S.

The equity allocation model weights the proportions of the child population, the child abuse hotline workload, and the children in care according to the following formula:

- The proportion of the child population is weighted at 5% of the total.
- The proportion of the child abuse hotline workload is weighted at 35% of the total.
- The proportion of the children in care is weighted at 60% of the total.[26]

The FY 2023-24 GAA provides the following core service funding amounts to CBC's:

Community-based Care Lead Agency	Core Service Funding for FY 2023-24
Big Bend CBC (Northwest Florida Health Network)-West	$55,032,652
Big Bend CBC (Northwest Florida Health Network)-East	$35,459,931
Partnership for Strong Families	$31,401,300
Kids First of Florida	$12,525,871
Family Support Services of North Florida	$49,018,528
St Johns Board of County Commissioners (Family Integrity Program)	$7,683,739
Community Partnership for Children	$43,440,511
Kids Central	$54,912,909
Embrace Families	$60,761,737
Heartland for Children	$46,721,076
Community-Based Care of Brevard (Brevard Family Partnerships)	$29,292,110
Communities Connected for Kids	$24,247,000
Family Support Services of Suncoast	$87,553,887
Safe Children Coalition	$34,861,493
Children's Network of Hillsborough	$75,448,412
Children's Network of Southwest Florida	$53,746,134
ChildNet (Palm Beach)	$38,086,728
ChildNet (Broward)	$60,952,428
Citrus Family Care Network	$76,440,546

Total state-appropriated funds available for CBC's for FY 2023-24 was $1.331 billion.[27]

In addition, some CBCs receive revenue from local sources such as local government, private businesses, and not-for-profit foundations.[28]

Risk Pool

Total new funding available to CBC's varies by year but is generally a small percentage of the total funding for CBC services. This means that a CBC's funding does not change significantly year to year. When extenuating circumstances result in increased expenditures for CBC's, the funding through the formula does not change significantly. Thus s. 409.990, F.S., establishes a risk pool for lead agencies. The risk pool is intended to mitigate the financial risk to eligible lead agencies.

[26] S. 409.991(2), F.S.
[27] *Supra,* FN 10, at 5.
[28] *Supra*, FN 10 at 5.

CBC's must apply for risk pool funding, and then a DCF secretary-appointed risk pool peer review committee reviews and assesses all risk pool applications. The committee includes both DCF and non-applicant CBC representatives. The peer review committee then reports its findings and recommendations to the secretary, providing, at a minimum:

- Justification for the specific funding amount required by the risk pool applicant based on the current year's service trend data, including validation that the applicant's financial need was caused by circumstances beyond the control of the lead agency management;
- Verification that the proposed use of risk pool funds meets at least one of the purposes specified in paragraph (c); and
- Evidence of technical assistance provided in an effort to avoid the need to access the risk pool and recommendations for technical assistance to the lead agency to ensure that risk pool funds are expended effectively and that the agency's need for future risk pool funding is diminished.

Upon approval by the secretary of a risk pool application, the department may request funds from the risk pool in accordance with s. 216.181(6)(a).

The four purposes for which the community-based care risk pool shall be used include:

- Significant changes in the number or composition of clients eligible to receive services.
- Significant changes in the services that are eligible for reimbursement.
- Continuity of care in the event of failure, discontinuance of service, or financial misconduct by a lead agency.
- Significant changes in the mix of available funds.

The Legislature appropriates funding for the risk pool. The amount appropriated varies by year; for FY 23-24, the Legislature appropriated $3.0 million for the risk pool.[29] In FY 2022-23, two CBC's applied for risk pool funding, and one of the two (Embrace Families) was approved and awarded $3.1 million.[30]

2022 and 2024 Reports on Allocation Options

Current law sets monthly reporting requirements for DCF regarding its case management services or case management services provided by CBCs or their subcontractors. At a minimum, DCF must publish the following data points on its website by the 15th day of each month:[31]

1. The average caseload of case managers, including only filled positions;
2. The total number and percentage of case managers who have 25 or more cases on their caseloads;
3. The turnover rate for case managers and case management supervisors for the previous 12 months;
4. The percentage of required home visits completed; and
5. Performance on outcome measures required pursuant to s. 409.997 for the previous 12 months.

[29] *Supra,* FN 10, at 3.

[30] Department of Children and Families, *Risk Pool Peer Review Committee, Executive Summary Report, Fiscal Year 2022-23*, https://www.myflfamilies.com/sites/default/files/2023-05/Risk_Pool_Executive_Summary_FY22-23.pdf, p. 2.

[31] S. 409.988(1)(k), F.S.

Procurement by CBCs and Civil Penalties

Federal Requirements Governing Procurement by CBCs

The federal government awards federal program funds to DCF as the federal awarding agency or pass-through entity. Current law defines the pass-through entity as a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program. A non-federal entity means a state, local government, indigenous tribe, institution of higher education, or nonprofit organization that carries out a federal award as a recipient or subrecipient. [32]

CBCs must comply with state and federal statutory requirements and agency rules in the provision of contractual services.[33] To determine which federal rules apply to CBCs, DCF must first determine whether CBCs meet the federal classification of subrecipient or contractor. DCF, as the pass-through entity, must make a case-by-case determination whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract. The substance of the relationship is more important the form of the agreement.[34]

The table below describes the criteria that DCF must use to determine whether a CBC is a subrecipient or contractor; CBC's meet the criteria for subrecipients.

The Subrecipient Classification[35]	The Contractor Classification[36]
Determines a person's eligibility for federal assistance	Providers goods and services within normal business operations
Has its performance measured in relation to whether objectives of a federal program were met	Provides similar goods or services to many different purchasers
Has responsibility for programmatic decision-making	Normally operates in a competitive environment
Must adhere to applicable federal program requirements specified in the federal award	Provides goods or services that are ancillary to the operation of the federal program
Uses federal funds to carry out a program for a public purpose authorized in statute (as opposed to providing goods or services for the benefit of a pass-through entity)	Is not subject to compliance requirements of the federal program as a result of the agreement with the pass-through entity.

At the time of DCF's subaward to the subrecipient CBC, the DCF must put the CBC on notice of all federal requirements to ensure the federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the federal award.[37] DCF must evaluate each CBC's risk of noncompliance with federal statutes, regulations, and terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring protocols.[38] The federal government authorizes the DCF to consider taking enforcement action against noncompliant subrecipients.[39]

The federal government delegates certain federal subaward enforcement responsibilities to DCF. If a CBC fails to comply with federal law or the terms and conditions of a federal award, DCF may impose

[32] 2 C.F.R. § 200.1.
[33] S. 409.988(1)(i), F.S.
[34] 2 C.F.R. § 200.331.
[35] 2 C.F.R. § 200.331(a).
[36] 2 C.F.R. § 200.331(b).
[37] 2 C.F.R. § 200.332(a)(2).
[38] 2 C.F.R. § 200.332(b).
[39] 2 C.F.R. § 200.332(h).

additional conditions[40] on the subrecipient or contractor. If DCF determines that noncompliance cannot be remedied by imposing additional conditions, DCF may take one of more the following actions:[41]

1. Temporarily withhold cash payments pending correction of the deficiency by the non-federal entity or take more serve enforcement action.
2. Deny all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspend or terminate the federal award.
4. Initiate suspension or debarment proceedings.
5. Withhold further federal awards for the project or program.
6. Take other remedies that are legally available.

Under federal law, a nonprofit organization that carries out a Federal award as a recipient or subrecipient (i.e., a CBC) must provide for full and open competition in procuring goods and services.[42] When the value of the procurement for property or services under a federal award does not exceed the federal simplified acquisition threshold of $250,000,[43] or a lower threshold established by a non-federal entity, formal procurement methods are not required.[44] When the value of the procurement for property or services under a federal financial assistance award exceed the federal simplified acquisition threshold of $250,000, or a lower threshold established by a non-federal entity, formal procurement methods are required.[45]

A CBC may conduct noncompetitive procurements with federal award dollars if:

1. the acquisition of services does not exceed an established micro-purchase threshold,
2. the item is available only from a single source,
3. there is public exigency or an emergency,
4. the federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity[46], or
5. competition is deemed inadequate after solicitation of a number of sources.[47]

State Law Governing Procurement by CBC's

In Florida, chapter 287 governs the procurement of commodities and contractual services. Generally, if a procurement request for commodities or contractual services exceeds $35,000, the competitive solicitation process is mandatory.[48] However, purchases of certain contractual services and commodities are exempt from this requirement, such as:

- Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration.
- Services provided to persons with mental or physical disabilities by nonprofits recognized as 501(c)(3)s by the IRS.
- Medicaid services delivered to Medicaid eligible recipients.
- Family placement services.
- Prevention services related to mental health operated by nonprofits – including drug abuse prevention programs, child abuse prevention programs, and shelters for runaways.[49]

[40] Additional conditions include adjusting specific federal award conditions, requiring payments as reimbursements rather than a dvance payments, requiring more detailed financial reports, requiring additional project monitoring, requiring technical or management assistance, and establishing additional prior approvals. 2 C.F.R. 200.208.
[41] 2 C.F.R. § 200.339.
[42] 2 C.F.R. § 200.318-320.
[43] 48 C.F.R. § 2.101.
[44] 2 C.F.R. § 200.320(a).
[45] 2 C.F.R. § 200.320(b).
[46] e.g., a DCF waiver to bypass competitive procurement requirements that create inefficiencies or inhibit of the performance of the CBC's duties.
[47] 2 C.F.R. § 200.320(c)(1)-(5).
[48] Ss. 287.057(1), 287.017(2), F.S.
[49] S. 287.057(3)(e), F.S.

If an agency receives fewer than two responsive bids, proposals, or replies, the procuring agency may negotiate with the vendor on the best terms and conditions.[50] Also, an agency may award a non-competitive government contract if state or federal law prescribes with whom the agency must contract or if the rate of payment or the receipt of funds is established during the appropriations process.[51]

CBCs have additional limitations on their procurement under state law beyond the general requirements in ch. 287, F.S. Specifically, CBC's cannot directly provide more than 35 percent of all child welfare services unless the CBC can demonstrate a need within the CBC's geographic service area to exceed this threshold. Current law requires community alliances[52] to review the CBC's justification for need and to recommend whether DCF should approve or deny the CBC's request for an exemption from the 35 percent threshold.[53] When CBCs outsource contractual services, the subcontracts must specify how the third-party vendor helps the CBC meet established performance standards under the child welfare results-oriented accountability system.[54].

CBC Governance and Expenditures

Organization and Board Responsibilities

Each CBC must be organized as a Florida corporation or a governmental entity and be governed by a board of directors or a board committee composed of by board members.[55] The membership of the board of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency.

- For boards of directors, at least 75% of the membership must consist of Florida residents, and at least 51% of these Florida resident members must reside within the CBC service area. The board of directors must have the power to hire the CBC's executive director.
- For board committees, 100% of its membership must consist of persons residing within the CBC service area. The board committee must have the power to confirm the selection of an executive director.[56]

Regardless of organization, each governing body must approve its CBC budget, set the CBC's operational policy and procedures, and demonstrate financial responsibility through an organized plan for regular fiscal audits and the posting of a performance bond.[57]

Conflict of Interest Requirements

Section 409.987, F.S, addresses conflict of interests in CBC board decisionmaking. A CBC board member or officer must disclose to the board any activity that may reasonably be construed to be a conflict of interest before that activity may be initially considered and approved. This mandatory disclosure also applies to contract renewals.[58] A conflict of interest transaction manifests when a CBC board member or officer, or their relatives within the third degree of consanguinity by blood or marriage, does any of the following acts:

- enters into a contract or other transaction with the CBC for goods or services.
- holds a direct or indirect interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts or proposes business with the CBC.

[50] S. 287.057(6), F.S.
[51] S. 287.057(11), F.S.
[52] Current law requires DCF to establish community alliances in each county to provide a focal point for community participation and governance of community-based services. s. 20.19(5), F.S.
[53] S. 409.988(1)(j). F.S.
[54] *Id*.
[55] e.g., St. Johns County Board of Commissioners is the CBC serving St. Johns County in Circuit 7.
[56] S. 409.987(4), F.S.
[57] S. 409.987(4), F.S.
[58] S. 409.987,(7)(b) F.S.

- knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such board member or officer, or their relatives, with the CBC.[59]

A rebuttable presumption of a conflict of interest exists if the board acted on a proposed conflict of interest transaction without prior notice on the board's meeting agenda. The meeting agenda must clearly identify the existence of a potential conflict of interest for the proposed transaction. At the meeting, if an affirmative vote of two-thirds of all other non-interested board members present approve the proposed transaction, only then can the CBC board member or officer engage in the conflict of interest activity.[60] The interested CBC board member or officer must recuse himself or herself from the vote.[61] However, if the proposed transaction is not approved, the CBC board member or officer must decide whether to provide written notice of the board member's or officer's intent to not pursue the proposed transaction or to withdraw from CBC leadership.[62]

If a conflict-of-interest contract entered into between the CBC and a CBC board member or officer (or their relatives) was not properly disclosed, the contract is voidable. The board may terminate the contract with the formal consent of at least 20% of the voting interests of the CBC.

CBC Executive Compensation

A CBC lead agency administrative employee cannot receive a salary, whether in base pay or base pay plus bonus or incentive payments, in excess of 150% of the annual salary paid to the DCF Secretary from state-appropriated funds – including state-appropriated federal funds.[63] Additional federal requirements also apply. In practice, this is currently a maximum of $350,449.71 of combined state and federal funds, of which only $213,000 can be federal funds. According to DCF, during recent audits of CBC spending on executive compensation, some CBCs stated that because they had multiple DCF contracts, they believed they could exceed this cap.[64]

Remedies

As an immediate remedy for failure to comply with contract terms or in the event of performance deficiencies, all contracts between DCF and the CBCs must provide for tiered interventions and graduated penalties. Examples of available interventions and penalties include:

- Enhanced monitoring and reporting.
- Corrective action plans.
- Requirements to accept DCF's technical assistance and consultation.
- Financial penalties requiring a CBC to reallocate funds from administrative costs to direct care for children.
- Early termination of contracts.[65]

In the event that DCF determines health, safety, and welfare of the dependent children currently cared for or supervised by a CBC is in imminent danger, DCF may petition a court of competent jurisdiction for the appointment of a receiver to ensure the continued health, safety, and welfare of the dependent children.[66] According to current law, DCF can make at least two arguments in a receivership petition:

- DCF determines that conditions exist in the CBC which present an imminent danger to the health, safety, or welfare of dependent children under the CBC's care or supervision.
- The CBC cannot meet its current financial obligations to its employees, contractors, or foster parents. The issuance of bad checks or the existence of delinquent obligations for payment of

[59] S. 409.987(7)(a), F.S.
[60] S. 409.987(7)(c), F.S.
[61] S. 409.987(e), F.S.
[62] S. 409.987(7)(d), F.S.
[63] S. 409.992(3), F.S.
[64] Florida Department of Children and Families, Agency Analysis of 2024 House Bill 1061, p. 6.
[65] S. 409.996(d), F.S.
[66] S. 409.994, F.S.

salaries, utilities, or invoices for essential services or commodities constitute prima facie evidence that the CBC lacks the financial ability to meet its financial obligations.[67]

The court may appoint a receiver for up to 90 days. DCF may petition for additional 30-day extensions. Sixty days after the appointment of the receiver, and every 30 days until the receivership is terminated, DCF must submit to the court an assessment of the CBC's ability to ensure the health, safety, and welfare of the dependent children under its supervision.[68]

Forensic Audits of CBCs

In December 2021, the DCF Inspector General (IG) identified 11 CBCs that routinely transferred funds to related parties. The IG expressed concern over this practice because funds transferred to related parties compromises DCF's ability to track further expenditures of state and federal dollars. Current law mandates that CBCs abide by DCF's financial guidelines and allow for a regular independent auditing of its financial activities,[69] and thus DCF procured the services of two auditing firms with the expertise to perform a forensic audit of these CBCs. As of January 2024, these auditing firms completed forensic examination reports for 6 CBCs and submitted them to DCF in August 2023.[70]

In response to the findings of the initial forensic examinations, the Department issued Corrective Action Plans (CAPs) to address key findings which included:

- Non-compliant contract procurement for related and non-related entities.
- Receipt of Paycheck Protection Program Loans that were not properly reimbursed to the State.
- Board approval of deficit budgets.
- Allocated officer compensation in excess of mandatory caps.
- Non-compliance with Cost Allocation Plans.[71]

Effect of the Bill

Contractual Obligations

Contract Term

The bill prohibits DCF from renewing a CBC contract, instead requiring DCF to reprocure it at the end of the five-year term. The bill allows DCF to extend a CBC contract for one year.

General Governance

The bill requires board members to provide fiduciary oversight to prevent conflicts of interest, to promote accountability and transparency for the system of care, and to protect state and federal funding from misuse. The bill requires at least 75 percent of the membership of the board of directors or the board committee be composed of Florida residents. CBCs must ensure that board members participate in annual training related to their responsibilities.

Related Parties and Conflict of Interest Transactions

The bill restricts the ability of CBCs to transact with third-party entities that are directly or indirectly related to the CBC itself by requiring CBCs to competitively procure all contracts with related parties in excess of $35,000.

[67] S. 409.994, F.S.
[68] S. 409.994(2)(d), F.S.
[69] S. 409.988(1)(c), F.S.
[70] The six CBC's were Northwest Florida Health Network, Embrace Families, Partnership for Strong Families, Children's Network of Southwest Florida, Kids First of Florida, and Brevard Family Partnership. The audit reports for the first six CBC's are at https://www.myflfamilies.com/community-based-care-lead-agencies-audit-findings (last visited Jan. 26, 2024).
[71] *Supra*, FN 64.

The bill defines related party as "any entity of which a director or an executive of the entity is also directly or indirectly related to, or has a direct or indirect financial or other material interest in, the lead agency. The term also includes any subsidiary, parent entity, associate firm, or joint venture, or any entity that is controlled, influenced, or managed by another entity or an individual related to such entity, including an individual who is, or was within the immediately preceding 3 years, an executive officer or a board member of the entity."

The bill requires the board to disclose any known or actual conflicts of interest – including with related parties for the provision of management, administrative services, or oversight.

The bill expands the definition of conflict of interest to cover director level positions in the CBCs and the relatives of a board member, director, or officer of the CBCs. The bill prohibits directors and their relatives from knowingly obtaining a direct or indirect personal, financial, professional, or other benefit as a result of the conflict of interest relationship.

The bill requires DCF to assess a civil penalty of $5,000 per occurrence on a CBC for each known and potential conflict of interest that the CBC fails to disclose to DCF. In addition, the bill requires DCF to assess a civil penalty on a CBC when that CBC procures a contract for which a conflict of interest was not disclosed to DCF prior to the execution of the contract. For the first offense, DCF must assess a civil penalty of $50,000. For each subsequent offense, DCF must assess a civil penalty of $100,000. Finally, the bill requires the CBCs to reprocure transactions that involved a conflict of interest.

The bill authorizes DCF to prohibit the execution of a contract for which a conflict of interest exists, or will exist after execution.

CBC Executive Pay

The bill prohibits a CBC administrative employee from receiving a salary, whether base pay or base pay combined with any bonus or incentive payments from the CBC or any related party, in excess of 150 percent of the annual salary paid to the DCF Secretary from state-appropriated funds. The bill applies this limitation regardless of the number of contracts a CBC executes with DCF.

Financial Integrity

The bill requires the CBCs to comply with regular, independent auditing of its financial activities, including any requests for records associated with such financial audits within the timeframe established by DCF or its contracted vendors.

Reporting Requirements

The bill expands the minimum data points that the CBCs must publish on its website by the 15th day of each month. Specifically, the bill requires the CBCs to report four new data points:

1. The number of unlicensed placements for the previous month.
2. The percentages and trends for foster parent and group home recruitment and licensure for the previous month.
3. The percentage of families being served through family support, in-home, and out-home services for the previous month.
4. The percentage of cases that converted from nonjudicial to judicial for the previous month.

Allocation of Core Service Funds

Effective July 1, 2025, the bill eliminates the current equity allocation model and replaces it with a new actuarially sound, tiered payment model that adjusts for workload fluctuations and incentivizes prevention, family preservation, and permanency. The bill creates a three-tiered payment model.

The bill establishes fixed payments for Tier 1 operational base expenses and fixed costs that are not sensitive to the number of children and families served. The bill allows Tier 1 expenses to include administrative expenses, lease payments, asset depreciation, utilities, select components of case management, mandated activities such as training, quality, and contract management, and activities performed for children and families which are nonjudicial and who are not candidates for Title IV-E funding. The bill authorizes Tier 1 fixed payments to vary by geographic catchment area and cost of living differences.

The bill establishes variable payments for the Tier 2 per-child, per-month payment. The bill provides a Tier 2 payment rate that blends out-of-home rates and in-home rates specific to each lead agency. This rate incentivizes CBCs to provide services in the least restrictive safe placement.

The bill requires DCF to establish and annually update Tier 1 and Tier 2 payment rates to maintain cost expectations aligned with the population served, the services provided, and the environment.

The bill establishes financial incentive payments for Tier 3 and requires DCF to reward CBCs that achieve performance measures aligned with DCF's goals of prevention, family preservation, and permanency.

Effective July 1, 2025, unless otherwise specified in the General Appropriations Act, the bill requires DCF to allocate all funding for core services based on the new methodology.

The bill requires DCF to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes each CBC's actual performance in attaining the previous fiscal year's targets, recommendations for adjustments to lead agency funding, and adjustments to the tiered payment model if necessary. The bill requires DCF to submit this annual report by December 1st of each year.

Because the model requires additional refinement as discussed above, it is unknown what the specific impact is on each CBC once it would be fully implemented in FY 24-25.

Procurements by CBCs

The bill requires CBCs to competitively procure all contracts, consistent with the simplified acquisition threshold as specified the Code of Federal Regulations; the simplified acquisition threshold is currently $250,000. The bill requires DCF to establish by contract financial penalties or sanctions that DCF must enforce when a CBC is not compliant with applicable local, state, or federal law for the procurement of commodities or contractual services.

The bill requires CBCs to procure contracts for real property and professionals services according to established purchasing practices. If a CBC sells, transfers, or dispossesses of real property procured during the contract term, the bill requires any resulting funds from the sell, transfer, or dispossession to be returned to DCF. When DCF or a CBC terminates a contract, the bill grants DCF immediate rights to the retention and ownership of all real property that the CBC procured.

When a CBC subcontracts for the provision of services, the bill requires subcontracts in excess of $250,000 to comply with the federal competitive procurement process. The bill prohibits a CBC from subcontracting administrative and management functions. The bill prevents a CBC from providing more than 35 percent of all child welfare services unless it can demonstrate a need within its geographic service area where there is a lack of viable providers available to perform the necessary services.

The bill limits the waiver period to two years. The bill requires CBCs to reprocure each subcontract before the end of the two-year waiver period.

CBC Receivership

The bill lowers the threshold level of danger at which DCF can petition the court for a receivership of a CBC. Specifically, the bill allows DCF to file a petition in court for the receivership of a CBC when DCF determines that conditions exist at the CBC which present any danger to the health, safety, or welfare of the dependent children under that CBC's care or supervision.

The bill also lowers the threshold risk of financial insolvency at which DCF can petition the court for a receivership of a CBC. Specifically, the bill allows DCF to file a petition in court the receivership of a CBC when DCF determines a CBC is unlikely to meet its current financial obligations to its employees, contractors, or foster parents.

Remedies for Noncompliance or Inadequate Performance

The bill establishes contractual actions that DCF may enforce against a CBC if the CBC fails to comply with contract terms or experiences performance deficiencies in the opinion of DCF. Specifically, the bill authorizes DCF to reclaim funds from a CBC's administrative costs as a financial penalty when the CBC fails to provide timely, sufficient resolution of deficiencies resulting in a corrective action plan or other performance improvement plan issued by DCF. The bill allows financial penalties to manifest as liquidated damages.

If DCF reclaims funds for a CBC's administrative costs as a financial penalty, the bill requires DCF to spend those funds to support service delivery of quality improvement activities for children in the CBC's care.

The bill requires contracts between DCF and CBCs to include a provision that requires a CBC pay sanctions and disincentives for failure to comply with contractual terms. The bill requires DCF to establish a schedule of daily monetary sanctions or disincentives for CBCs. The bill requires the schedule of daily monetary sanctions or disincentives to be incorporated by reference into the contracts between DCF and CBCs. The bill vests the right to determine the monetary value of liquidated damages with DCF.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amending s. 409.987, F.S., relating to lead agency procurement; boards; conflicts of interest.
Section 2: Amending s. 409.988, F.S., relating to community-based care lead agency duties; general provisions.
Section 3: Amending s. 409.991, F.S., relating to allocation of funds for community-based care lead agencies.
Section 4: Amending s. 409.992, F.S., relating to lead agency expenditures.
Section 5: Amending s. 409.994, F.S., relating to community-based care lead agencies; receivership.
Section 6: Amending s. 409.996, F.S., relating to duties of the department of children and families.
Section 7: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate pending refinement of the actuarial allocation model, beginning in FY 2025-26.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The elimination of the equity allocation model and the substitution of an actuarially sound, tiered payment allocation model means individual CBC funding levels may change and fluctuate. The specific impact is indeterminate.

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:

DCF has sufficient rulemaking authority to carry out the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to community-based child welfare agencies; amending s. 409.987, F.S.; revising requirements for contracts the Department of Children and Families has with community-based care lead agencies; revising requirements for an entity to serve as a lead agency; requiring that lead agencies ensure that board members participate in certain annual training; revising the definition of the term "conflict of interest"; defining the term "related party"; requiring the lead agency's board of directors to disclose any known or potential conflicts of interest; prohibiting a lead agency from entering into a contract or being a party to a transaction that creates a conflict of interest; requiring a lead agency to competitively procure certain contracts; imposing civil penalties on lead agencies for undisclosed conflicts of interest; providing applicability; requiring certain contracts to be reprocured; authorizing the department to prohibit execution of certain contracts; amending s. 409.988, F.S.; revising community-based care lead agency duties; amending s. 409.991, F.S.; revising the definition of the term "core services funds"; removing definitions; requiring that the allocation of core

services funds be based on a three-tiered payment model; providing specifications for the payment model; requiring that reports be submitted annually to the Governor and the Legislature by a specified date; requiring that all funding for core services be based on the department's methodology; amending s. 409.992, F.S.; revising requirements for lead agency practices in the procurement of commodities and contractual services; requiring the department to impose certain penalties for a lead agency's noncompliance with applicable procurement law; requiring lead agencies to comply with established purchasing practices for the procurement of real property and professional services; requiring the department to retain all rights to and ownership of real property procured upon termination of contracts; requiring certain funds to be returned to the department; providing applicability of certain limitations on the salaries of community-based care lead agency administrative employees; amending s. 409.994, F.S.; revising the conditions under which the department may petition a court for the appointment of a receiver for a community-based care lead agency; amending s. 409.996, F.S.; revising requirements for contracts between the department and lead agencies; revising the actions the department may

take under certain circumstances; making a technical change; providing duties of the department; providing an effective date.

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

Section 1. Subsections (3) and (4) and paragraphs (a) and (b) of subsection (7) of section 409.987, Florida Statutes, are amended, and paragraph (g) is added to subsection (7) of that section, to read:

409.987 Lead agency procurement; boards; conflicts of interest.—

(3) Notwithstanding s. 287.057, the department shall use 5-year contracts with lead agencies. The 5-year contract must be reprocured at the end of each 5-year contract term. The contract may be extended at the discretion of the department for up to 1 year, based on department needs.

(4) In order to serve as a lead agency, an entity must:

(a) Be organized as a Florida corporation or a governmental entity.

(b) Be governed by a board of directors or a board committee composed of board members. Board members shall provide oversight and ensure accountability and transparency for the system of care. The board of directors shall provide fiduciary oversight to prevent conflicts of interest, promote

accountability and transparency, and protect state and federal funding from misuse. The membership of the board of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency, which must provide that at least 75 percent of the membership of the board of directors or board committee must be composed ~~consist~~ of persons residing in this state, and at least 51 percent of the state residents on the board of directors must reside within the service area of the lead agency. The lead agency shall ensure that board members participate in annual training related to their responsibilities. However, for procurements of lead agency contracts initiated on or after July 1, 2014:

1. At least 75 percent of the membership of the board of directors must be composed ~~consist~~ of persons residing in this state, and at least 51 percent of the membership of the board of directors must be composed ~~consist~~ of persons residing within the service area of the lead agency. If a board committee governs the lead agency, 100 percent of its membership must be composed ~~consist~~ of persons residing within the service area of the lead agency.

2. The powers of the board of directors or board committee include, but are not limited to, approving the lead agency's budget and setting the lead agency's operational policy and procedures. A board of directors must additionally have the power to hire the lead agency's executive director, unless a

board committee governs the lead agency, in which case the board committee must have the power to confirm the selection of the lead agency's executive director.

(c) Demonstrate financial responsibility through an organized plan for regular fiscal audits and the posting of a performance bond.

(7)(a) As used in this subsection, the term:

1. "Activity" includes, but is not limited to, a contract for goods and services, a contract for the purchase of any real or tangible property, or an agreement to engage with a lead agency for the benefit of a third party in exchange for an interest in real or tangible property, a monetary benefit, or an in-kind contribution.

2. "Conflict of interest" means when a board member or an officer, or a relative of a board member, director, or ~~an~~ officer, or a relative of a board member, director, or officer, of a lead agency does any of the following:

a. Enters into a contract or other transaction for goods or services with the lead agency.

b. Holds a direct or indirect interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the lead agency or proposes to enter into a contract or other transaction with the lead agency. For purposes of this paragraph, the term "indirect interest" has the same meaning as

in s. 112.312.

c. Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such board member, director, or officer, or relative of the board member, director, or officer, with the lead agency. For purposes of this paragraph, the term "benefit" does not include per diem and travel expenses paid or reimbursed to board members or officers of the lead agency in connection with their service on the board.

3. "Related party" means any entity of which a director or an executive of the entity is also directly or indirectly related to, or has a direct or indirect financial or other material interest in, the lead agency. The term also includes any subsidiary, parent entity, associate firm, or joint venture, or any entity that is controlled, influenced, or managed by another entity or an individual related to such entity, including an individual who is, or was within the immediately preceding 3 years, an executive officer or a board member of the entity.

4.~~3.~~ "Relative" means a relative within the third degree of consanguinity by blood or marriage.

(b)1. For any activity that is presented to the board of a lead agency for its initial consideration and approval ~~after July 1, 2021~~, or any activity that involves a contract that is being considered for renewal ~~on or after July 1, 2021, but~~

~~before January 1, 2022~~, a board member, a director, or an officer of a lead agency shall disclose to the board any activity that may reasonably be construed to be a conflict of interest before such activity is initially considered and approved or a contract is renewed by the board. A rebuttable presumption of a conflict of interest exists if the activity was acted on by the board without prior notice as required under paragraph (c). The board shall disclose any known actual or potential conflicts to the department.

2. A lead agency may not enter into a contract or be a party to any transaction that creates a conflict of interest, including with related parties for the provision of management or administrative services or oversight. The lead agency shall competitively procure all contracts with related parties in excess of $35,000 ~~For contracts with a lead agency which are in existence on July 1, 2021, and are not subject to renewal before January 1, 2022, a board member or an officer of the lead agency shall disclose to the board any activity that may reasonably be construed to be a conflict of interest under this section by December 31, 2021~~.

(g)1. Civil penalties in the amount of $5,000 per occurrence shall be imposed for each known and potential conflict of interest, as described in paragraph (b), which is not disclosed to the department.

2. If a contract is procured for which a conflict of

interest was not disclosed to the department before execution of the contract, the following penalties apply:

a. A civil penalty in the amount of $50,000 for a first offense.

b. A civil penalty in the amount of $100,000 for a second or subsequent offense.

3. The civil penalties for failure to disclose a conflict of interest under subparagraphs 1. and 2. apply to any contract entered into, regardless of the method of procurement, including, but not limited to, formal procurement, single-source contracts, and contracts that do not meet the minimum threshold for formal procurement.

4. A contract procured for which a conflict of interest was not disclosed to the department before execution of the contract shall be reprocured.

5. The department may, at its sole discretion, prohibit execution of a contract for which a conflict of interest exists, or will exist after execution.

Section 2. Paragraphs (c), (i), (j), and (k) of subsection (1) of section 409.988, Florida Statutes, are amended to read:

409.988 Community-based care lead agency duties; general provisions.—

(1) DUTIES.—A lead agency:

(c) Shall follow the financial guidelines developed by the department and shall comply with regular, independent auditing

of its financial activities, including any requests for records associated with such financial audits within the timeframe established by the department or its contracted vendors ~~provide for a regular independent auditing of its financial activities~~. The results of the financial audit must ~~Such financial information shall~~ be provided to the community alliance established under s. 20.19(5).

(i) Shall comply with federal and state statutory requirements and agency rules in the provision of contractual services. Any subcontract in excess of $250,000 must comply with the competitive procurement process.

(j) May subcontract for the provision of services, excluding administrative and management functions, required by the contract with the lead agency and the department; however, the subcontracts must specify how the provider will contribute to the lead agency meeting the performance standards established pursuant to the child welfare results-oriented accountability system required by s. 409.997. The lead agency shall directly provide no more than 35 percent of all child welfare services provided unless it can demonstrate a need~~,~~ within the lead agency's geographic service area where there is a lack of viable providers available to perform the necessary services. The approval period to exceed the threshold shall be limited to 2 years. The lead agency shall reprocure for these services before the end of the 2-year period~~, to exceed this threshold~~. The

local community alliance in the geographic service area in which the lead agency is seeking to exceed the threshold shall review the lead agency's justification for need and recommend to the department whether the department should approve or deny the lead agency's request for an exemption from the services threshold. If there is not a community alliance operating in the geographic service area in which the lead agency is seeking to exceed the threshold, such review and recommendation shall be made to the department. ~~by representatives of local stakeholders, including at least one representative from each of the following:~~

~~1. The department.~~

~~2. The county government.~~

~~3. The school district.~~

~~4. The county United Way.~~

~~5. The county sheriff's office.~~

~~6. The circuit court corresponding to the county.~~

~~7. The county children's board, if one exists~~.

(k) Shall publish on its website by the 15th day of each month at a minimum the data specified in subparagraphs 1.-9. ~~1.-5.~~, calculated using a standard methodology determined by the department, for the preceding calendar month regarding its case management services. The following information must ~~shall~~ be reported by each individual subcontracted case management provider, by the lead agency, if the lead agency provides case

management services, and in total for all case management services subcontracted or directly provided by the lead agency:

1. The average caseload of case managers, including only filled positions;

2. The total number and percentage of case managers who have 25 or more cases on their caseloads;

3. The turnover rate for case managers and case management supervisors for the previous 12 months;

4. The percentage of required home visits completed; ~~and~~

5. Performance on outcome measures required pursuant to s. 409.997 for the previous 12 months;~~.~~

6. The number of unlicensed placements for the previous month;

7. The percentages and trends for foster parent and group home recruitment and licensure for the previous month;

8. The percentage of families being served through family support, in-home, and out-of-home services for the previous month; and

9. The percentage of cases that converted from nonjudicial to judicial for the previous month.

Section 3. Section 409.991, Florida Statutes, is amended to read:

409.991 Allocation of funds for community-based care lead agencies.—

(1) As used in this section, the term~~:~~

~~(a)~~ "core services funds" means all funds allocated to ~~community-based care~~ lead agencies operating under contract with the department pursuant to s. 409.987. The term does not include any of~~, with~~ the following ~~exceptions~~:

(a)~~1.~~ Funds appropriated for independent living services.~~;~~

(b)~~2.~~ Funds appropriated for maintenance adoption subsidies.~~;~~

(c)~~3.~~ Funds allocated by the department for child protective investigation service ~~investigations~~ training.~~;~~

(d)~~4.~~ Nonrecurring funds.~~;~~

(e)~~5.~~ Designated mental health wrap-around service ~~services~~ funds.~~;~~

(f)~~6.~~ Funds for special projects for a designated ~~community-based care~~ lead agency.~~; and~~

(g)~~7.~~ Funds appropriated for the Guardianship Assistance Program established under s. 39.6225.

~~(b) "Equity allocation model" means an allocation model that uses the following factors:~~

~~1. Proportion of the child population;~~

~~2. Proportion of child abuse hotline workload; and~~

~~3. Proportion of children in care.~~

~~(c) "Proportion of child population" means the proportion of children up to 18 years of age during the previous calendar year in the geographic area served by the community-based care lead agency.~~

~~(d) "Proportion of child abuse hotline workload" means the weighted average of the following subcomponents:~~

~~1. The average number of initial and additional child abuse reports received during the month for the most recent 12 months based on child protective investigations trend reports as determined by the department. This subcomponent shall be weighted as 20 percent of the factor.~~

~~2. The average count of children in investigations in the most recent 12 months based on child protective investigations trend reports as determined by the department. This subcomponent shall be weighted as 40 percent of the factor.~~

~~3. The average count of children in investigations with a most serious finding of verified abuse in the most recent 12 months based on child protective investigations trend reports as determined by the department. This subcomponent shall be weighted as 40 percent of the factor.~~

~~(e) "Proportion of children in care" means the proportion of the number of children in care receiving in-home services over the most recent 12-month period, the number of children whose families are receiving family support services over the most recent 12-month period, and the number of children who have entered into out-of-home care with a case management overlay during the most recent 24-month period. This subcomponent shall be weighted as follows:~~

~~1. Fifteen percent shall be based on children whose~~

~~families are receiving family support services.~~

~~2. Fifty-five percent shall be based on children in out-of-home care.~~

~~3. Thirty percent shall be based on children in in-home care.~~

(2) Effective July 1, 2025, allocation of core services funds must be based on an actuarially sound, tiered payment model. The tiered model's purpose is to achieve the overarching goals of a stable payment model that adjusts to workload and incentivizes prevention, family preservation, and permanency.

(a) Tier 1 provides operational base and fixed costs, which do not vary based on the number of children and families served. Tier 1 payments may vary by geographic catchment area and cost of living differences. The department shall establish and annually update Tier 1 payment rates to maintain cost expectations that are aligned with the population served, services provided, and environment. Tier 1 expenses may include:

1. Administrative expenditures.

2. Lease payment.

3. Asset depreciation.

4. Utilities.

5. Select components of case management, including administrative elements.

6. Mandated activities such as training, quality, and contract management.

7. Activities performed for children and families which are nonjudicial and not candidates for Title IV-E funding, including true prevention and community-focused activities.

(b) Tier 2 is a per-child, per-month payment designed to provide funding for lead agencies' expenses that vary based on the number of children served for a particular month. The payment rate blends out-of-home rates and in-home rates specific to each lead agency to create a rate that provides a financial incentive to lead agencies to provide services in the least restrictive safe placement. The department shall establish and annually update Tier 2 payment rates to maintain cost expectations that are aligned with the population served, services provided, and environment. Tier 2 rates must be set annually.

(c) Tier 3 provides financial incentives that the department shall establish to reward lead agencies that achieve performance measures aligned with the department's goals of prevention, family preservation, and permanency.

~~(2) The equity allocation of core services funds shall be calculated based on the following weights:~~

~~(a) Proportion of the child population shall be weighted as 5 percent of the total.~~

~~(b) Proportion of child abuse hotline workload shall be weighted as 35 percent of the total.~~

~~(c) Proportion of children in care shall be weighted as 60~~

~~percent of the total.~~

(3) By December 1 of each year, beginning in 2024, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes each lead agency's actual performance in attaining the previous fiscal year's targets, recommendations for adjustments to lead agency funding, and adjustments to the tiered payment model, if necessary ~~Beginning in the 2015-2016 state fiscal year, 100 percent of the recurring core services funding for each community-based care lead agency shall be based on the prior year recurring base of core services funds~~.

(4) Effective July 1, 2025, unless otherwise specified in the General Appropriations Act, the department shall allocate all funding for core services, based on the department's methodology ~~any new core services funds shall be allocated based on the equity allocation model as follows:~~

~~(a) Seventy percent of new funding shall be allocated among all community-based care lead agencies.~~

~~(b) Thirty percent of new funding shall be allocated among community-based care lead agencies that are funded below their equitable share. Funds allocated pursuant to this paragraph shall be weighted based on each community-based care lead agency's relative proportion of the total amount of funding below the equitable share~~.

Section 4. Subsections (1) and (3) of section 409.992,

Florida Statutes, are amended to read:

409.992 Lead agency expenditures.—

(1) The procurement of commodities or contractual services by lead agencies is ~~shall be~~ governed by the financial guidelines developed by the department and must comply with applicable state and federal law and follow good business practices. Pursuant to s. 11.45, the Auditor General may provide technical advice in the development of the financial guidelines.

(a) Lead agencies shall competitively procure all contracts, consistent with the simplified acquisition threshold as specified in 2 C.F.R. part 200. Financial penalties or sanctions, as established by the department and incorporated into the contract, shall be imposed by the department for noncompliance with applicable local, state, or federal law for the procurement of commodities or contractual services.

(b) Notwithstanding s. 402.73, for procurement of real property or professional services, lead agencies shall comply with established purchasing practices, including the provisions of s. 287.055, as required, for professional services, including engineering or construction design. Upon termination of the contract, the department shall immediately retain all rights to and ownership of real property procured. Any funds from the sale, transfer, or other dispossession of such property during the contract term shall be returned to the department.

(3) Notwithstanding any other provision of law, a

community-based care lead agency administrative employee may not receive a salary, whether base pay or base pay combined with any bonus or incentive payments from the lead agency or any related party, in excess of 150 percent of the annual salary paid to the secretary of the Department of Children and Families from state-appropriated funds, including state-appropriated federal funds. This limitation applies regardless of the number of contracts a community-based care lead agency may execute with the department. This subsection does not prohibit any party from providing cash that is not from appropriated state funds to a community-based care lead agency administrative employee.

Section 5. Paragraphs (c) and (d) of subsection (1) of section 409.994, Florida Statutes, are amended to read:

409.994 Community-based care lead agencies; receivership.—

(1) The Department of Children and Families may petition a court of competent jurisdiction for the appointment of a receiver for a community-based care lead agency established pursuant to s. 409.987 if any of the following conditions exist:

(c) The department determines that conditions exist in the lead agency which present a ~~an imminent~~ danger to the health, safety, or welfare of the dependent children under that agency's care or supervision. Whenever possible, the department shall make a reasonable effort to facilitate the continued operation of the program.

(d) The lead agency cannot meet, or is unlikely to meet,

its current financial obligations to its employees, contractors, or foster parents. Issuance of bad checks or the existence of delinquent obligations for payment of salaries, utilities, or invoices for essential services or commodities constitutes ~~shall constitute~~ prima facie evidence that the lead agency lacks the financial ability to meet its financial obligations.

Section 6. Paragraph (d) of subsection (1) of section 409.996, Florida Statutes, is amended 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 for the quality of contracted services and programs and shall ensure that, at a minimum, services are delivered in accordance with applicable federal and state statutes and regulations and the performance standards and metrics specified in the strategic plan created under s. 20.19(1).

(1) The department shall enter into contracts with lead agencies for the performance of the duties by the lead agencies established in s. 409.988. At a minimum, the contracts must do all of the following:

(d) Provide for contractual actions ~~tiered interventions and graduated penalties~~ for failure to comply with contract terms or in the event of performance deficiencies, as determined

appropriate by the department.

1. Such contractual actions must ~~interventions and penalties shall~~ include, but are not limited to:

~~1. Enhanced monitoring and reporting.~~

a.~~2.~~ Corrective action plans.

b.~~3.~~ Requirements to accept technical assistance and consultation from the department under subsection (6).

c.~~4.~~ Financial penalties, which ~~shall~~ require a lead agency to direct ~~reallocate~~ funds from administrative costs to the department. The department shall use the funds collected to support service delivery of quality improvement activities for children in the lead agency's care ~~to direct care for children~~. These penalties may be imposed for failure to provide timely, sufficient resolution of deficiencies resulting in a corrective action plan or other performance improvement plan issued by the department. Financial penalties may include liquidated damages.

d.~~5.~~ Early termination of contracts, as provided in s. 402.7305(3)(f) ~~s. 402.1705(3)(f)~~.

2. The department shall include in each lead agency contract executed a provision that requires payment to the department of sanctions or disincentives for failure to comply with contractual obligations. The department shall establish a schedule of daily monetary sanctions or disincentives for lead agencies, which schedule shall be incorporated by reference into the contract. The department is solely responsible for

determining the monetary value of liquidated damages.

Section 7. This act shall take effect July 1, 2024.

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 McFarland offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Subsections (3) and (4) and paragraphs (a) and (b) of subsection (7) of section 409.987, Florida Statutes, are amended, and paragraph (g) is added to subsection (7) of that section, to read:

409.987 Lead agency procurement; boards; conflicts of interest.—

(3) Notwithstanding s. 287.057, the department shall use 5-year contracts with lead agencies. The 5-year contract must be reprocured at the end of each 5-year contract term. The contract may be extended at the discretion of the department for up to 1

year, based on department needs.

(4) In order to serve as a lead agency, an entity must:

(a) Be organized as a Florida corporation or a governmental entity.

(b) Be governed by a board of directors or a board committee composed of board members. Board members shall provide oversight and ensure accountability and transparency for the system of care. The board of directors shall provide fiduciary oversight to prevent conflicts of interest, promote accountability and transparency, and protect state and federal funding from misuse. The board of directors must act in accordance with s. 617.0830. The membership of the board of directors or board committee must be described in the bylaws or articles of incorporation of each lead agency, which must provide that at least 75 percent of the membership of the board of directors or board committee must be composed ~~consist~~ of persons residing in this state, and at least 51 percent of the state residents on the board of directors must reside within the service area of the lead agency. The lead agency shall ensure that board members participate in annual training related to their responsibilities. However, for procurements of lead agency contracts initiated on or after July 1, 2014:

1. At least 75 percent of the membership of the board of directors must be composed ~~consist~~ of persons residing in this state, and at least 51 percent of the membership of the board of

directors must be composed ~~consist~~ of persons residing within the service area of the lead agency. If a board committee governs the lead agency, 100 percent of its membership must be composed ~~consist~~ of persons residing within the service area of the lead agency.

2. The powers of the board of directors or board committee include, but are not limited to, approving the lead agency's budget and setting the lead agency's operational policy and procedures. A board of directors must additionally have the power to hire the lead agency's executive director, unless a board committee governs the lead agency, in which case the board committee must have the power to confirm the selection of the lead agency's executive director.

(c) Demonstrate financial responsibility through an organized plan for regular fiscal audits and the posting of a performance bond.

(7)(a) As used in this subsection, the term:

1. "Activity" includes, but is not limited to, a contract for goods and services, a contract for the purchase of any real or tangible property, or an agreement to engage with a lead agency for the benefit of a third party in exchange for an interest in real or tangible property, a monetary benefit, or an in-kind contribution.

2. "Conflict of interest" means when a board member, a director, or an officer, or a relative of a board member,

director, or an officer, of a lead agency does any of the following:

a. Enters into a contract or other transaction for goods or services with the lead agency.

b. Holds a direct or indirect interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the lead agency or proposes to enter into a contract or other transaction with the lead agency. For purposes of this paragraph, the term "indirect interest" has the same meaning as in s. 112.312.

c. Knowingly obtains a direct or indirect personal, financial, professional, or other benefit as a result of the relationship of such board member, director, or officer, or relative of the board member, director, or officer, with the lead agency. For purposes of this paragraph, the term "benefit" does not include per diem and travel expenses paid or reimbursed to board members or officers of the lead agency in connection with their service on the board.

3. "Related party" means any entity of which a director or an officer of the entity is also directly or indirectly related to, or has a direct or indirect financial or other material interest in, the lead agency. The term also includes any subsidiary, parent entity, associate firm, or joint venture, or any entity that is controlled, influenced, or managed by another

entity or an individual related to such entity, including an individual who is, or was within the immediately preceding 3 years, an executive officer or a board member of the entity.

4.~~3.~~ "Relative" means a relative within the third degree of consanguinity by blood or marriage.

(b)1. For any activity that is presented to the board of a lead agency for its initial consideration and approval ~~after July 1, 2021~~, or any activity that involves a contract that is being considered for renewal ~~on or after July 1, 2021, but before January 1, 2022~~, a board member, a director, or an officer of a lead agency shall disclose to the board any activity that may reasonably be construed to be a conflict of interest before such activity is initially considered and approved or a contract is renewed by the board. A rebuttable presumption of a conflict of interest exists if the activity was acted on by the board without prior notice as required under paragraph (c). The board shall disclose any known actual or potential conflicts to the department.

2. A lead agency may not enter into a contract or be a party to any transaction that creates a conflict of interest, including with related parties for the provision of management or administrative services or oversight. ~~For contracts with a lead agency which are in existence on July 1, 2021, and are not subject to renewal before January 1, 2022, a board member or an officer of the lead agency shall disclose to the board any~~

~~activity that may reasonably be construed to be a conflict of interest under this section by December 31, 2021~~.

(g)1. Civil penalties in the amount of $5,000 per occurrence shall be imposed for each known and potential conflict of interest, as described in paragraph (b), which is not disclosed to the department. Civil penalties are to be paid by the board and not from any state or federal funds.

2. If a contract is executed for which a conflict of interest was not disclosed to the department before execution of the contract, the following penalties apply:

a. A civil penalty in the amount of $50,000 for a first offense.

b. A civil penalty in the amount of $100,000 for a second or subsequent offense.

3. The civil penalties for failure to disclose a conflict of interest under subparagraphs 1. and 2. apply to any contract entered into, regardless of the method of procurement, including, but not limited to, formal procurement, single-source contracts, and contracts that do not meet the minimum threshold for formal procurement.

4. A contract procured for which a conflict of interest was not disclosed to the department before execution of the contract shall be reprocured.

5. The department may, at its sole discretion, prohibit execution of a contract for which a conflict of interest exists, or will exist after execution.

Section 1. Paragraphs (c), (i), (j), and (k) of subsection (1) of section 409.988, Florida Statutes, are amended to read:

409.988 Community-based care lead agency duties; general provisions.—

(1) DUTIES.—A lead agency:

(c) Shall follow the financial guidelines developed by the department and shall comply with regular, independent auditing of its financial activities, including any requests for records associated with such financial audits within the timeframe established by the department or its contracted vendors ~~provide for a regular independent auditing of its financial activities~~. The results of the financial audit must ~~Such financial information shall~~ be provided to the community alliance established under s. 20.19(5).

(j) May subcontract for the provision of services, excluding management and oversight functions, required by the contract with the lead agency and the department; however, the subcontracts must specify how the provider will contribute to the lead agency meeting the performance standards established pursuant to the child welfare results-oriented accountability system required by s. 409.997. The lead agency shall directly provide no more than 35 percent of all child welfare services

provided unless it can demonstrate a need~~,~~ within the lead agency's geographic service area where there is a lack of qualified providers available to perform the necessary services. The approval period to exceed the threshold shall be limited to 2 years. If a lead agency wishes to continue its exemption it must submit a new request with updated evidence to department and the community alliance showing their efforts to recruit providers and that conditions have not changed. ~~, to exceed this threshold~~. The local community alliance in the geographic service area in which the lead agency is seeking to exceed the threshold shall review the lead agency's justification for need and recommend to the department whether the department should approve or deny the lead agency's request for an exemption from the services threshold. If there is not a community alliance operating in the geographic service area in which the lead agency is seeking to exceed the threshold, such review and approval or denial of the lead agency's request for an exemption from the services threshold must be made ~~recommendation shall be made~~ by the department and the department must specify the duration of the exemption. ~~by representatives of local stakeholders, including at least one representative from each of the following:~~

~~1. The department.~~

~~2. The county government.~~

~~3. The school district.~~

~~4. The county United Way.~~

~~5. The county sheriff's office.~~

~~6. The circuit court corresponding to the county.~~

~~7. The county children's board, if one exists~~.

(k) Shall publish on its website by the 15th day of each month at a minimum the data specified in subparagraphs 1.-9. ~~1.-5.~~, calculated using a standard methodology determined by the department, for the preceding calendar month regarding its case management services. The following information must ~~shall~~ be reported by each individual subcontracted case management provider, by the lead agency, if the lead agency provides case management services, and in total for all case management services subcontracted or directly provided by the lead agency:

1. The average caseload of case managers, including only filled positions;

2. The total number and percentage of case managers who have 25 or more cases on their caseloads;

3. The turnover rate for case managers and case management supervisors for the previous 12 months;

4. The percentage of required home visits completed; ~~and~~

5. Performance on outcome measures required pursuant to s. 409.997 for the previous 12 months; ~~.~~

6. The number of unlicensed placements for the previous month;

7. The percentages and trends for foster parent and group

home recruitment and licensure for the previous month;

8. The percentage of families being served through family support, in-home, and out-of-home services for the previous month; and

9. The percentage of cases that converted from nonjudicial to judicial for the previous month.

Section 2. Section 409.9913, Florida Statutes, is created to read:

409.9913 Actuarially-based tiered model for allocation of funds for community-based care lead agencies.—

(1) As used in this section, the term "core services funds" means all funds allocated to lead agencies operating under contract with the department pursuant to s. 409.987. The term does not include any of, with the following:

(a) Funds appropriated for independent living services.

(b) Funds appropriated for maintenance adoption subsidies.

(c) Funds allocated by the department for child protective investigation service training.

(d) Nonrecurring funds.

(e) Designated mental health wrap-around service funds.

(f) Funds for special projects for a designated lead agency.

(g) Funds appropriated for the Guardianship Assistance Program established under s. 39.6225.

(2) The purpose of the tiered model is to achieve a stable

payment model that adjusts to workload and incentivizes prevention, family preservation, and permanency. The tiers shall be as follows:

(a) Tier 1 provides operational base and fixed costs, which do not vary based on the number of children and families served. Tier 1 payments may vary by geographic catchment area and cost of living differences. The department shall establish and annually update Tier 1 payment rates to maintain cost expectations that are aligned with the population served, services provided, and environment. Tier 1 expenses may include:

1. Administrative expenditures.

2. Lease payment.

3. Asset depreciation.

4. Utilities.

5. Select components of case management, including administrative elements.

6. Mandated activities such as training, quality, and contract management.

7. Activities performed for children and families which are nonjudicial and not candidates for Title IV-E funding, including true prevention and community-focused activities.

(b) Tier 2 is a per-child, per-month payment to provide funding for lead agencies' expenses that vary based on the number of children served for a particular month. The payment rate shall blend out-of-home rates and in-home rates specific to

each lead agency to create a rate that provides a financial incentive to lead agencies to provide services in the least restrictive safe placement. The department shall establish and annually update Tier 2 payment rates to maintain cost expectations that are aligned with the population served, services provided, and environment. Tier 2 rates must be set annually.

(c) Tier 3 shall provide financial incentives that the department shall establish to reward lead agencies that achieve performance measures aligned with the department's goals of prevention, family preservation, and permanency.

(3) By December 1 of each year, beginning in 2027, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which includes each lead agency's actual performance in attaining the previous fiscal year's targets, recommendations for adjustments to lead agency funding, and adjustments to the tiered payment model, if necessary.

Section 3. Section 409.995, Florida Statutes, is created to read:

409.995 Implementation of actuarially-based tiered model for allocation of funds for community-based care lead agencies.—

(1) The model established under s. 409.9913 shall be implemented as follows:

(a) During the 2024-2025 fiscal year, the department

shall:

1. establish the requisite systems and processes to collect data necessary for system implementation.

2. refine the model in collaboration with the lead agencies.

(b) Funding for lead agencies shall be determined as follows:

1. During the 2024-2025 fiscal year, funding for a lead agency shall be as provided under s. 409.991, unless otherwise provided in the General Appropriations Act.

2. During the 2025-26 fiscal year, funding for a lead agency shall be the sum of 67% of the funding determined under s. 409.991, unless otherwise provided in the General Appropriations Act, and 33% of the funding determined under s. 409.9913.

3. During the 2026-27 fiscal year, funding for a lead agency shall be the sum of 33% of the funding determined under s. 409.991, unless otherwise provided in the General Appropriations Act, and 67% of the funding determined under s. 409.9913.

4. During fiscal year 2027-28, funding for a lead agency shall be as provided under s. 409.9913.

(2) The department shall submit quarterly reports to the Governor, President of the Senate, and Speaker of the House of Representatives, with the first report due October 31, 2024, and

subsequent reports submitted every three months thereafter. Each report shall contain, at a minimum, information regarding the department's actions, determinations, proposals, and results under this section.

(a) The first quarterly report for the 2024-25 fiscal year shall include a plan for implementation under this section, which shall be updated in subsequent reports.

(b) The second quarterly report for the 2024-25 fiscal year shall additionally provide details regarding:

1. Proposed payments under tier 3, including but not limited to the proposed goals and justifications for any incentive payments in the next fiscal year, measures and targets, and correlating payment amounts, which shall be updated in subsequent reports. The report shall describe how the Tier 3 goals and payments relate to the results-oriented accountability program under s. 409.997.

2. Proposed funding for the 2025-2026 fiscal year, as determined under s. 409.993, by lead agency.

(3) This section shall expire on June 30, 2029.

Section 4. Subsections (1) and (3) of section 409.992, Florida Statutes, are amended to read:

409.992 Lead agency expenditures.—

(1) The procurement of commodities or contractual services by lead agencies is ~~shall be~~ governed by the financial guidelines developed by the department and must comply with

applicable state and federal law and follow good business practices. Pursuant to s. 11.45, the Auditor General may provide technical advice in the development of the financial guidelines.

(a)1. Lead agencies shall competitively procure all contracts, consistent with the federal simplified acquisition threshold.

2. The lead agency shall competitively procure all contracts with related parties in excess of $35,000.

3. Financial penalties or sanctions, as established by the department and incorporated into the contract, shall be imposed by the department for noncompliance with applicable local, state, or federal law for the procurement of commodities or contractual services.

(b) Notwithstanding s. 402.73, for procurement of real property or professional services, lead agencies shall comply with established purchasing practices, including the provisions of s. 287.055, as required, for professional services, including engineering or construction design. Upon termination of the contract, the department shall immediately retain all rights to and ownership of real property procured. Any funds from the sale, transfer, or other dispossession of such property during the contract term shall be returned to the department.

(3) Notwithstanding any other provision of law, a community-based care lead agency administrative employee may not receive a salary, whether base pay or base pay combined with any

bonus or incentive payments from the lead agency or any related party, in excess of 150 percent of the annual salary paid to the secretary of the Department of Children and Families from state-appropriated funds, including state-appropriated federal funds. This limitation applies regardless of the number of contracts a community-based care lead agency may execute with the department. This subsection does not prohibit any party from providing cash that is not from appropriated state funds to a community-based care lead agency administrative employee.

Section 5. Paragraphs (c) and (d) of subsection (1) of section 409.994, Florida Statutes, are amended to read:

409.994 Community-based care lead agencies; receivership.—

(1) The Department of Children and Families may petition a court of competent jurisdiction for the appointment of a receiver for a community-based care lead agency established pursuant to s. 409.987 if any of the following conditions exist:

(c) The department determines that conditions exist in the lead agency which present a ~~an imminent~~ danger to the health, safety, or welfare of the dependent children under that agency's care or supervision. Whenever possible, the department shall make a reasonable effort to facilitate the continued operation of the program.

(d) The lead agency cannot meet, or is unlikely to meet, its current financial obligations to its employees, contractors, or foster parents. Issuance of bad checks or the existence of

delinquent obligations for payment of salaries, utilities, or invoices for essential services or commodities constitutes ~~shall constitute~~ prima facie evidence that the lead agency lacks the financial ability to meet its financial obligations.

Section 6. Paragraph (d) of subsection (1) of section 409.996, Florida Statutes, is amended 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 for the quality of contracted services and programs and shall ensure that, at a minimum, services are delivered in accordance with applicable federal and state statutes and regulations and the performance standards and metrics specified in the strategic plan created under s. 20.19(1).

(1) The department shall enter into contracts with lead agencies for the performance of the duties by the lead agencies established in s. 409.988. At a minimum, the contracts must do all of the following:

(d) Provide for contractual actions ~~tiered interventions and graduated penalties~~ for failure to comply with contract terms or in the event of performance deficiencies, as determined appropriate by the department.

1. Such contractual actions must ~~interventions and~~

~~penalties shall~~ include, but are not limited to:

a.~~1.~~ Enhanced monitoring and reporting.

b.~~2.~~ Corrective action plans.

c.~~3.~~ Requirements to accept technical assistance and consultation from the department under subsection (6).

d.~~4.~~ Financial penalties, which ~~shall~~ require a lead agency to direct ~~reallocate~~ funds from administrative costs to the department. The department shall use the funds collected to support service delivery of quality improvement activities for children in the lead agency's care ~~to direct care for children~~. These penalties may be imposed for failure to provide timely, sufficient resolution of deficiencies resulting in a corrective action plan or other performance improvement plan issued by the department. Financial penalties may include liquidated damages.

e.~~5.~~ Early termination of contracts, as provided in s. 402.7305(3)(f) ~~s. 402.1705(3)(f)~~.

2. The department shall include in each lead agency contract executed a provision that requires payment to the department of sanctions or disincentives for failure to comply with contractual obligations. The department shall establish a schedule of daily monetary sanctions or disincentives for lead agencies, which schedule shall be incorporated by reference into the contract. The department is solely responsible for determining the monetary value of liquidated damages.

Section 7. The Department of Children and Families shall

submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives on rules adopted, policies promulgated, and other actions to implement the requirements of this bill. The first such report shall be due September 30, 2024, and the second such report shall be due February 1, 2025.

Section 8. This section shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 409 Temporary Cash Assistance Eligibility
SPONSOR(S): Children, Families & Seniors Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee		Osborne	Brazzell

SUMMARY ANALYSIS

Public assistance programs help low-income families meet their basic needs, such as housing, food, and utilities. Two of the most commonly utilized public assistance programs in Florida are the Supplemental Nutrition Assistance Program (SNAP) or food assistance, and the Temporary Assistance for Needy Families (TANF) Temporary Cash Assistance (TCA) program. Both programs operate through federal and state level coordination and administration.

Federal law prohibits TCA and food assistance eligibility for any individual with a felony drug conviction and imposes a lifetime ban on such benefits, unless a state elects to opt out of the provision. Florida has opted out of this federal provision, with one limitation. Florida has implemented a modified ban wherein an applicant may not be denied benefits solely based on a felony drug conviction, unless the conviction is for drug trafficking. Studies have shown that public assistance such as TANF and SNAP reduces recidivism, while banning access to assistance has been linked to increased recidivism.

Human trafficking is a form of modern-day slavery involving the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. Victims of human trafficking are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. Victims of human trafficking often do not trust the police and rarely seek their assistance. When victims of human trafficking do interact with the criminal justice system, they are often perceived as criminals, rather than victims. Trafficking victims are frequently compelled to break the law and may be arrested as a result of that criminal act before they are recognized as a victim of trafficking.

PCS for HB 409 leaves the existing prohibition against individuals with felony drug trafficking convictions receiving TCA and SNAP assistance intact, but creates an exemption for victims of human trafficking. Under the bill, TCA and food assistance benefits may not be denied to an individual solely on the basis of a drug trafficking conviction if DCF has determined the individual to be a victim of human trafficking.

The bill has an indeterminant, negative fiscal impact on state government, and no fiscal impact on local government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public assistance programs help low-income families meet their basic needs, such as housing, food, and utilities.[1] The social safety net for American families depends on the coordination of a complex patchwork of federal, state, and local funding and program administration.[2] Through various programs, public assistance is capable of helping families to keep children in their family home through economic difficulties[3] and reducing the material hardship that has been linked to negative outcomes in children;[4] as well as driving the economy in times of market downturns[5] and supporting the career advancement of low-income adults striving to break the cycle of intergenerational poverty.[6]

Two of the most commonly utilized public assistance programs in Florida are the Supplemental Nutrition Assistance Program (SNAP) or food assistance, and the Temporary Assistance for Needy Families (TANF) Temporary Cash Assistance (TCA) program.[7]

Temporary Assistance for Needy Families (TANF)

The Temporary Assistance for Needy Families (TANF) system was established at the federal level in 1996 through the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.[8] PRWORA ended the Aid to Families with Dependent Children (AFDC) program, a federal program which provided dedicated funding for cash assistance to needy families with children, and alternatively created the broad-purpose TANF block grant.[9] TANF became effective July 1, 1997, and was reauthorized by the Deficit Reduction Act of 2005.

Temporary Cash Assistance (TCA)

[1] National Conference of State Legislatures, *Introduction to Benefits Cliffs and Public Assistance Programs* (2023). Available at https://www.ncsl.org/human-services/introduction-to-benefits-cliffs-and-public-assistance-programs (last visited January 17, 2024).
[2] Brookings Institute, *State Social Safety Net Policy: How are States Addressing Economic Need?* (2023). Available at https://www.brookings.edu/events/state-social-safety-net-policy-how-are-states-addressing-economic-need/ (last visited January 17, 2024).
[3] Providing assistance to needy families so that children can be cared for in their own homes is one of the four purposes of the TANF program. *See*, Office of Family Assistance, *About TANF* (2022). Available at https://www.acf.hhs.gov/ofa/programs/tanf/about (last visited January 17, 2024). See also, Gennetian, L. & Magnuson, K., *Three Reasons Why Providing Cash to Families with Children is a Sound Policy Investment* (2022). Center on Budget and Policy Priorities. Available at https://www.cbpp.org/research/income-security/three-reasons-why-providing-cash-to-families-with-children-is-a-sound (last visited January 17, 2024).
[4] Karpman, M., Gonzalez, D., Zuckerman, S., & Adams, G., *What Explains the Widespread Material Hardships among Low-Income Families with Children?* (2018). Urban Institute. Available at https://www.urban.org/sites/default/files/publication/99521/what_explains_the_widespread_material_hardship_among_low-income_families_with_children_0.pdf (last visited January 17, 2024).
[5] Vogel, S., Miller, C., & Ralston, K, *Impact of USDA's Supplemental Nutrition Assistance Program (SNAP) on Rural and Urban Economies in the Aftermath of the Great Recession* (2021). USDA, Economic Research Service Economic Research Report Number 296. Available at https://ssrn.com/abstract=3938336 (last visited January 17, 2024).
[6] Duncan, G. & Holzer, H, *Policies that Reduce Intergenerational Poverty* (2023). The Brookings Institute. Available at https://www.brookings.edu/articles/policies-that-reduce-intergenerational-poverty/ (last visited January 17, 2024).
[7] Office of Program Policy Analysis and Government Accountability (OPPAGA). *Research Memorandum: Economic Self-Sufficiency*, Research Product 10. On file with the Children, Families & Seniors Subcommittee.
[8] Center on Budget and Policy Priorities. *Policy Basics: Temporary Assistance for Needy Families* (2022). Available at https://www.cbpp.org/research/family-income-support/policy-basics-an-introduction-to-tanf (last visited January 24, 2024). *See also*, US Department of Health & Human Services, Office of Family Assistance, *Major Provisions of the Welfare Law* (1997). Available at https://www.acf.hhs.gov/ofa/policy-guidance/major-provisions-welfare-law (last visited January 24, 2024), for more information on PRWORA.
[9] Congressional Research Service. *Temporary Assistance for Needy Families: The Decline in Assistance Receipt Among Eligible Individuals* (2023). Available at https://crsreports.congress.gov/product/pdf/R/R47503 (last visited January 24, 2024).

Direct cash assistance to needy families is the foundation of public welfare in the US.[10] Prior to the establishment of TANF in 1996, direct cash assistance to needy families was the primary method of providing support to low-income families with children. Since the transition to the TANF block grant system, the number of families receiving direct cash assistance has waned significantly, even among eligible populations, and the majority of TANF funds are allocated for indirect methods of assisting families.[11]

The Temporary Cash Assistance (TCA) Program is Florida's direct cash assistance program for needy families. The TCA program is one of several Florida programs funded with the TANF block grant. Through the TCA program, families who meet specific technical, income, and asset requirements[12] may receive cash assistance in the form of monthly payments deposited into an electronic benefits transfer (EBT) account.[13]

TCA is administered by several state agencies through a series of contracts and memoranda of understanding. The Department of Children and Families (DCF) receives the federal TANF block grant funds, processes applications, determines initial eligibility, monitors ongoing eligibility, and disburses benefits to recipients. The Department of Commerce[14] (Florida Commerce) is responsible for financial and performance reporting to ensure compliance with federal and state measures and for providing training and technical assistance to Local Workforce Development Boards (LWDBs). LWDBs provide information about available jobs, on-the-job training, and education and training services within their respective areas and contract with one-stop career centers.[15] CareerSource Florida has planning and oversight responsibilities for all workforce-related programs and contracts with the LWDBs on a performance-basis.[16]

The number of families receiving TCA dramatically increased during the COVID-19 pandemic, peaking at more than 50,000 families receiving TCA payments in July of 2020.[17] While TCA caseloads have not yet returned to pre-pandemic levels, they have decreased steadily since July 2020. In November 2023, 34,015 families, including 44,309 children, received TCA.[18]

TCA Eligibility

[10] Public cash assistance to needy families has its origin in the early 1900s; state and local entities financed "mother's pension" programs that provided support to single, often widowed, mothers so that children could be raised in their family homes rather than be institutionalized. *See*, Congressional Research Service, *The Temporary Assistance for Needy Families (TANF) Block Grant: A Legislative History* (2023). Available at https://crsreports.congress.gov/product/pdf/R/R44668 (last visited January 24, 2024).
[11] *Supra*, note 9.
[12] Children must be under the age of 18, or under age 19 if they are full time secondary school students. 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. *See*, Florida Department of Children and Families, *Temporary Cash Assistance (TCA)*. Available at https://www.myflfamilies.com/services/public-assistance/temporary-cash-assistance (last visited January 14, 2024).
[13] Florida Department of Children and Families. *Temporary Cash Assistance Fact Sheet* (2019). Available at https://www.myflfamilies.com/sites/default/files/2022-10/tcafactsheet_0.pdf (last visited January 10, 2024).
[14] The Department of Commerce, formerly known as the Department of Economic Opportunity, was renamed as such in the 2023 Legislative session. *See*, Governor DeSantis Signs Legislation to Streamline Economic Development in Florida (2023). Available at https://www.flgov.com/2023/05/31/governor-desantis-signs-legislation-to-streamline-economic-development-in-florida/ (last visited January 24, 2024).
[15] Florida Department of Commerce, CareerSource Florida, *Workforce Innovation and Opportunity Act Annual Statewide Performance Report* (2023). Available at https://careersourceflorida.com/wp-content/uploads/2023/12/2022-23-WIOA-Annual-Performance-Report.pdf (last visited January 20, 2024).
[16] *Id.*
[17] Florida Department of Children and Families. *ESS Standard Reports: Caseload Report*. Available at https://www.myflfamilies.com/services/public-assistance/additional-resources-and-services/ess-standard (last visited January 5, 2024)
[18] Florida Department of Children and Families. *ESS Standard Reports: Flash Points*. Available at https://www.myflfamilies.com/services/public-assistance/additional-resources-and-services/ess-standard (last visited January 5, 2024).

States have broad discretion in determining who is eligible for cash assistance. Florida's TCA program requires applicants to meet all of the following criteria to be eligible:[19]

- Be a U.S. citizen or qualified noncitizen;[20]
- Be a legal resident of Florida;
- Have a minor child residing with a custodial parent or relative caregiver, or be a pregnant woman in the 9th month of pregnancy;
- Have a gross income of 185 percent or less of the federal poverty level;[21]
- Have liquid or nonliquid resources, of all members of the family, valued at less than $2,000.[22]
- Register for work with the Local Workforce Development Board (LWDB), unless an applicant qualifies for an exemption.

Florida imposes a lifetime limit of 48 cumulative months for an adult to be eligible for and receive cash assistance. Current law outlines specific, limited circumstances under which a person may be exempt from the time limitation;[23] however, most households receive TCA for fewer than six months.[24]

TCA Work Requirements

To be eligible for full-family TCA, work-eligible adult family members must participate in work activities in accordance with s. 445.024, F.S., unless they qualify for an exemption.[25] Individuals who fail to comply with the work requirements may be sanctioned.[26] Individuals are required to participate in work activities for the maximum number of hours allowable under federal law.[27] 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.

Work Participation Requirements[28]	
Family Composition	**Required Work Participation Hours**
Single parent with a child under age 6	20 hours weekly of core work activities
Single parent with a child over 6, or two-	30 hours weekly with at least 20 hours of

[19] Florida Department of Children and Families. *Temporary Assistance for Needy Families – State Plan Renewal, October 1, 2020 – September 30, 2023*. Available at https://www.myflfamilies.com/sites/default/files/2022-10/TANF-Plan.pdf (last visited January 5, 2024).
[20] S. 414.095(3), F.S. A qualified noncitizen includes an individual who is admitted to the United States as a refugee or who is granted asylum, a Cuban or Haitian entrant, or a noncitizen who has been admitted as a permanent resident. It also 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, and has applied for or received protection under the federal Violence Against Women Act, if certain criteria are met.
[21] Gross income cannot exceed 185% FPL, and a family's countable income cannot exceed the payment standard for the family size. There is a $90 deduction on earned income per individual. *See*, Florida Department of Children and Families, *Temporary Cash Assistance (TCA)*. Available at https://www.myflfamilies.com/services/public-assistance/temporary-cash-assistance (last visited January 22, 2024). For 2024, 185% FPL for a family of four is $57,720; *See*, US Department of Health and Human Services, *Poverty Guidelines* (2024). Available at https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines (last visited January 23, 2024).
[22] Licensed vehicles with a combined value of not more than $8,500 are excluded if a family includes individuals subject to the work requirement, or if the vehicle is necessary to transport a disabled family member and the vehicle has been specially equipped to transport the disabled person. *See*, s. 414.075, F.S.
[23] S. 414.105, F.S.
[24] CareerSource Florida, *Temporary Assistance for Needy Families (TANF) Transitional Benefits Feasibility Study*. (2023). On file with the Children, Families & Seniors Subcommittee.
[25] S. 414.095(1), F.S. A person may be exempt from the work requirement if they receive benefits under the Supplemental Security Income Program or the Security Disability Program, is a single parent of a child under three months of age (parenting preparation activities may be alternatively required), is exempt from the TCA time limitation due to hardship, or not considered work-eligible under federal policy. *See also*, Florida Department of Children and Families. *Temporary Assistance for Needy Families – State Plan Renewal, October 1, 2020 – September 30, 2023*. Available at https://www.myflfamilies.com/sites/default/files/2022-10/TANF-Plan.pdf (last visited January 5, 2024).
[26] S. 414.065, F.S.
[27] S. 445.024(2), F.S.
[28] Department of Children and Families, *Temporary Assistance for Needy Families (TANF): An Overview of Program Requirements* (2016). On file with the Children, Families & Seniors Subcommittee.

parent families where one parent is disabled	core work activities
Married teen or teen head of household under age 20	Maintains satisfactory attendance at secondary school or the equivalent, or participates in education related directly to employment for at least 20 hours weekly
Two-parent families who do not receive subsidized child care	35 hours weekly with at least 30 hours of core work activities, combined between both parents
Two-parent families who receive subsidized child care	55 hours weekly with at least 50 hours in core activities, combined between both parents

Pursuant to federal rule[29] and state law,[30] there are 12 distinct types of work activities which can be used to satisfy a TCA recipient's work requirement.[31] The recognized work activities count toward a TCA participant's work requirement differently dependent on personal and family characteristics. Not every TCA participant may use each activity to satisfy the entirety of their work requirement. The list of recognized work activities include:

- 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.[32]

TCA recipients who fail to comply with work requirements may be sanctioned by the LWDBs. Sanctions result in cash assistance being withheld for a specified period of time, the length of which increases with repeated lack of compliance. Consequences for failure to participate in work activities include:[33]

- 1st penalty: Cash assistance is terminated for entire family for a minimum of 10-days or until the individual who failed to comply does so, whichever is later.
- 2nd penalty: Cash assistance is terminated for entire family for one-month or until the individual who failed to comply does so, whichever is later.
- 3rd penalty: Cash assistance is terminated for entire family for three-months or until the individual who failed to comply does so, whichever is later.

Supplemental Nutrition Assistance Program (SNAP)

The Food and Nutrition Service (FNS), under the U.S. Department of Agriculture (USDA), administers the Supplemental Nutrition Assistance Program (SNAP).[34] SNAP is the nation's largest domestic food

[29] 45 C.F.R. § 261.30
[30] S. 445.024, F.S.
[31] 45 CFR 261.30; S. 445.024(1), F.S.; See also, Florida Department of Children and Families, *Temporary Assistance for Needy Families (TANF) – An Overview of Program Requirements* (2016). Available at https://www.myflfamilies.com/sites/default/files/2022-10/TANF%20101%20final_1.pdf (last visited January 6, 2024).
[32] S. 445.024(1)(a)-(l), F.S.
[33] S. 414.065, F.S.
[34] The Food Stamp Program (FSP) originated in 1939 as a pilot program for certain individuals to buy stamps equal to their normal food expenditures: for every $1 of orange stamps purchased, people received 50 cents worth of blue stamps, which could be used to buy surplus food. The FSP expanded nationwide in 1974. Under the federal welfare reform legislation of 1996, Congress enacted major changes to the FSP, including limiting eligibility for certain adults who did not meet work requirements. The Food and Nutrition Act of 2008 renamed the FSP the Supplemental Nutrition Assistance Program (SNAP) and implemented priorities to strengthen program

and nutrition program for low-income Americans, offering nutritional assistance to millions of individuals and families each year through the provision of funds that can be used to purchase eligible foods.[35] In fiscal year 2020, SNAP provided assistance to approximately 39.9 million people living in 20.5 million households across the US.[36] SNAP benefits support individual households by reducing the effects of poverty and increasing food security while supporting economic activity across communities, as SNAP benefits directly benefit farmers, retailers, food processors and distributors, and their employees.[37]

SNAP is administered at the state level in Florida by DCF.[38] DCF determines and monitors eligibility and disburses benefits to SNAP participants. The state and federal governments share the administrative costs of the program, while the federal government funds 100 percent of the benefit amount received by participants.[39] Federal laws, regulations, and waivers provide states with various policy options to better target benefits to those most in need, streamline program administration and field operations, and coordinate SNAP activities with those of other programs.[40]

The amount of benefits, or allotment, for which a household qualifies depends on the number of individuals in the household and the household's net income. To calculate a household's allotment, 30% of its net income is subtracted from the maximum allotment for that household size.[41] This is because SNAP households are expected to spend about 30% of their own resources on food.[42] As of October 2023, 3,3112,411 Floridians are participating in SNAP.[43]

SNAP Eligibility & Work Requirements

To be eligible for SNAP, households must meet the following criteria: (1) gross monthly income must be at or below 200 percent of the poverty level; (2) net income must be equal to or less than the poverty level; and (3) assets must be below the limits set based on household composition.[44]

Individuals may be deemed ineligible for SNAP due to any of the following:[45]

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integrity; simplify program administration; maintain states' flexibility in how they administer their programs; and improve access to SNAP. *See,* US Department of Agriculture, Food and Nutrition Service, *Short History of SNAP*. Available at https://www.fns.usda.gov/snap/short-history-snap (last visited January 24, 2024).

[35] US Department of Agriculture, Economic Research Service, *Supplemental Nutrition Assistance Program (SNAP) Overview*. Available at https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/ (last visited January 24, 2024).

[36] US Department of Agriculture, Food and Nutrition Service, *Characteristics of SNAP Households: FY 2020 and Early Months of the COVID-19 Pandemic: Characteristics of SNAP Households*. Available at https://www.fns.usda.gov/snap/characteristics-snap-households-fy-2020-and-early-months-covid-19-pandemic-characteristics (last visited January 25, 2024).

[37] US Department of Agriculture, Economic Research Service, *Supplemental Nutrition Assistance Program (SNAP) Economic Linkages*. Available at https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap/economic-linkages/ (last visited January 24, 2024).

[38] S. 414.31, F.S.

[39] Center on Budget and Policy Priorities, *Policy Basics: The Supplemental Nutrition Assistance Program (SNAP)*. Available at https://www.cbpp.org/research/food-assistance/the-supplemental-nutrition-assistance-program-snap#:~:text=The%20federal%20government%20pays%20the,the%20states%2C%20which%20operate%20it. (last visited January 25, 2024).

[40] US Department of Agriculture, Food and Nutrition Service, *State Options Report*. Available at https://www.fns.usda.gov/snap/waivers/state-options-report (last visited January 25, 2024).

[41] U.S. Department of Agriculture Food and Nutrition Service, *SNAP Eligibility*. Available at https://www.fns.usda.gov/snap/recipient/eligibility (last visited January 25, 2024).

[42] *Id.*

[43] US Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Number of Persons Participating* (2024). Available at https://fns-prod.azureedge.us/sites/default/files/resource-files/snap-persons-1.pdf (last visited January 25, 2024).

[44] Florida Department of Children and Families, *SNAP Eligibility.* Available at https://www.myflfamilies.com/services/public-assistance/supplemental-nutrition-assistance-program-snap/snap-eligibility (last visited January 16, 2024). *See also*, s. 414.32, F.S.

[45] *Id*. *See also*, s. 414.32, F.S.

- Conviction of drug trafficking;
- Fleeing a felony warrant;
- Breaking SNAP or TANF program rules;
- Failure to cooperate with the child support enforcement agency; or
- Being a noncitizen without qualified status.

Able-bodied, non-elderly adults are generally required to participate in work activities in order to be eligible for SNAP. Federal policy outlines two tiers of work requirements for SNAP recipients: the general work requirement and the Able-Bodied Adult Without Dependents (ABAWD) work requirement.

The general work requirement applies to all recipients between 16 and 59 years of age, unless they qualify for an exemption. The general work requirements include requiring a recipient register for work, participating in SNAP Employment and Training (E&T) or workfare if assigned, taking a suitable job if offered, and not voluntarily quitting a job or reducing work hours below 30 a week without a good reason.[46]

Individuals are exempt from the general work requirements if they are:[47]

- Already working at least 30 hours a week (or earning wages at least equal to the federal minimum wage multiplied by 30 hours);
- Meeting work requirements for another program (TANF or unemployment compensation);
- Taking care of a child under 6 or an incapacitated person;
- Unable to work due to a physical or mental limitation;
- Participating regularly in an alcohol or drug treatment program; or
- Studying in school or a training program at least half-time (but college students are subject to additional eligibility rules).

If an individual capable of meeting the general work requirements fails to do so, they are disqualified from getting SNAP for at least a month and must start meeting the requirements to get SNAP again. If the person gets back on SNAP and fails to meet the requirements again, they are disqualified for longer than a month and could be permanently disqualified.[48]

The ABAWD work requirement applies to Adults between 18 and 52 years of age, able-bodied, and without dependents, unless otherwise exempt from the general work requirement.[49] ABAWDs are required to work or participate in a qualifying work program for a combined total of at least 80 hours per month. ABAWDs who fail to comply with the ABAWD work requirement for three months in a 36-month period will lose their SNAP benefits.[50]

Prohibition on Receiving TCA and Food Assistance - Felony Drug Convictions

Federal law prohibits TCA and food assistance eligibility for any individual with a felony drug conviction and imposes a lifetime ban on such benefits, unless a state elects to opt out of the provision.[51] Florida has opted out of this federal provision,[52] with one limitation. Florida has implemented a modified ban wherein an applicant may not be denied benefits solely based on a felony drug conviction, unless the

[46] US Department of Agriculture, Food and Nutrition Service, *SNAP Work Requirements*. Available at https://www.fns.usda.gov/snap/work-requirements (last visited January 26, 2024).
[47] *Id*.
[48] *Id*.
[49] *Id*. Adults who are unable to work due to a physical or mental limitation, are pregnant, have someone under 18 in their SNAP household, are excused from the general work requirement, are a veteran, experiencing homelessness, or were in foster care on their 18th birthday and are under age 24 are exempt from the ABAWD requirements.
[50] US Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program (SNAP) ABAWD Policy Guide* (2023). Available at https://fns-prod.azureedge.us/sites/default/files/resource-files/SNAP-ABAWD-Policy-Guide-September-2023.pdf (last visited January 26, 2024).
[51] Pub. L. No. 104-193, s. 115.
[52] S. 414.095(1), F.S.

conviction is for drug trafficking,[53] including agreeing, conspiring, combining, or confederating with another person to commit an act after August 22, 1996.[54]

Under Florida law, drug trafficking is a first-degree felony punishable by up to 30 years of imprisonment and—depending upon the drug type and amount trafficked—fines from $25,000 to $500,000.[55] During the application process, individuals seeking public benefits self-attest if they have been convicted of felony drug trafficking. This information is then confirmed by an eligibility specialist during the applicant's interview. If the illegal behavior that led to the conviction occurred on or before August 22, 1996, the disqualification does not apply regardless of the date of the conviction. If a court expunges the felony drug trafficking conviction, the individual is not subject to the disqualification.[56]

In Florida, while an individual is disqualified, his or her family may still apply for and receive benefits. In such instances, the disqualified individual's needs are excluded in calculating the family's benefits, although the individual's income and assets are included in determining the household's eligibility. This means that while those with felony drug trafficking convictions may still apply for assistance for their children, the overall household receives less support because of the current bans.

DCF reports that in the 2023 calendar year, 402 individuals were denied benefits due to a drug trafficking conviction.[57] The number of people otherwise eligible who choose not to apply due to disqualification due to a felony drug trafficking conviction is unknown.

Prohibition Policy by State

Many states have chosen to opt-out or implement a modified ban on the receipt of SNAP and TCA benefits for individuals with felony drug convictions. Except for South Carolina, all other states and Washington D.C., have chosen to modify or remove the ban for at least one of the two affected programs.[58]

As of April 2022, seven[59] states fully ban TANF benefits, including TCA, for individuals with prior felony drug convictions; while 17[60] states, including Florida, have modified bans; and 26[61] states and Washington D.C., have no bans. South Carolina is the only state with a full ban on SNAP benefits for individuals with prior felony drug convictions. Florida is one of 21[62] states with modified bans, and 28[63] states and Washington D.C., have no ban for SNAP benefits.

Recidivism Studies

[53] S. 414.095, F.S. Any person may be convicted of drug trafficking if they knowingly sell, purchase, manufacture, deliver, or bring into this state specified illegal drugs, such as cannabis, morphine, cocaine, fentanyl, hydrocodone, oxycodone, or if they are knowingly in actual or constructive possession of these drugs and the drugs are over a certain amount. S. 893.135, F.S., Drug trafficking also includes those who agree, conspire, combine, or confederate with another person to commit the act.
[54] See, DCF's ESS Policy Manual 1420.2200, Individual Convicted of Felony Drug Trafficking (TCA). Available at https://www.myflfamilies.com/sites/default/files/2023-02/1410.pdf (last visited January 25, 2024).
[55] S. 893.135, F.S.
[56] *Supra*, note 54.
[57] Department of Children & Families, Agency Bill Analysis for HB 409 (2024). On file with the Children, Families & Seniors Subcommittee.
[58] The Center for Law and Social Policy, *No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions* (2022). Available at https://www.clasp.org/publications/report/brief/no-more-double-punishments/ (last visited January 25, 2024).
[59] Arizona, Georgia, Missouri, Nebraska, South Carolina, Texas, and West Virginia.
[60] Alaska, Colorado, Connecticut, Florida, Hawaii, Idaho, Indiana, Iowa, Montana, Maryland, Massachusetts, Michigan, Minnesota, North Carolina, Pennsylvania, Tennessee, and Utah.
[61] Alabama, Arkansas, California, Delaware, District of Columbia, Illinois, Kansas, Kentucky, Louisiana, Maine, Mississippi, New Hampshire, New Jersey, New Mexico, New York, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Vermont, Virginia, Washington, Wisconsin, and Wyoming.
[62] Alabama, Alaska, Arizona, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Maryland, Minnesota, Missouri, Montana, Nebraska, North Carolina, Tennessee, Texas, West Virginia, and Wisconsin.
[63] Arkansas, California, Delaware, District of Columbia, Illinois, Iowa, Kentucky, Louisiana, Maine, Michigan, Massachusetts, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, and Wyoming.

Studies have shown that public assistance such as TANF and SNAP reduces recidivism, while banning access to assistance has been linked to increased recidivism. The Bureau of Justice Statistics reports that approximately 66 percent of state prisoners were rearrested within three years of release, and 82 percent were arrested within 10 years.[64] Such odds of recidivating can be offset through providing support; the barriers to re-entering society as productive members of society are reduced when people are able to meet their basic needs. A Harvard Law School study found that access to SNAP and TANF significantly reduced an individual's risk of being reincarcerated by up to 10 percent within one year.[65] Additionally, a study of recidivism before and after the Florida ban took effect estimated the ban increased drug traffickers' likelihood of returning to prison by at least 9.5 percent.[66]

Human Trafficking

Human trafficking is a form of modern-day slavery involving the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person.[67] Victims of human trafficking are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.[68] Human trafficking does not necessarily involve movement or relocation of a person, nor does it necessarily involve physical captivity.

Human trafficking can affect individuals of any age, gender, or nationality; however, some people are more vulnerable than others. Significant risk factors include recent migration or relocation, substance use, mental health concerns, and involvement in the child welfare system.[69] Vulnerable people are lured and coerced through a myriad of means including economic abuse, psychological coercion, threats against family, drug addiction, physical abuse, and sexual abuse.[70]

It is estimated that at any given time in 2021, there were approximately 27.6 million people engaging in forced labor.[71] In 2021, the National Human Trafficking Hotline[72] identified 16,710 trafficking victims in the US, of which 1,253 were in Florida;[73] however, these figures do not reflect the true scope and scale of the issue, which cannot be easily quantified due to its underground nature.

Trafficking of illegal drugs and human trafficking often co-occur.[74] Victims of trafficking may be exploited for the transport illegal drugs and illegal drugs may also serve as a means of coercion by the trafficker.[75] Substance use as a means of coercion occurs in various settings, including sexual

[64] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 24 States in 2008: A 10-Year Follow-Up Period (2008–2018),* Special Report (2021). Available at https://bjs.ojp.gov/BJS_PUB/rpr24s0810yfup0818/Web%20content/508%20compliant%20PDFs (last visited January 25, 2024).
[65] Yang, C., *Does Public Assistance Reduce Recidivism?* (2017). Harvard Law School. Available at http://www.law.harvard.edu/programs/olin_center/papers/pdf/Yang_920.pdf (last visited January 25, 2024).
[66] Tuttle, C., *Snapping Back: Food Stamp Bans and Criminal Recidivism* (2019). American Economic Journal: Economic Policy, 11(2): 301–327, https://pubs.aeaweb.org/doi/pdfplus/10.1257/pol.20170490.
[67] S. 787.06, F.S.
[68] *Id.*
[69] National Human Trafficking Hotline. *Human Trafficking: What Human Trafficking is, and isn't*. Available at https://humantraffickinghotline.org/en/human-trafficking (last visited January 25, 2024).
[70] Stoklosa, H., MacGibbon, M., & Stoklosa, J. *Human Trafficking, Mental Illness, and Addiction: Avoiding Diagnostic Overshadowing*. (2017). AMA Journal of Ethics. 19(1):23-24. doi: 10.1001/journalofethics.2017.19.1.ecas3-1701.
[71] International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Sep. 2022). Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf (last visited January 25, 2024).
[72] The National Human Trafficking Hotline is a free service to connect victims and survivors of sex and labor trafficking with services and supports to find help and safety. The Hotline also receives tips about potential situations of sex and labor trafficking and facilitates reporting that information to the appropriate authorities. *See also*, National Human Trafficking Hotline, *About Us*. Available at https://humantraffickinghotline.org/en/about-us (last visited January 25, 2024).
[73] National Human Trafficking Hotline, *National Statistics (2021)*. Available at https://humantraffickinghotline.org/en/statistics (last visited January 25, 2024).
[74] US Drug Enforcement Administration, *Violent Drug Organizations Use Human Trafficking to Expand Profits* (2021). Available at https://www.dea.gov/stories/2021/2021-01/2021-01-28/violent-drug-organizations-use-human-trafficking-expand-profits (last visited January 25, 2024).
[75] Asian Pacific Institute on Gender-Based Violence. *Intersections of Human Trafficking, Domestic Violence, and Sexual Assault – National Organizational Advocacy Roundtable* (2016). Available at https://api-gbv.org/wp-content/uploads/2019/02/Trafficking-DV-SA-Intersections-2016-formatted2019.pdf (last visited January 25, 2024).

exploitation and forced labor, as well as intimate personal violence.[76] Through substance use coercion a trafficker can maintain control over the victim through controlling the victim's access to the substance, forcing the victim to use substances, and using the victim's own substance use as a means of discrediting the victim and making the victim complicit in the victim's own oppression.[77]

The Legislature has made clear its intent that the perpetrators of human trafficking be penalized for their illegal conduct and that the victims of trafficking be protected and assisted by the state and the agencies;[78] however, in application it has proven difficult to hold human traffickers accountable, and victims of human trafficking face significant barriers in being recognized as such.

Victims of human trafficking often do not trust the police and rarely seek their assistance.[79] When victims of human trafficking do interact with the criminal justice system, they are often perceived as criminals, rather than victims. Trafficking victims are frequently compelled to break the law and may be arrested as a result of that criminal act before they are recognized as a victim of trafficking. Once a trafficking victim is charged with a crime, the circumstances around the arrest and the overtaxed criminal court system create a tremendous pressure on the victim to plead guilty, rather than contest the charge or seek to reveal the trafficking situation.[80]

Effect of the Bill

PCS for HB 409 leaves the existing prohibition against individuals with felony drug trafficking convictions receiving TCA and SNAP assistance intact, but creates an exemption for victims of human trafficking.

Under the bill, TCA and food assistance benefits may not be denied to an individual solely on the basis of a drug trafficking conviction if DCF has determined the individual to be a victim of human trafficking. This will allow individuals with a drug trafficking conviction who are also victims of human trafficking to access TCA and SNAP assistance, as long as they meet the other eligibility requirements.

The bill defines a victim of human trafficking to be a person subjected to coercion[81] for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

[76] US Department of Health and Human Services, *Understanding Substance Use Coercion as a Barrier to Economic Stability for Survivors of Intimate Partner Violence: Policy Implications* (2020). Available at https://aspe.hhs.gov/sites/default/files/private/pdf/264166/Substance-Use-Coercion-Policy-Brief.pdf (last visited January 25, 2024).
[77] *Id*. See also, Asian Pacific Institute on Gender-Based Violence. *Intersections of Human Trafficking, Domestic Violence, and Sexual Assault – National Organizational Advocacy Roundtable* (2016). Available at https://api-gbv.org/wp-content/uploads/2019/02/Trafficking-DV-SA-Intersections-2016-formatted2019.pdf (last visited January 25, 2024); Stoklosa, H., MacGibbon, M., & Stoklosa, J. *Human Trafficking, Mental Illness, and Addiction: Avoiding Diagnostic Overshadowing*. (2017). AMA Journal of Ethics. 19(1):23-24. doi: 10.1001/journalofethics.2017.19.1.ecas3-1701.
[77] International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Sep. 2022). Available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf (last visited November 27, 2023).
[78] S. 787.06(1)(d), F.S.
[79] Farrell, A., et al.. *Failing victims? Challenges of the police response to human trafficking*. (2019). Criminology & Public Policy, 18: 649– 673 https://doi.org/10.1111/1745-9133.12456
[80] Phillips, S., Coates, C., Ortiz, C., Rast, L, Sheltry, J., & Thomas, K. Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims (2013). CUNY School of Law. Available at https://ncjtc-static.fvtc.edu/Resources/RS00002861.pdf (last visited January 25, 2024).
[81] *See*, s 786.06(2)(a), F.S., for a complete definition of "coercion."

Section 1: Amends s. 414.095, F.S., relating to determining eligibility for temporary cash assistance.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has an indeterminate, negative fiscal impact on DCF.[82]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals previously disqualified from receiving cash or food assistance because of a felony drug trafficking conviction who are also human trafficking victims will now be eligible to receive such benefits, assuming they meet all of the other eligibility requirements, which will provide additional financial support to low-income families.

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:

DCF has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[82] *Supra*, note 57.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to temporary cash assistance eligibility; amending s. 414.095, F.S.; providing that benefits may not be denied to certain victims of human trafficking; providing an effective date.

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

Section 1. Subsection (1) of section 414.095, Florida Statutes, is amended to read:

414.095 Determining eligibility for temporary cash assistance.—

(1) ELIGIBILITY.—An applicant must meet the eligibility requirements of this section before receiving services or temporary cash assistance under this chapter, except that an applicant is ~~shall be~~ required to register for work and engage in work activities in accordance with s. 445.024, as designated by the local workforce development board, and may receive support services or child care assistance in conjunction with such 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 not be denied to an individual solely based on a felony drug conviction,

unless the conviction is for trafficking pursuant to s. 893.135. Benefits may not be denied to an individual solely on the basis of a trafficking conviction pursuant to s. 893.135, if such individual has been determined by the department to be a victim of human trafficking, as defined by s. 943.0583. 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.

Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 915 Outpatient Mental Health Service
SPONSOR(S): Children, Families & Seniors Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee		Curry	Brazzell

SUMMARY ANALYSIS

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community. In Florida, the Baker Act provides a legal procedure for voluntary and involuntary mental health examination and treatment. The Department of Children and Families (DCF) is responsible for the operation and administration of the Baker Act.

PCS for HB 915 modifies the Baker Act and makes changes to the statutory process for mental health examinations and treatment. The bill combines the process for courts to order individuals to involuntary outpatient services and involuntary inpatient placement in the Baker Act to streamline the process for obtaining involuntary services. This provides more flexibility for courts to meet the individuals' treatment needs.

The bill grants law enforcement officers discretion on initiating involuntary examinations. The bill also allows a psychiatric nurse to release a patient from a receiving facility if certain criteria are met.

The bill prohibits a receiving facility from releasing a patient from involuntary examination outside of the facility's ordinary business hours if the examination period ends on a weekend or holiday and specifies that the 72 hour examination period begins when a patient arrives at the facility.

The bill allows witnesses to appear and testify remotely under oath at a hearing for involuntary services. The bill requires DCF to publish certain specified reports on its website.

The bill makes technical and conforming changes and updates cross references.

The bill will have a significant negative fiscal impact on state government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[1] The primary indicators used to evaluate an individual's mental health are:[2]

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

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[3] 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. Nearly one in five adults lives with a mental illness.[4] During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22%.[5]

Mental Health Safety Net Services

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.

Behavioral Health Managing Entities

In 2001, the Legislature authorized DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.[6] The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.[7] MEs were fully implemented statewide in 2013, serving all geographic regions.

[1] World Health Organization, *Mental Health: Strengthening Our Response,* https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited January 24, 2024).
[2] Centers for Disease Control and Prevention, *Mental Health Basics*, http://medbox.iiab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm (last visited January 24, 2024).
[3] *Id*.
[4] National Institute of Mental Health (NIH), *Mental Illness*, https://www.nimh.nih.gov/health/statistics/mental-illness (last visited January 24, 2024).
[5] *Id*.
[6] Ch. 2001-191, Laws of Fla.
[7] Ch. 2008-243, Laws of Fla.

DCF currently contracts with seven MEs for behavioral health services throughout the state. These entities do not provide direct services; rather, they allow the department's funding to be tailored to the specific behavioral health needs in the various regions of the state.[8]

Coordinated System of Care

Managing entities are required to promote the development and implementation of a coordinated system of care.[9] A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a managing entity or by another method of community partnership or mutual agreement.[10] A community or region provides a coordinated system of care for those with a mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, DCF may award system improvement grants to managing entities.[11] MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or to meet specific needs identified in DCF's assessment of behavioral health services in this state.[12] DCF must use performance-based contracts to award grants.[13]

There are several essential elements which make up a coordinated system of care, including:[14]

- Community interventions;
- Case management;
- Care coordination;
- Outpatient services;
- Residential services;
- Hospital inpatient care;
- Aftercare and post-discharge services;
- Medication assisted treatment and medication management; and
- Recovery support.

A coordinated system of care must include, but is not limited to, the following array of services:[15]

- Prevention services;
- Home-based services;
- School-based services;
- Family therapy;
- Family support;
- Respite services;
- Outpatient treatment;
- Crisis stabilization;
- Therapeutic foster care;
- Residential treatment;
- Inpatient hospitalization;
- Case management;
- Services for victims of sex offenses;
- Transitional services; and
- Trauma-informed services for children who have suffered sexual exploitation.

[8] DCF, *Managing Entities,* available at https://www.myflfamilies.com/services/samh/prov/*d*ers/managing-entities, (last visited January 24, 2024).
[9] S. 394.9082(5)(d), F.S.
[10] S. 394.4573(1)(c), F.S.
[11] S. 394.4573(3), F.S. The Legislature has not funded system improvement grants.
[12] *Id.*
[13] *Id.*
[14] S. 394.4573(2), F.S.
[15] S. 394.495(4), F.S

DCF must define the priority populations which would benefit from receiving care coordination.[16] In defining priority populations, DCF must consider the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

MEs are required to conduct a community behavioral health care needs assessment once every three years in the geographic area served by the managing entity, which identifies needs by sub-region.[17] The assessments must be submitted to DCF for inclusion in the state and district substance abuse and mental health plan.[18]

The Baker Act

The Florida Mental Health Act, commonly referred to as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.[19] The Act includes 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.[20]

The Department of Children and Families (DCF) is responsible for the operation and administration of the Baker Act, including publishing an annual Baker Act report. According to the Fiscal Year (FY) 2021-2022 Baker Act annual report, over 170,000 individuals were involuntarily examined under the Baker Act; of those, just over 11,600 individuals were 65 years of age or older. This age group is the most likely to include individuals with Alzheimer's disease or related dementia.

Receiving Facilities and Involuntary Examination

Receiving Facilities

Individuals in an 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.[21] Individuals receiving services on an involuntary basis must be taken to a facility that has been designated by Department of Children and Families (DCF) as a receiving facility.

Receiving facilities, often referred to as Baker Act receiving facilities, are public or private facilities designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.[22] A public receiving facility is a facility that has contracted with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.[23] Funds appropriated for Baker Act services may only be used to pay for services to diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.[24]

Crisis Stabilization Units

[16] S. 394.9082(3)(c), F.S.
[17] S. 394.9082(5)(b), F.S.
[18] S. 394.75(3), F.S.
[19] The Baker Act is contained in Part I of ch. 394, F.S.
[20] S. 394.459, F.S.
[21] Ss. 394.4625 and 394.463, F.S.
[22] S. 394.455(40), F.S. This term does not include a county jail.
[23] S. 394.455(38), F.S
[24] R. 65E-5.400(2), F.A.C.

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalization for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit individuals brought to the unit under the Baker Act, as well as those individuals who voluntarily present themselves, for short-term services. CSUs provide services 24 hours a day, seven days a week, through a team of mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs.[25] Individuals often enter the public mental health system through CSUs. Managing entities must follow current statutes and rules that require CSUs to be paid for bed availability rather than utilization.

Although involuntary examinations under the Baker Act have recently been decreasing statewide, the population of Florida continues to grow, and there are counties where the number of involuntary examinations remain the same or are slightly increasing, while some receiving facilities within communities are closing. There has been some demonstrated success with mobile response teams diverting individuals from the receiving facilities, resulting in those persons who are admitted to a receiving facility for an involuntary examination having higher acuity and longer lengths of stay.

Involuntary Examination

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, has refused voluntary examination, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to that person's well-being, and such harm is unavoidable through help of willing family members or friends, or will cause serious bodily harm to him or herself or others in the near future based on recent behavior.[26]

An involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;[27] or
- A physician, clinical psychologist, psychiatric nurse, an autonomous advanced practice registered nurse, mental health counselor, marriage and family therapist, or clinical social worker executing 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, including a statement of the professional's observations supporting such conclusion.[28]

Unlike the discretion afforded courts and medical professionals, current law mandates that law enforcement officers must initiate an involuntary examination of a person who appears to meet the criteria by taking him or her into custody and delivering or having the person delivered to a receiving facility for examination.[29] When transporting, officers are currently required to restrain the person in the least restrictive manner available and appropriate under the circumstances.[30] The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record. The report must also include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles.
Involuntary patients must be taken to either a public or a private facility that has been designated by DCF as a Baker Act receiving facility. Under the Baker Act, a receiving facility has up to 72 hours to examine an involuntary patient.[31] During that 72 hours, an involuntary patient must be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility, to determine if the criteria for involuntary services

[25] S. 394.875, F.S.
[26] S. 394.463(1), F.S.
[27] S. 394.463(2)(a)1., F.S. The order of the court must be made a part of the patient's clinical record.
[28] S. 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record.
[29] S. 394.463(2)(a)2., F.S. The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.
[30] *Id.*
[31] S. 394.463(2)(g), F.S.

are met.[32] Current law does not indicate when the examination period begins for an involuntary patient. However, if the patient is a minor, a receiving facility must initiate the examination within 12 hours of arrival.[33]

Within that 72-hour examination period, one of the following must happen:[34]

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

If the patient's 72-hour examination period ends on a weekend or holiday, and the receiving facility:[35]

- Intends to file a petition for involuntary services, the patient may be held at a receiving facility through the next working day and the petition for involuntary services must be filed no later than such date. If the receiving facility fails to file a petition at the close of the next working day, the patient must be released from the receiving facility upon documented approval from a psychiatrist or a clinical psychologist.
- Does not intend to file a petition for involuntary services, the receiving facility may postpone release of a patient until the next working day if a qualified professional documents that adequate discharge planning and procedures and approval from a psychiatrist or a clinical psychologist are not possible until the next working day.

The receiving facility may not release an involuntary examination patient without the documented approval of a psychiatrist or a clinical psychologist. However, if the receiving facility is owned or operated by a hospital or health system, or a nationally accredited community mental health center, a psychiatric nurse performing under the framework of an established protocol with a psychiatrist is permitted to release a Baker Act patient in specified community settings. However, a psychiatric nurse is prohibited from approving a patient's release if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist. [36]

Baker Act Reporting Requirements

DCF is required to prepare and provide annual reports to the agency itself, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives. The annual reports analyze data obtained from ex parte orders, involuntary orders issued under the Baker Act, professional certificates, law enforcement officers' reports, and reports relating to the transportation of patients.[37] Current law does not provide a due date for the report.

Involuntary Services

Involuntary services are defined as court-ordered outpatient services or inpatient placement for mental health treatment.[38]

Involuntary Outpatient Services

[32] S. 394.463(2)(f), F.S.
[33] S. 394.463(2)(g), F.S.
[34] *Id*.
[35] S. 394.463(2)(g)4., F.S.
[36] S. 394.463(2)(f), F.S.
[37] S. 394.463(2)(e). F.S.
[38] S. 394.455(23), F.S.

A person may be ordered to involuntary outpatient services upon a finding of the court that by clear and convincing evidence, all of the following factors are met:[39]

- 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, 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, at least twice; 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;
- 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;
- The person is in need of involuntary outpatient services 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;[40]
- It is likely that the person will benefit from involuntary outpatient services; 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.

A petition for involuntary outpatient services may be filed by the administrator of either a receiving facility or a treatment facility. [41] The petition must allege and sustain each of the criterion for involuntary outpatient services and be accompanied by a certificate recommending involuntary outpatient services by a qualified professional and a proposed treatment plan.[42]

The petition for involuntary outpatient services must be filed in the county where the patient is located. However, if the patient is being placed from a state treatment facility, the petition must be filed in the county where the patient will reside.[43] The petition must be based on the opinion of two professionals who have personally examined the individual within the preceding 72 hours.[44] When the petition has been filed, the clerk of the court must provide copies of the petition and the proposed treatment plan to DCF, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel.[45]

Once a petition for involuntary outpatient services has been filed with the court, the court must hold a hearing within five business days, unless a continuance is granted.[46] Under current law, the patient is entitled to a maximum four-week continuance, with the concurrence of their counsel.[47] The court may waive a patient's presence from all or any portion of the hearing if it finds the patient's presence is not in the patient's best interests and the patient's counsel does not object.[48] Otherwise, the patient must be present. The state attorney for the circuit in which the patient is located represents the state, rather than the petitioner, as the real party in interest in the proceeding.[49] The court must appoint the public defender to represent the person who is the subject of the petition, unless that person is otherwise represented by counsel.[50]

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[39] S. 394.4655(2), F.S.
[40] This factor is evaluated based on the person's treatment history and current behavior.
[41] S. 394.4655(4)(a), F.S.
[42] S. 394.4655(4)(b), F.S.
[43] S. 394.4655(4)(c), F.S.
[44] S. 394.4655(3)(a)1., F.S.
[45] *Id*.
[46] S. 394.4655(7)(a)1., F.S.
[47] S. 394.4655(7)(a)1., F.S.
[48] S. 394. 4655(7)(a)1, F.S.
[49] *Id*.
[50] S. 394.4655(5), F.S. This must be done within one court working day of filing of the petition.

At the hearing on involuntary outpatient services, the court must 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.[51] If the court concludes that the patient meets the criteria for involuntary outpatient services, it must issue an order for those services.[52] The order must specify the duration of involuntary outpatient services, which may be up to 90 days, and the nature and extent of the patient's mental illness.[53] The order of the court and the treatment plan are to be made part of the patient's clinical record.[54]

If, at any time before the conclusion of the initial hearing on involuntary outpatient services, it appears to the court that the person does not meet the criteria for involuntary outpatient services, but instead meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination.[55]

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: [56]

- 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 or is unable to determine for himself or herself whether placement is necessary; and
    - He or she is 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 a 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.

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.[57] The petition must be based on the opinions of two professionals who have personally examined the individual within the past 72 hours.[58] Upon filing, the clerk of the court must provide copies to DCF, 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.[59] Unlike the procedures for involuntary outpatient services, current law does not require a proposed treatment plan to be filed with the petition for involuntary inpatient placement.

Involuntary Inpatient Placement Hearing

[51] S. 394.4655(7)(d), F.S.
[52] S. 394.4655(7)(b)1., F.S.
[53] *Id*.
[54] *Id*.
[55] S. 394.4655(7)(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 to the statutory requirements of the Marchman Act.
[56] S. 394.467(1), F.S.
[57] S. 394.467(2) and (3), F.S.
[58] S. 394.467(2), F.S.
[59] S. 394.467(3), F.S.

The court proceedings for involuntary inpatient placement closely mirror those for involuntary outpatient services.[60] However, the laws governing involuntary inpatient placement are silent regarding the court's order becoming part of the patient's clinical record. Once a petition for involuntary inpatient placement has been filed, the court must hold a hearing within five business days in the county or facility where the patient is located, unless a continuance is granted.[61] Presently, only the patient is entitled to a maximum four-week continuance, with the concurrence of their counsel.[62] Similar to the procedures for involuntary outpatient services, the court may waive a patient's presence from all or any portion of the hearing if it finds the patient's presence is not in their best interests, and the patient's counsel does not object.[63] Otherwise, the patient must be present.

Current law permits the court to appoint a magistrate to preside at the hearing, in general.[64] At the hearing, the state attorney must represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding.[65] Although the state attorney has the evidentiary burden in Baker Act cases, current law does not require a facility to make the patient's clinical records available to the state attorney so that the state can evaluate and prepare its case before the hearing. Additionally, there is no requirement that the court allow testimony from family members regarding the patient's prior history and how it relates to their current condition.

If, at any time before the conclusion of the hearing, it appears to the court that the person does not meet the criteria for involuntary inpatient placement, but rather meets the criteria for involuntary outpatient services, the court may order the person evaluated for involuntary outpatient services.[66] If the court concludes that the patient meets the criteria for involuntary inpatient placement, it has discretion to issue an order for involuntary inpatient services at a receiving facility for up to 90 days or in a state treatment facility[67] for up to six months.[68]

Current law prohibits a state treatment facility from admitting a civil patient unless he or she has undergone a transfer evaluation, the process by which the patient is evaluated for appropriateness of placement in a treatment facility.[69] Current law also requires the court to receive and consider the transfer evaluation's documented information before the involuntary placement hearing is held, but it does not specify that the evaluator must testify at the hearing in order for the court to consider any substantive information within it.[70] Under Florida law, if a court were to consider substantive information in the transfer evaluation without the evaluator testifying at the hearing, it would be a violation of the hearsay rule contained in Florida's Evidence Code.[71]

Current law requires the court's order to specify the nature and extent of the patient's illness and prohibits the court from ordering individuals with traumatic brain injuries or dementia who lack a co-occurring mental illness to be involuntarily committed to a state treatment facility.[72] However, there is currently no prohibition against involuntarily committing individuals with developmental disabilities who also lack a co-occurring mental illness to these facilities.

Remote Hearings

[60] *See* s. 394.467(6) and (7), F.S.
[61] S. 394.467(6), F.S.
[62] S. 394.467(5), F.S.
[63] S. 394.467(6), F.S.
[64] *Id*.
[65] *Id*.
[66] S. 394.467(6)(c), F.S.
[67] A treatment facility is any state-owned, state-operated, or state-supported hospital, center, or clinic designated by DCF to provide mentally ill patients treatment and hospitalization that extends beyond that provided for by a receiving facility. Treatment facilities also include federal government facilities and any private facility designated by DCF. Only VA patients may be treated in federal facilities S. 394.455(48), F.S. A receiving facility is any public or private facility or hospital designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider. County jails are not considered receiving facilities. S. 394.455(40), F.S.
[68] S. 394.467(6)(b), F.S.
[69] S. 394.461(2), F.S.
[70] *Id*.
[71] S. 90.802, F.S. The basic hearsay rule states that courts cannot rely on out-of-court, unsworn statements (written or spoken) as proof of the matter asserted in the statement.
[72] S. 394.467(6), F.S.

In response to the COVID-19 pandemic, on March 21, 2020, the Chief Justice of the Florida Supreme Court issued Supreme Court of Florida Administrative Order AOSC20-23, Amendment 2, authorizing courts to conduct hearings remotely. However, on January 8, 2022, Supreme Court of Florida Administrative Order AOSC21-17 was issued, requiring in-person hearings unless the facility where the individual is located is closed to hearing participants due to the facility's COVID-19 protocols or the individual waives the right to physical presence at the hearing.

Effect of the Bill

Involuntary Examination

One of the criteria for involuntary examination requires that the person to be likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to their well-being and such harm is unavoidable through the help of "willing" family members or friends. PCS for HB 915 amends this criteria to add that such family members or friends being considered for offering help also be able and responsible.

The bill authorizes, rather than requires as in current law, law enforcement officers to transport those who appear to meet Baker Act criteria to receiving facilities. This gives law enforcement officers the same discretion that courts and medical professionals have to initiate an involuntary examination. By removing the legal mandate to initiate an involuntary examination, there could be a reduction in involuntary examinations, especially in cases involving minors and schools. This may lead to greater use of alternatives to involuntary examinations, such as mobile response teams.

The bill removes the restriction prohibiting a psychiatric nurse from approving a patient's release from involuntary examination when the examination was initiated by a psychiatrist.

Receiving Facilities

The bill specifies that the 72 hour Baker Act examination period begins when a patient arrives at the receiving facility. The bill prohibits a receiving facility from releasing a patient from involuntary examination outside of the facility's ordinary business hours, including the hours before the facility's ordinary business hours on the morning of the next working day, if the 72 hour examination period ends on a weekend or holiday.

The bill requires the court to dismiss a petition for involuntary services if the petitioner fails to file the petition within the 72 hour Baker Act examination period.

Baker Act Reports

The bill amends s. 394.463(2)(e), F.S., to require DCF to publish the annual reports analyzing ex parte, involuntary outpatient services, and involuntary inpatient placement orders, and the professional certificates, law enforcement officers' reports, and reports relating to the transportation of patients on the agency's website by November 30 of each year and eliminates the current requirement for DCF to provide annual reports to the department itself.

Involuntary Services

The process and criteria for involuntary outpatient services and involuntary inpatient placement are very similar. PCS for HB 915 combines these statutes and creates an "Involuntary Services" statute to remove duplicative functions, simplify procedures and to create a more streamlined and patient-tailored process for committing individuals to involuntary services. The new statute largely maintains current law for involuntary outpatient services and involuntary inpatient placement. However, the bill does make some substantive changes to the process, which are discussed below.

The bill allows those under age 18 access to all involuntary services. This will increase access to services, as current law required the individual be 18 or older for involuntary outpatient services.

The bill removes the involuntary outpatient services 36-month involuntary commitment criteria which required the person to have been committed to a receiving or treatment facility or received mental health services in a forensic or correctional facility within the preceding 36-month period.

PCS for HB 915 creates a single petition process for involuntary services. This gives the court more flexibility and authority to order a person to either involuntary outpatient services, involuntary inpatient placement, or a combination of both. The bill also creates a single certificate for petitioning for involuntary services. The bill requires a court order for both involuntary outpatient services and involuntary inpatient placement be included in the patient's clinical record.

The bill authorizes civil patients to be admitted to state treatment facilities without undergoing a transfer evaluation. This could result in a greater number of admissions to state treatment facilities. The bill also removes the requirement that the court receive and consider a transfer evaluation before a hearing for involuntary placement. Instead, it allows the state attorney to establish that a transfer evaluation was performed and that the document was properly executed by providing the court with a copy of the transfer evaluation before the close of the state's case. This change will likely improve court efficiencies as hearings will not need to be delayed because a transfer evaluation is unavailable before the hearing. The bill codifies current hearsay rules by specifying that the court may not consider substantive information in the transfer evaluation unless the evaluator testifies at the hearing.

The bill prohibits the court from ordering an individual with a developmental disability as defined under s. 393.063, F.S., who lacks a co-occurring mental illness, into a state treatment facility. This expands current law which prohibits such orders for persons with traumatic brain injury or dementia and ensures that limited state treatment facility beds remain for individuals who are appropriate for treatment.

The bill makes technical and conforming changes and updates cross references.

Involuntary Services Hearing

PCS for HB 915 expands the grounds under which a patient's presence at the hearing may be waived. Specifically, the bill authorizes the court to waive a patient's presence if the patient knowingly, intelligently and voluntarily waives the right to be present. However, the bill maintains the requirement that the patient's counsel have no objections for the waiver to take effect.

The bill states that magistrates may preside over hearings for the petition for involuntary inpatient placement and ancillary proceedings. The bill allows the state to have a continuance of hearing for a period of up to 5 days upon showing of good cause. The bill also allows the state attorney to have access to records to litigate at the hearing. However, the bill requires that the records remain confidential and may not be used for criminal investigation or prosecution purposes or any purpose other than civil commitment. Additionally, the bill requires the court to allow testimony deemed relevant from family members regarding the patient's prior history and how it relates to their current condition and from other specified individuals, including medical professions, which aligns this provision with the Marchman Act.

Remote Hearing

PCS for HB 915 allows for all witnesses to appear and testify remotely under oath at a hearing via audio-video teleconference, upon a showing of good cause and if all parties consent. The bill further requires any witness appearing remotely to provide all parties with all relevant documents by the close of business the day prior to the hearing.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.4599, F.S., relating to notice.
Section 2: Amends s. 394, 4615, F.S., relating to clinical records; confidentiality.
Section 3: Amends s. 394.463, F.S., relating to involuntary examination.
Section 4: Amends s. 394.4655, F.S., relating to involuntary outpatient services.
Section 5: Amends s. 394.467, F.S., relating to involuntary inpatient placement.
Section 6: Amends s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.
Section 7: Amends s. 394.496, F.S., relating to service planning.
Section 8: Amends. S. 394.9085, F.S., relating to behavioral provider liability.
Section 9: Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.
Section 10: Amends s. 464.012, F.S., relating to licensure of advanced practice registered nurses; fees; controlled substance prescribing.
Section 11: Amends s. 744.2007, F.S., relating to powers and duties.
Section 12: Provides and effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has an indeterminate, yet significant, fiscal impact to DCF and the state court system. The bill provides judges with greater flexibility regarding the type of involuntary services to which to order a person, rather than being required to order the specific services for which the petition was filed or no services at all. This is likely to increase demand for involuntary outpatient services, as these services have lower utilization rates.

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 require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   The bill does not provide rulemaking authority to implement the bill. However, the department has sufficient rulemaking authority to comply with the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to outpatient health services; amending s. 394.4599, F.S.; revising written notice requirements relating to filing petitions for involuntary services; amending s. 394.4615, F.S.; conforming provisions to changes made by the act; amending s. 394.463, F.S.; authorizing, rather than requiring, law enforcement officers to take certain persons into custody for involuntary examinations; requiring written reports by law enforcement officers to contain certain information; removing a provision prohibiting a psychiatric nurse from approving the release of a patient under certain circumstances; revising the types of documents that the department is required to receive and maintain and that are considered part of the clinical record; requiring the department to post a specified report on its website; revising requirements for releasing a patient from a receiving facility; revising requirements for petitions for involuntary services; amending s. 394.4655, F.S.; defining the term "involuntary outpatient placement"; authorizing a specified court to order an individual to involuntary outpatient treatment; removing provisions relating to criteria, retention of a patient, and petition for involuntary

outpatient services and court proceedings relating to involuntary outpatient services; amending s. 394.467, F.S.; providing definitions; revising requirements for ordering a person for involuntary services and treatment, petitions for involuntary service, appointment of counsel, and continuances of hearings, respectively; revising the conditions under which a court may waive the requirement for a patient to be present at an involuntary inpatient placement hearing; authorizing the court to permit witnesses to attend and testify remotely at the hearing through specified means; providing requirements for a witness to attend and testify remotely; requiring facilities to make certain clinical records available to a state attorney within a specified timeframe; specifying that such records remain confidential and may not be used for certain purposes; revising the circumstances under which a court may appoint a magistrate to preside over certain proceedings; requiring the court to allow certain testimony from specified persons; revising the length of time a court may require a patient to receive services; requiring facilities to discharge patients when they no longer meet the criteria for involuntary inpatient treatment; prohibiting courts from ordering individuals with developmental

disabilities to be involuntarily placed in a state treatment facility; requiring courts to refer such individuals, and authorizing courts to refer certain other individuals, to specified agencies for evaluation and services; providing requirements for treatment plan modifications, noncompliance with involuntary outpatient services, and discharge, respectively; revising requirements for the procedure for continued involuntary services and return to facilities, respectively; amending ss. 394.495 and 394.496, F.S.; conforming provisions to changes made by the act; amending s. 394.9085, F.S.; conforming a cross-reference to changes made by the act; amending ss. 409.972, 464.012, and 744.2007, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

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

394.4599 Notice.—

(2) INVOLUNTARY ADMISSION.—

(d) The written notice of the filing of the petition for involuntary services for an individual being held must contain the following:

1. Notice that the petition for:

a. Involuntary services ~~inpatient treatment~~ pursuant to s. 394.467 has been filed with the circuit court and the address of such court ~~in the county in which the individual is hospitalized and the address of such court~~; or

b. Involuntary outpatient services pursuant to s. 394.467 ~~s. 394.4655~~ has been filed with the criminal county court, as defined in s. 394.4655(1), ~~or the circuit court, as applicable, in the county in which the individual is hospitalized~~ and the address of such court.

2. Notice that the office of the public defender has been appointed to represent the individual in the proceeding, if the individual is not otherwise represented by counsel.

3. The date, time, and place of the hearing and the name of each examining expert and every other person expected to testify in support of continued detention.

4. Notice that the individual, the individual's guardian, guardian advocate, health care surrogate or proxy, or representative, or the administrator may apply for a change of venue for the convenience of the parties or witnesses or because of the condition of the individual.

5. Notice that the individual is entitled to an independent expert examination and, if the individual cannot afford such an examination, that the court will provide for one.

Section 2. Subsection (3) of section 394.4615, Florida

Statutes, is amended to read:

394.4615 Clinical records; confidentiality.—

(3) Information from the clinical record may be released in the following circumstances:

(a) When a patient has communicated to a service provider a specific threat to cause serious bodily injury or death to an identified or a readily available person, if the service provider reasonably believes, or should reasonably believe according to the standards of his or her profession, that the patient has the apparent intent and ability to imminently or immediately carry out such threat. When such communication 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.

(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 services ~~outpatient placement~~ or for preparing the proposed treatment plan pursuant to s. 394.4655 or

s. 394.467 ~~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 under s. 394.4655 or s. 394.467 ~~identified in s. 394.4655(7)(b)2.~~, in accordance with state and federal law.

Section 3. Subsection (1) and paragraphs (a), (e), (f), (g), and (h) of subsection (2) of section 394.463, Florida Statutes, are amended to read:

394.463 Involuntary examination.—

(1) CRITERIA.—A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

(a)1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. The person is unable to determine for himself or herself whether examination is necessary; and

(b)1. 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, able, and responsible family members or friends or the

provision of other services; or

2. 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.

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. 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 an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing

data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer may ~~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 an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. A law enforcement officer transporting a person pursuant to this section ~~subparagraph~~ shall restrain the person in the least restrictive manner available and appropriate under the circumstances. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). Any facility accepting the patient based on this

report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under s. 464.0123, a mental health counselor, a marriage and family therapist, or a 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, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody and include all emergency contact information required under subparagraph 2. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information

may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

(e) The department shall receive and maintain the copies of ex parte orders, involuntary ~~outpatient~~ services orders issued pursuant to ss. 394.4655 and 394.467 ~~s. 394.4655, involuntary inpatient placement orders issued pursuant to s. 394.467~~, professional certificates, law enforcement officers' reports, and reports relating to the transportation of patients. These documents shall be considered part of the clinical record, governed by the provisions of s. 394.4615. These documents shall be used to prepare annual reports analyzing the data obtained from these documents, without including the personal identifying information of the patient. ~~identifying patients, and~~ The

department shall post the reports on its website and provide copies of such reports to the ~~department, the~~ President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives by November 30 of each year.

(f) A patient shall be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility without unnecessary delay to determine if the criteria for involuntary services are met. Emergency treatment may be provided upon the order of a physician if the physician determines that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist or a clinical psychologist or, if the receiving facility is owned or operated by a hospital, health system, or nationally accredited community mental health center, the release may also be approved by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis and treatment of mental illness after completion of an involuntary examination pursuant to this subsection. ~~A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist~~

~~unless the release is approved by the initiating psychiatrist.~~ The release may be approved through telehealth.

(g) The examination period must be for up to 72 hours and begins when a patient arrives at the receiving facility. For a minor, the examination shall be initiated within 12 hours after the patient's arrival at the facility. Within the examination period, one of the following actions must be taken, based on the individual needs of the patient:

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

2. The patient shall be released, subject to subparagraph 1., for voluntary outpatient treatment;

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

4. A petition for involuntary services shall be filed in the circuit court ~~if inpatient treatment is deemed necessary~~ or with the criminal county court, as defined in s. 394.4655(1), as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. The ~~When a~~ petition ~~is to be filed for involuntary outpatient placement, it~~ shall be filed by one of the petitioners specified

in s. 394.467, and the court shall dismiss an untimely filed petition ~~s. 394.4655(4)(a)~~. ~~A petition for involuntary inpatient placement shall be filed by the facility administrator.~~ If a patient's 72-hour examination period ends on a weekend or holiday, including the hours before the ordinary business hours on the morning of the next working day, and the receiving facility:

a. Intends to file a petition for involuntary services, such patient may be held at the ~~a receiving~~ facility through the next working day thereafter and the ~~such~~ petition ~~for involuntary services~~ must be filed no later than such date. If the ~~receiving~~ facility fails to file the ~~a~~ petition by ~~for involuntary services at~~ the ordinary close of business on the next working day, the patient shall be released from the receiving facility following approval pursuant to paragraph (f).

b. Does not intend to file a petition for involuntary services, the ~~a~~ receiving facility may postpone release of a patient until the next working day thereafter only if a qualified professional documents that adequate discharge planning and procedures in accordance with s. 394.468, and approval pursuant to paragraph (f), are not possible until the next working day.

(h) A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 must be

examined by a facility within the examination period specified in paragraph (g). The examination period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary ~~outpatient~~ services pursuant to s. 394.467 ~~s. 394.4655(2) or involuntary inpatient placement pursuant to s. 394.467(1)~~, the patient may be offered voluntary outpatient or inpatient services ~~or placement~~, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that the patient has been examined and does not meet the criteria for involuntary ~~inpatient~~ services ~~or involuntary outpatient placement~~ must be entered into the patient's clinical record. This paragraph is not intended to prevent a hospital providing emergency medical services from appropriately transferring a patient to another hospital before stabilization if the requirements of s. 395.1041(3)(c) have been met.

Section 4. Section 394.4655, Florida Statutes, is amended to read:

394.4655 Involuntary outpatient services.—

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

(a) "Court" means a circuit court or a criminal county court.

(b) "Criminal county court" means a county court exercising its original jurisdiction in a misdemeanor case under s. 34.01.

(c) "Involuntary outpatient placement" means involuntary outpatient services as defined in s. 394.467, F.S.

(2) A criminal county court may order an individual to involuntary outpatient placement under s. 394.467. ~~CRITERIA FOR INVOLUNTARY OUTPATIENT SERVICES.—A person may be ordered to involuntary outpatient services upon a finding of the court, by clear and convincing evidence, that the person meets all of the following criteria:~~

~~(a) The person is 18 years of age or older.~~

~~(b) The person has a mental illness.~~

~~(c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.~~

~~(d) The person has a history of lack of compliance with treatment for mental illness.~~

~~(e) The person has:~~

~~1. At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month~~

~~period does not include any period during which the person was admitted or incarcerated; or~~

~~2. 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.~~

~~(f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary services for treatment after sufficient and conscientious explanation and disclosure of why the services are necessary or is unable to determine for himself or herself whether services are necessary.~~

~~(g) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services 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 as set forth in s. 394.463(1).~~

~~(h) It is likely that the person will benefit from involuntary outpatient services.~~

~~(i) 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.~~

~~(3) INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a)1. A patient who is being recommended for involuntary outpatient services by the administrator of the facility where~~

~~the patient has been examined may be retained by the facility after adherence to the notice procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness, a physician assistant who has at least 3 years' experience and is supervised by such licensed physician or a psychiatrist, a clinical social worker, or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient services certificate that authorizes the facility to retain the patient pending completion of a hearing. The certificate must be made a part of the patient's clinical record.~~

~~2. If the patient has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the facility while awaiting the hearing for involuntary outpatient services. Before~~

~~filing a petition for involuntary outpatient services, the administrator of the facility or a designated department representative must identify the service provider that will have primary responsibility for service provision under an order for involuntary outpatient services, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.~~

~~3. The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient services order that addresses the nature and extent of the mental illness and any co-occurring substance use disorder that necessitate involuntary outpatient services. The treatment plan must specify the likely level of care, including the use of medication, and anticipated discharge criteria for terminating involuntary outpatient services. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to~~

~~the court in the proposed plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services.~~

~~(b) If a patient in involuntary inpatient placement meets the criteria for involuntary outpatient services, the administrator of the facility may, before the expiration of the period during which the facility is authorized to retain the patient, recommend involuntary outpatient services. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient services are met. However, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness, a physician assistant who has at least 3 years' experience and is supervised by such licensed physician~~

~~or a psychiatrist, a clinical social worker, or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient services certificate, and the certificate must be made a part of the patient's clinical record.~~

~~(c)1. The administrator of the treatment facility shall provide a copy of the involuntary outpatient services certificate and a copy of the state mental health discharge form to the managing entity in the county where the patient will be residing. For persons who are leaving a state mental health treatment facility, the petition for involuntary outpatient services must be filed in the county where the patient will be residing.~~

~~2. The service provider that will have primary responsibility for service provision shall be identified by the designated department representative before the order for involuntary outpatient services and must, before filing a petition for involuntary outpatient services, certify to the court whether the services recommended in the patient's discharge plan are available and whether the service provider agrees to provide those services. The service provider must develop with the patient, or the patient's guardian advocate, if appointed, a treatment or service plan that addresses the needs identified in the discharge plan. The plan must be deemed to be~~

~~clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker, as defined in this chapter, who consults with, or is employed or contracted by, the service provider.~~

~~3. If the service provider certifies that the services in the proposed treatment or service plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services.~~

~~(4) PETITION FOR INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a) A petition for involuntary outpatient services may be filed by:~~

~~1. The administrator of a receiving facility; or~~

~~2. The administrator of a treatment facility.~~

~~(b) Each required criterion for involuntary outpatient services must be alleged and substantiated in the petition for involuntary outpatient services. A copy of the certificate recommending involuntary outpatient services completed by a qualified professional specified in subsection (3) must be attached to the petition. A copy of the proposed treatment plan must be attached to the petition. Before the petition is filed, the service provider shall certify that the services in the proposed plan are available. If the necessary services are not~~

~~available, the petition may not be filed. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services.~~

~~(c) The petition for involuntary outpatient services 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. When the petition has been filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to the department, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel. A fee may not be charged for filing a petition under this subsection.~~

~~(5) APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary outpatient services, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of the appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary outpatient services. An attorney who represents the patient must be provided access to~~

~~the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.~~

~~(6) CONTINUANCE OF HEARING.—The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing. The continuance shall be for a period of up to 4 weeks.~~

~~(7) HEARING ON INVOLUNTARY OUTPATIENT SERVICES.—~~

~~(a)1. The court shall hold the hearing on involuntary outpatient services within 5 working days after the filing of the petition, unless a continuance is granted. The hearing must be held in the county where the petition is filed, must be as convenient to the patient as is consistent with orderly procedure, and must be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient and if the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. 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.~~

~~2. The court may appoint a magistrate to preside at the hearing. One of the professionals who executed the involuntary outpatient services certificate shall be a witness. The patient~~

~~and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided by law. The independent expert's report is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the person's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.~~

~~(b)1. If the court concludes that the patient meets the criteria for involuntary outpatient services pursuant to subsection (2), the court shall issue an order for involuntary outpatient services. The court order shall be for a period of up to 90 days. The order must specify the nature and extent of the patient's mental illness. The order of the court and the treatment plan must be made part of the patient's clinical record. The service provider shall discharge a patient from involuntary outpatient services when the order expires or any time the patient no longer meets the criteria for involuntary placement. Upon discharge, the service provider shall send a certificate of discharge to the court.~~

~~2. The court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for the program or service. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services. A copy of the order must be sent to the managing entity by the service provider within 1 working day after it is received from the court. The order may be submitted electronically through existing data systems. After the order for involuntary services is issued, the service provider and the patient may modify the treatment plan. For any material modification of the treatment plan to which the patient or, if one is appointed, the patient's guardian advocate agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (3).~~

~~3. If, in the clinical judgment of a physician, the patient has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the patient may meet the criteria for involuntary examination, a~~

~~person may be brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement pursuant to s. 394.467, the patient must be discharged from the facility. The involuntary outpatient services order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient services or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if applicable, agrees, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (3).~~

~~(c) If, at any time before the conclusion of the initial hearing on involuntary outpatient services, it appears to the court that the person does not meet the criteria for involuntary outpatient services under this section but, instead, meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination under s. 394.463. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary~~

~~admission pursuant to s. 397.675, the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings are governed by chapter 397.~~

~~(d) At the hearing on involuntary outpatient services, the court shall consider testimony and evidence regarding the patient's competence to consent to services. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598. The guardian advocate shall be appointed or discharged in accordance with s. 394.4598.~~

~~(e) The administrator of the receiving facility or the designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient services. Such documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a psychologist or a clinical social worker.~~

~~(8) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT SERVICES.~~

~~(a)1. If the person continues to meet the criteria for involuntary outpatient services, the service provider shall, at least 10 days before the expiration of the period during which the treatment is ordered for the person, file in the court that~~

~~issued the order for involuntary outpatient services a petition for continued involuntary outpatient services. The court shall immediately schedule a hearing on the petition to be held within 15 days after the petition is filed.~~

~~2. The existing involuntary outpatient services order remains in effect until disposition on the petition for continued involuntary outpatient services.~~

~~3. A certificate shall be attached to the petition which includes a statement from the person's physician or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was receiving involuntary services, and an individualized plan of continued treatment.~~

~~4. The service provider shall develop the individualized plan of continued treatment in consultation with the patient or the patient's guardian advocate, if applicable. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued services to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or the public defender.~~

~~(b) Within 1 court working day after the filing of a petition for continued involuntary outpatient services, the court shall appoint the public defender to represent the person who is the subject of the petition, unless the person is~~

~~otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. The public defender shall represent the person until the petition is dismissed or the court order expires or the patient is discharged from involuntary outpatient services. Any attorney representing the patient shall have access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.~~

~~(c) Hearings on petitions for continued involuntary outpatient services must be before the court that issued the order for involuntary outpatient services. The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph must meet the requirements of subsection (7), except that the time period included in paragraph (2)(c) is not applicable in determining the appropriateness of additional periods of involuntary outpatient placement.~~

~~(d) Notice of the hearing must be provided as set forth in s. 394.4599. The patient and the patient's attorney may agree to a period of continued outpatient services without a court hearing.~~

~~(e) The same procedure must be repeated before the expiration of each additional period the patient is placed in treatment.~~

~~(f) If the patient has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. Section 394.4598 governs the discharge of the guardian advocate if the patient's competency to consent to treatment has been restored.~~

Section 5. Section 394.467, Florida Statutes, is amended to read:

394.467 Involuntary services ~~inpatient placement~~.—

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

(a) "Court" means a circuit court.

(b) "Involuntary inpatient placement" means services provided on an inpatient basis to a person 18 years of age or older who does not voluntarily consent to services under this chapter, or a minor who does not voluntarily assent to services under this chapter.

(c) "Involuntary outpatient services" means services provided on an outpatient basis to a person who does not voluntarily consent to services under this chapter.

(2)~~(1)~~ CRITERIA FOR INVOLUNTARY SERVICES.—A person may be ordered by a court to be provided ~~for~~ involuntary services ~~inpatient placement for treatment~~ upon a finding of the court, by clear and convincing evidence, that the person meets the following criteria:

(a) The person ~~He or she~~ has a mental illness and because of his or her mental illness:

1.a. Is unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary services or ~~He or she has refused~~ voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of ~~inpatient placement for~~ treatment; or

b. ~~He or she~~ Is unable to determine for himself or herself whether services or inpatient placement is necessary; and

2.a. Is unlikely to survive safely in the community without supervision, based on clinical determination;

b.~~2.a. He or she~~ Is incapable of surviving alone or with the help of willing, able, 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

c.~~b.~~ Without treatment, there is a substantial likelihood that in the near future the person ~~he or she~~ will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting to cause, or threatening to cause such harm.~~; and~~

(b) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services to prevent a relapse or deterioration of his or her

mental health that would be likely to result in serious bodily harm to self or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1).

(c) The person has a history of lack of compliance with treatment for mental illness.

(d) It is likely that the person will benefit from involuntary services.

(e) ~~(b)~~ All available less restrictive treatment alternatives that would offer an opportunity for improvement of the person's ~~his or her~~ condition have been deemed ~~judged~~ to be inappropriate or unavailable.

(3) ~~(2)~~ RECOMMENDATION FOR INVOLUNTARY SERVICES AND ~~ADMISSION TO A~~ TREATMENT ~~FACILITY~~.—A patient may be recommended for involuntary inpatient placement, involuntary outpatient services, or a combination of both.

(a) A patient may be retained by a facility for involuntary services ~~or involuntarily placed in a treatment facility~~ upon the recommendation of the administrator of the facility where the patient has been examined and after adherence to the notice and hearing procedures provided in s. 394.4599. However, if a patient who is being recommended for only involuntary outpatient services has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the facility while awaiting the hearing for involuntary outpatient services.

(b) The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary services ~~inpatient placement~~ are met.

(c) If ~~However, if the administrator certifies that~~ a psychiatrist or clinical psychologist is not available to provide a ~~the~~ second opinion, the administrator must certify that a clinical psychologist is not available and the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental illness or by a psychiatric nurse. If the patient is being recommended for involuntary outpatient services only, the second opinion may be provided by a physician assistant who has at least 3 years' experience and is supervised by a licensed physician or psychiatrist or a clinical social worker.

(d) Any opinion authorized in this subsection may be conducted through a face-to-face or in-person examination, ~~in person,~~ or by electronic means. Recommendations for involuntary services must be ~~Such recommendation shall be~~ entered on an ~~a petition for~~ involuntary services ~~inpatient placement~~ certificate, which shall be made a part of the patient's clinical record. The certificate must either authorize the facility to retain the patient pending completion of a hearing or authorize ~~that authorizes~~ the facility to retain the patient

pending transfer to a treatment facility or completion of a hearing.

(4)~~(3)~~ PETITION FOR INVOLUNTARY SERVICES ~~INPATIENT PLACEMENT~~.—

(a) A petition for involuntary services may be filed by:

1. The administrator of a receiving ~~the~~ facility; or

2. The administrator of a treatment facility.

(b) A ~~shall file a~~ petition for involuntary inpatient placement, or inpatient placement followed by outpatient services, must be filed in the court in the county where the patient is located.

(c) A petition for involuntary outpatient services 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.

(d)1. The petitioner must state in the petition:

a. Whether the petitioner is recommending inpatient placement, outpatient services, or both.

b. The length of time recommended for each type of involuntary services.

c. The reasons for the recommendation.

2. If recommending involuntary outpatient services, or a combination of involuntary inpatient placement and outpatient services, the petitioner must identify the service provider that

will have primary responsibility for providing such services under an order for involuntary outpatient services, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.

3. If recommending an immediate order to involuntary outpatient placement, the service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient services order that addresses the nature and extent of the mental illness and any co-occurring substance use disorder that necessitate involuntary outpatient services. The treatment plan must specify the likely level of care, including the use of medication, and anticipated discharge criteria for terminating involuntary outpatient services. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the

proposed plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested service.

(e) Each required criterion for the recommended involuntary services must be alleged and substantiated in the petition. A copy of the certificate recommending involuntary services completed by a qualified professional specified in subsection (3) and, if applicable, a copy of the proposed treatment plan must be attached to the petition.

(f) When the petition has been filed ~~Upon filing~~, the clerk of the court shall provide copies of the petition and, if applicable, the proposed treatment plan to the department, the managing entity, the patient, the patient's guardian or representative, ~~and~~ the state attorney, and the public defender or the patient's private counsel ~~of the judicial circuit in which the patient is located~~. A fee may not be charged for the filing of a petition under this subsection.

(5) ~~(4)~~ APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary services ~~inpatient placement~~, the court shall appoint the public defender

to represent the person who is the subject of the petition, unless the person is otherwise represented by counsel or ineligible. The clerk of the court shall immediately notify the public defender of such appointment. The public defender shall represent the person until the petition is dismissed, the court order expires, or the patient is discharged from involuntary services. Any attorney who represents ~~representing~~ the patient shall be provided ~~have~~ access to the patient, witnesses, and records relevant to the presentation of the patient's case and shall represent the interests of the patient, regardless of the source of payment to the attorney.

(6)~~(5)~~ CONTINUANCE OF HEARING.—The patient and the state are independently ~~is~~ entitled~~, with the concurrence of the patient's counsel,~~ to at least one continuance of the hearing. The patient's continuance may be for a period of up to 4 weeks and requires the concurrence of the patient's counsel. The state's continuance may be for a period of up to 5 court working days and requires a showing of good cause and due diligence by the state before requesting the continuance. The state's failure to timely review any readily available document or failure to attempt to contact a known witness does not warrant a continuance.

(7)~~(6)~~ HEARING ON INVOLUNTARY SERVICES ~~INPATIENT PLACEMENT~~.—

(a)1. The court shall hold a ~~the~~ hearing on the

involuntary services petition ~~inpatient placement~~ within 5 court working days after the filing of the petition, unless a continuance is granted.

2. The court must hold any hearing on involuntary outpatient services in the county where the petition is filed. A hearing on involuntary inpatient placement, or a combination of involuntary inpatient placement and involuntary outpatient services, ~~Except for good cause documented in the court file, the hearing~~ must be held in the county or the facility, as appropriate, where the patient is located, except for good cause documented in the court file.

3. A hearing on involuntary services must be as convenient to the patient as is consistent with orderly procedure, and shall be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of the patient, or the patient knowingly, intelligently, and voluntarily waives his or her right to be present, and if the patient's counsel does not object, the court may waive the attendance ~~presence~~ of the patient from all or any portion of the hearing. 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. The facility shall make the respondent's clinical records available to the state attorney and the respondent's

attorney so that the state can evaluate and prepare its case. However, these records shall remain confidential, and the state attorney may not use any record obtained under this part for criminal investigation or prosecution purposes, or for any purpose other than the patient's civil commitment under this chapter ~~petitioning facility administrator, as the real party in interest in the proceeding~~.

(b)~~3.~~ The court may appoint a magistrate to preside at the hearing on the petition and any ancillary proceedings, including, but not limited to, writs of habeas corpus issued pursuant to s. 394.459. Upon a finding of good cause, the court may permit all witnesses, including, but not limited to, medical professionals who are or have been involved with the patient's treatment, to remotely attend and testify at the hearing under oath via audio-video teleconference. A witness intending to remotely attend and testify must provide the parties with all relevant documents by the close of business on the day before the hearing. One of the professionals who executed the ~~petition for~~ involuntary services ~~inpatient placement~~ certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided for by law. The independent expert's report is confidential and not discoverable, unless the

expert is to be called as a witness for the patient at the hearing. The court shall allow testimony from persons, including family members, deemed by the court to be relevant under state law, regarding the person's prior history and how that prior history relates to the person's current condition. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(c) ~~(b)~~ At the hearing, the court shall consider testimony and evidence regarding the patient's competence to consent to services and treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598.

(8) ORDERS OF THE COURT.—

(a)1. If the court concludes that the patient meets the criteria for involuntary services, the court may order a patient to involuntary inpatient placement, involuntary outpatient services, or a combination of involuntary services depending on the criteria met and which type of involuntary services best meet the needs of the patient. However, if the court orders the patient to involuntary outpatient services, the court may not order the department or the service provider to provide services if the program or service is not available in the patient's local community, if there is no space available in the program or service for the patient, or if funding is not available for

the program or service. The service provider must notify the managing entity if the requested services are not available. The managing entity must document such efforts to obtain the requested services. A copy of the order must be sent to the managing entity by the service provider within 1 working day after it is received from the court.

2. The order must specify the nature and extent of the patient's mental illness.

3.a. An order for only involuntary outpatient services shall be for a period of up to 90 days.

b. An order for involuntary inpatient placement, or a combination of inpatient placement and outpatient services, may be up to 6 months.

4. An order for a combination of involuntary services shall specify the length of time the patient shall be ordered for involuntary inpatient placement and involuntary outpatient services.

5. The order of the court and the patient's treatment plan, if applicable, must be made part of the patient's clinical record.

(b) If the court orders a patient into involuntary inpatient placement, the court ~~it~~ may order that the patient be transferred to a treatment facility, or~~,~~ if the patient is at a treatment facility, that the patient be retained there or be treated at any other appropriate facility, or that the patient

receive services~~,~~ on an involuntary basis~~, for up to 90 days~~. ~~However, any order for involuntary mental health services in a treatment facility may be for up to 6 months. The order shall specify the nature and extent of the patient's mental illness.~~ The court may not order an individual with a developmental disability as defined in s. 393.063 or a traumatic brain injury or dementia who lacks a co-occurring mental illness to be involuntarily placed in a state treatment facility. ~~The facility shall discharge a patient any time the patient no longer meets the criteria for involuntary inpatient placement, unless the patient has transferred to voluntary status.~~

(c) If at any time before the conclusion of a ~~the~~ hearing on involuntary services, ~~inpatient placement~~ it appears to the court that the patient ~~person does not meet the criteria for involuntary inpatient placement under this section, but~~ instead meets the criteria for involuntary ~~outpatient services, the court may order the person evaluated for involuntary outpatient services pursuant to s. 394.4655. The petition and hearing procedures set forth in s. 394.4655 shall apply. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary~~ admission or treatment pursuant to s. 397.675, then the court may order the person to be admitted for involuntary assessment ~~for a period of 5 days~~ pursuant to s. 397.6757 ~~s. 397.6811~~. Thereafter, all proceedings are governed by chapter 397.

~~(d) At the hearing on involuntary inpatient 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 as provided in s. 394.4598.~~

(d)~~(e)~~ The administrator of the petitioning facility or the designated department representative shall provide a copy of the court order and adequate documentation of a patient's mental illness to the service provider for involuntary outpatient services or the administrator of a treatment facility if the patient is ordered for involuntary inpatient placement~~, whether by civil or criminal court~~. The documentation must include any advance directives made by the patient, a psychiatric evaluation of the patient, and any evaluations of the patient performed by a psychiatric nurse, a clinical psychologist, a marriage and family therapist, a mental health counselor, or a clinical social worker. The administrator of a treatment facility may refuse admission to any patient directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied by adequate orders and documentation.

(9) TREATMENT PLAN MODIFICATION—After the order for involuntary outpatient services is issued, the service provider and the patient may modify the treatment plan. For any material modification of the treatment plan to which the patient or, if one is appointed, the patient's guardian advocate agrees, the

service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (4).

(10) NONCOMPLIANCE WITH INVOLUNTARY OUTPATIENT SERVICES.—If, in the clinical judgment of a physician, a patient receiving involuntary outpatient services has failed or has refused to comply with the treatment plan ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the patient may meet the criteria for involuntary examination, a person may be brought to a receiving facility pursuant to s. 394.463. If, after examination, the patient does not meet the criteria for involuntary inpatient placement under this section, the patient must be discharged from the facility. The involuntary outpatient services order shall remain in effect unless the service provider determines that the patient no longer meets the criteria for involuntary outpatient services or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the patient in treatment. For any material modification of the treatment plan to which the patient or the patient's guardian advocate, if applicable, agrees, the service provider shall send notice of the modification to the court. Any material modifications of the

treatment plan which are contested by the patient or the patient's guardian advocate, if applicable, must be approved or disapproved by the court consistent with subsection (4).

(11) ~~(7)~~ PROCEDURE FOR CONTINUED INVOLUNTARY SERVICES ~~INPATIENT PLACEMENT~~.—

(a) A petition for continued involuntary services shall be filed if the patient continues to meets the criteria for involuntary services.

(b)1. If a patient receiving involuntary outpatient services continues to meet the criteria for involuntary outpatient services, the service provider shall file in the court that issued the order for involuntary outpatient services a petition for continued involuntary outpatient services.

2. If the patient in involuntary inpatient placement

~~(a) Hearings on petitions for continued involuntary inpatient placement of an individual placed at any treatment facility are administrative hearings and must be conducted in accordance with s. 120.57(1), except that any order entered by the administrative law judge is final and subject to judicial review in accordance with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity are governed by s. 916.15.~~

~~(b) If the patient~~ continues to meet the criteria for involuntary inpatient placement and is being treated at a treatment facility, the administrator shall, before the

expiration of the period the treatment facility is authorized to retain the patient, file a petition requesting authorization for continued involuntary inpatient placement.

3. The court shall immediately schedule a hearing on the petition to be held within 15 days after the petition is filed.

4. The existing involuntary services order shall remain in effect until disposition on the petition for continued involuntary services.

(c) A certificate for continued involuntary services must be attached to the petition and shall include ~~The request must be accompanied by~~ a statement from the patient's physician, psychiatrist, psychiatric nurse, or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was receiving involuntary services ~~involuntarily placed~~, and, if requesting involuntary outpatient services, an individualized plan of continued treatment. The individualized plan of continued treatment shall be developed in consultation with the patient or the patient's guardian advocate, if applicable. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the individualized plan of continued services to the department, the patient, the patient's guardian advocate, the state attorney, and the patient's private counsel or the public defender.

(d) The court shall appoint counsel to represent the

person who is the subject of the petition for continued involuntary services in accordance to the provisions set forth in subsection (5), unless the person is otherwise represented by counsel or ineligible.

(e) Hearings on petitions for continued involuntary outpatient services must be before the court that issued the order for involuntary outpatient services. However, the patient and the patient's attorney may agree to a period of continued outpatient services without a court hearing.

(f) Hearings on petitions for continued involuntary inpatient placement must be held in the county or the facility, as appropriate, where the patient is located.

(g) The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph must meet the requirements of subsection (7).

(h) Notice of the hearing must be provided as set forth ~~provided~~ in s. 394.4599.

(i) If a patient's attendance at the hearing is voluntarily waived, the ~~administrative law~~ judge must determine that the patient knowingly, intelligently, and voluntarily waived his or her right to be present, ~~waiver is knowing and voluntary~~ before waiving the presence of the patient from all or a portion of the hearing. Alternatively, if at the hearing the ~~administrative law~~ judge finds that attendance at the hearing is not consistent with the best interests of the patient, the

~~administrative law~~ judge may waive the presence of the patient from all or any portion of the hearing, unless the patient, through counsel, objects to the waiver of presence. The testimony in the hearing must be under oath~~,~~ and the proceedings must be recorded.

(j) Hearings on petitions for continued involuntary inpatient placement of an individual placed at any treatment facility are administrative hearings and must be conducted in accordance with s. 120.57(1), except that any order entered by the judge is final and subject to judicial review in accordance with s. 120.68. Orders concerning patients committed after successfully pleading not guilty by reason of insanity are governed by s. 916.15.

~~(c) Unless the patient is otherwise represented or is ineligible, he or she shall be represented at the hearing on the petition for continued involuntary inpatient placement by the public defender of the circuit in which the facility is located.~~

(k)~~(d)~~ If at a hearing it is shown that the patient continues to meet the criteria for involuntary services ~~inpatient placement~~, the court ~~administrative law judge~~ shall issue an ~~sign the~~ order for continued involuntary services ~~inpatient placement~~ for up to 90 days. However, any order for involuntary inpatient placement, or ~~mental health services in~~ a combination of involuntary services ~~treatment facility~~ may be for up to 6 months. The same procedure shall be repeated before

the expiration of each additional period the patient is retained.

(l) If the patient has been ordered to undergo involuntary services and has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the patient's competence. If the patient's competency to consent to treatment is restored, the discharge of the guardian advocate shall be governed by s. 394.4598. If the patient has been ordered to undergo involuntary inpatient placement only and the patient's competency to consent to treatment is restored, the administrative law judge may issue a recommended order, to the court that found the patient incompetent to consent to treatment, that the patient's competence be restored and that any guardian advocate previously appointed be discharged.

(m) ~~(c)~~ If continued involuntary inpatient placement is necessary for a patient in involuntary inpatient placement who was admitted while serving a criminal sentence, but his or her sentence is about to expire, or for a minor involuntarily placed, but who is about to reach the age of 18, the administrator shall petition the administrative law judge for an order authorizing continued involuntary inpatient placement. The procedure required in this section ~~subsection~~ must be followed before the expiration of each additional period the patient is involuntarily receiving services.

(12) ~~(8)~~ RETURN TO FACILITY.—If a patient has been ordered to undergo involuntary inpatient placement ~~involuntarily~~ held at a treatment facility under this part leaves the facility without the administrator's authorization, the administrator may authorize a search for the patient and his or her return to the facility. The administrator may request the assistance of a law enforcement agency in this regard.

(13) DISCHARGE—The patient shall be discharged upon expiration of the court order or at any time the patient no longer meets the criteria for involuntary services, unless the patient has transferred to voluntary status. Upon discharge, the service provider or facility shall send a certificate of discharge to the court.

Section 6. Subsection (3) of section 394.495, Florida Statutes, is amended to read:

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

(3) Assessments must be performed by:

(a) A clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455 ~~professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~;

(b) A professional licensed under chapter 491; or

(c) A person who is under the direct supervision of a clinical psychologist, clinical social worker, physician,

psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455, ~~qualified professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~ or a professional licensed under chapter 491.

Section 7. Subsection (5) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(5) A clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455, ~~professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 8. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification ~~services~~," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(26)(a)4. ~~397.311(26)(a)3.~~, 397.311(26)(a)1., and 394.455(41) ~~394.455(40)~~, respectively.

Section 9. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt

from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a treatment facility as defined in s. 394.455 ~~s. 394.455(49)~~.

Section 10. Paragraph (e) of subsection (4) of section 464.012, Florida Statutes, is amended to read:

464.012 Licensure of advanced practice registered nurses; fees; controlled substance prescribing.—

(4) In addition to the general functions specified in subsection (3), an advanced practice registered nurse may perform the following acts within his or her specialty:

(e) A psychiatric nurse, who meets the requirements in s. 394.455(37) ~~s. 394.455(36)~~, within the framework of an established protocol with a psychiatrist, may prescribe psychotropic controlled substances for the treatment of mental disorders.

Section 11. Subsection (7) of section 744.2007, Florida Statutes, is amended to read:

744.2007 Powers and duties.—

(7) A public guardian may not commit a ward to a treatment facility, as defined in s. 394.455 ~~s. 394.455(49)~~, without an involuntary placement proceeding as provided by law.

Section 12. This act shall take effect July 1, 2024.

PCS for HB 951

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 951 Behavioral Health
SPONSOR(S): Children, Families & Seniors Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee		Curry	Brazzell

SUMMARY ANALYSIS

The Florida Mental Health Act, commonly referred to as the Baker Act governors the procedures for mental health examination and treatment, including voluntary and involuntary examinations while protecting the rights of all individuals examined or treated for mental illness in Florida.

Individuals in an 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. An involuntary examination may be initiated in one of three ways, including by a law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to an appropriate, or the nearest, receiving facility for examination.

PCS for HB 951 requires law enforcement officers, when transporting a minor, to provide the parent or legal guardian of the minor with the name, address, and contact information for the receiving facility to which the officer is transporting the minor to before departing, if the minor's parent or legal guardian is present, subject to concerns for the minor's safety and welfare.

The bill creates the Office of Children's Behavioral Health Ombudsman (Office) within the Department of Children and Families (DCF) for the purpose of being a central point to receive complaints on behalf of children and adolescents with behavioral health disorders receiving state-funded services and to use this information to improve the child and adolescent mental health treatment and support. Subject to available resources, the bill requires the Office to:

- Receive and direct to the appropriate contact within the department, at the Agency for Health Care Administration, or the appropriate organizations providing behavioral health services complaints from children and adolescents and their families about the mental health treatment and support system.
- Maintain records of complaints received and the actions taken.
- Be a resource to identify and explain relevant polices or procedures to children, adolescents and their families about the child and adolescent mental health treatment and support system.
- Provide recommendations to the department to address systemic problems within the mental health treatment and support system that are leading to complaints. The department shall include an analysis of complaints and these recommendations in the report required under s. 394.4573, F.S.
- Engage in functions that may improve the child and adolescent mental health treatment and support system.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[1] The primary indicators used to evaluate an individual's mental health are:[2]

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

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[3] 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. Nearly one in five adults lives with a mental illness.[4] During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22%.[5]

Mental Health Safety Net Services

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.

Behavioral Health Managing Entities

In 2001, the Legislature authorized DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.[6] The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.[7] MEs were fully implemented statewide in 2013, serving all geographic regions.

[1] World Health Organization, *Mental Health: Strengthening Our Response*, https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited January 21, 2024).
[2] Centers for Disease Control and Prevention, *Mental Health Basics*, http://medbox.iiab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm (last visited January 21, 2024).
[3] *Id*.
[4] National Institute of Mental Health (NIH), *Mental Illness*, https://www.nimh.nih.gov/health/statistics/mental-illness (last visited January 21, 2024).
[5] *Id*.
[6] Ch. 2001-191, Laws of Fla.
[7] Ch. 2008-243, Laws of Fla.

DCF currently contracts with seven MEs for behavioral health services throughout the state. These entities do not provide direct services; rather, they allow the department's funding to be tailored to the specific behavioral health needs in the various regions of the state.[8]

Coordinated System of Care

Managing entities are required to promote the development and implementation of a coordinated system of care.[9] A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a managing entity or by another method of community partnership or mutual agreement.[10] A community or region provides a coordinated system of care for those with a mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, DCF may award system improvement grants to managing entities.[11] MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or to meet specific needs identified in DCF's assessment of behavioral health services in this state.[12] DCF must use performance-based contracts to award grants.[13]

There are several essential elements which make up a coordinated system of care, including:[14]

- Community interventions;
- Case management;
- Care coordination;
- Outpatient services;
- Residential services;
- Hospital inpatient care;
- Aftercare and post-discharge services;
- Medication assisted treatment and medication management; and
- Recovery support.

A coordinated system of care must include, but is not limited to, the following array of services:[15]

- Prevention services;
- Home-based services;
- School-based services;
- Family therapy;
- Family support;
- Respite services;
- Outpatient treatment;
- Crisis stabilization;
- Therapeutic foster care;
- Residential treatment;
- Inpatient hospitalization;
- Case management;
- Services for victims of sex offenses;
- Transitional services; and
- Trauma-informed services for children who have suffered sexual exploitation.

[8] DCF, *Managing Entities,* available at https://www.myflfamilies.com/services/samh/prov/*d*ers/managing-entities, (last visited January 24, 2024).
[9] S. 394.9082(5)(d), F.S.
[10] S. 394.4573(1)(c), F.S.
[11] S. 394.4573(3), F.S. The Legislature has not funded system improvement grants.
[12] *Id.*
[13] *Id.*
[14] S. 394.4573(2), F.S.
[15] S. 394.495(4), F.S

DCF must define the priority populations which would benefit from receiving care coordination.[16] In defining priority populations, DCF must consider the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

MEs are required to conduct a community behavioral health care needs assessment once every three years in the geographic area served by the managing entity, which identifies needs by sub-region.[17] The assessments must be submitted to DCF for inclusion in the state and district substance abuse and mental health plan.[18]

The Baker Act

The Florida Mental Health Act, commonly referred to as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.[19] The Act includes 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.[20]

Involuntary Examination

Individuals in an 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.[21] 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, has refused voluntary examination, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to that person's well-being, and such harm is unavoidable through help of willing family members or friends, or will cause serious bodily harm to him or herself or others in the near future based on recent behavior.[22]

An involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;[23]
- A qualified professional (physician, clinical psychologist, psychiatric nurse, an autonomous advanced practice registered nurse, mental health counselor, marriage and family therapist, or clinical social worker) executing 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, including a statement of the professional's observations supporting such conclusion; or[24]
- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination.[25]

Involuntary examination patients must be taken to a facility that has been designated by the Department of Children and Families (DCF) as a receiving facility. Receiving facilities, often referred to as Baker Act receiving facilities, are public or private facilities designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance

[16] S. 394.9082(3)(c), F.S.
[17] S. 394.9082(5)(b), F.S.
[18] S. 394.75(3), F.S.
[19] The Baker Act is contained in Part I of ch. 394, F.S.
[20] S. 394.459, F.S.
[21] Ss. 394.4625 and 394.463, F.S.
[22] S. 394.463(1), F.S.
[23] S. 394.463(2)(a)1., F.S. The order of the court must be made a part of the patient's clinical record.
[24] S. 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record.
[25] S. 394.463(2)(a)2., F.S.

abuse evaluation and to provide treatment or transportation to the appropriate service provider.[26] Under the Baker Act, a receiving facility must examine an involuntary patient within 72 hours of arrival.[27]

Transportation by Law Enforcement Officers

When transporting an individual who appears to meet the criteria for involuntary examination, the law enforcement officer must deliver the person to an appropriate, or the nearest, designated receiving center for examination. Current law requires the officer to execute a written report detailing the circumstances under which the person was taken into custody, and to make the report a part of the patient's clinical record. The report must also include all emergency contact information for the person that is readily accessible to the officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles.

Current law authorizes the receiving facility to use the emergency contact information obtained by the law enforcement officer solely for the purpose of informing listed emergency contacts of the patient about the patient's whereabouts. The law does not require law enforcement officers, when transporting a minor, to provide the parent or legal guardian of the minor with the location or contact information for the receiving facility to which the office is transporting the minor.

Involuntary Examination of Minors

During fiscal year (FY) 2021-2022, 170,048 involuntary examinations were conducted for 115,239 individuals under the Baker Act;[28] of those examined, just over 36,000 were minors.[29] Individuals with multiple involuntary examinations accounted for a disproportionate number of examinations. Of the total involuntary examinations, there were 21.78 percent of individuals with two or more exams in FY 2021-2022. These individuals accounted for 46.99 percent of involuntary exams during the three-year period for FY 2019-2020 through FY 2021-2022.[30]

Approximately one in five (21.23 percent) of children with an involuntary examination in FY 2021-2022 had two or more involuntary exams. These children accounted for 44.93 percent of the of the involuntary examinations for the year.[31] According to the annual Baker Act Report, 12.40 percent of Baker Act examinations for children were initiated while at school.[32]

Effect of the Bill

When transporting a minor for involuntary examination, PCS for HB 951 requires law enforcement officers to provide the parent or legal guardian of the minor with the name, address, and contact information for the receiving facility to which the officer is transporting the minor to before departing, if the minor's parent or legal guardian is present, subject to any safety and welfare concerns for the minor.

PCS for HB 951 creates the Office of Children's Behavioral Health Ombudsman (Office) within DCF for the purpose of being a central point to receive complaints on behalf of children and adolescents with behavioral health disorders receiving state-funded services and to use this information to improve the child and adolescent mental health treatment and support system. The bill requires the Office to:

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[26] S. 394.455(40), F.S. This term does not include a county jail.
[27] S. 394.463(2)(g), F.S.
[28] DCF, *The Baker Act Florida Mental Health Act Fiscal Year 2021-2022 Report,* available at https://www.myflfamilies.com/sites/default/files/2023-07/FY%202021%202022%20Annual%20Report.pdf, (last visited January 21, 2024).
[29] DCF, *Report on Involuntary Examination of Minors,* available at https://www.usf.edu/cbcs/baker-act/documents/ba_minors_report_nov2023.pdf, (last visited January 21, 2024).
[30] *Id.*
[31] *Id.*
[32] DCF, *The Baker Act Florida Mental Health Act Fiscal Year 2021-2022 Report,* available at https://www.myflfamilies.com/sites/default/files/2023-07/FY%202021%202022%20Annual%20Report.pdf, (last visited January 21, 2024).

- Receive and direct to the appropriate contact within the department, at the Agency for Health Care Administration, or the appropriate organizations providing behavioral health services complaints from children and adolescents and their families about the mental health treatment and support system.
- Maintain records of complaints received and the actions taken.
- Be a resource to identify and explain relevant polices or procedures to children, adolescents and their families about the child and adolescent mental health treatment and support system.
- Provide recommendations to the department to address systemic problems within the mental health treatment and support system that are leading to complaints. The department shall include an analysis of complaints and these recommendations in the report required under s. 394.4573, F.S.
- Engage in functions that may improve the child and adolescent mental health treatment and support system.

DCF and managing entities must place contact information for the Office prominently on a webpage related to children's behavioral health services on their websites.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.463, F.S., relating to involuntary examination.
Section 2: Creates s. 394.4915, F.S., relating to the Office of Children's Behavioral Health Ombudsman.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. DCF's obligations under the bill are subject to available resources.

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:

The bill does not provide rulemaking authority to implement the bill. However, the department has sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to behavioral health; amending s. 394.463, F.S.; requiring a law enforcement officer to provide a parent or legal guardian of a minor being transported to certain facilities with specified facility information; creating an exception; creating s. 394.4915,F.S., establishing the Office of Children and Adolescent Mental Health Ombudsman; specifying responsibilities of the office; 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 circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. 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 an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

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 an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. A law enforcement officer transporting a person pursuant to this subparagraph shall restrain the person in the least restrictive manner available and appropriate under the circumstances. If transporting a minor and the parent or legal guardian of the

minor is present, before departing, the law enforcement officer shall provide the parent or legal guardian of the minor with the name, address, and contact information for the facility within the designated receiving system to which the law enforcement officer is transporting the minor, subject to any safety and welfare concerns for the minor. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under s. 464.0123, a mental health counselor, a marriage and family therapist, or a 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, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 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 must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway Safety and Motor Vehicles. Such emergency contact information may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

Section 2. Section 394.4915, Florida Statutes, is created to read:

394.4915 Office of Children's Behavioral Health Ombudsman.— The Office of Children's Behavioral Health Ombudsman is established within the department for the purpose of being a central point to receive complaints on behalf of children and adolescents with behavioral health disorders receiving state-funded services and use this information to improve the child and adolescent mental health treatment and support system. The department and managing entities shall include information about and contact information for the office placed prominently on their websites on easily accessible webpages related to children and adolescent behavioral health services. To the extent permitted by available resources, the office shall, at a minimum:

(1) Receive and direct to the appropriate contact within the department, at the Agency for Health Care Administration, or the appropriate organizations providing behavioral health

services complaints from children and adolescents and their families about the mental health treatment and support system.

(2) Maintain records of complaints received and the actions taken.

(3) Be a resource to identify and explain relevant polices or procedures to children, adolescents and their families about the child and adolescent mental health treatment and support system.

(4) Provide recommendations to the department to address systemic problems within the mental health treatment and support system that are leading to complaints. The department shall include an analysis of complaints and these recommendations in the report required under s. 394.4573.

(5) Engage in functions that may improve the child and adolescent mental health treatment and support system.

Section 3. This act shall take effect July 1, 2024.

PCS for HB 1065

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1065 Substance Abuse Treatment
SPONSOR(S): Children, Families & Seniors Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee		Curry	Brazzell

SUMMARY ANALYSIS

DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse or dependence.

A recovery residences is residential dwelling unit, or other form of group housing, that provides a peer-supported, alcohol-free, and drug-free living environment. Florida has a process for a recovery residence meeting certain quality standards and other requirements to be certified, which allows the residence to receive referrals. PCS for HB 1065 amends the definition of certified recovery residence to include standards regarding the level of care provided at those residences. The bill requires four levels of care that distinguish the residences based on their provided care. The levels of care include:

- Level I: House individuals in recovery who are post-treatment, with a minimum of 9 months of sobriety. These homes are run by the members who reside in them.
- Level II: These homes provide oversight from a house manager (typically a senior resident). Residents are expected to follow rules outlined in a resident handbook, pay dues, and work toward achieving milestones.
- Level III: These homes offer 24-hour supervision by formally trained staff and peer-support services for residents.
- Level IV: These homes are dwelling offered, referred to, or provided to patients by licensed service providers. The patients receive intensive outpatient and higher levels of outpatient care. These homes are staffed 24 hours a day.

The bill also prohibits recovery residences from paying transient rental taxes.

PCS for HB 1065 expands the Statewide Council on Opioid Abatement. To ensure the settlement proceeds related to the opioid epidemic are used to fund opioid and substance abuse education, treatment, prevention, and other related programs and services, the Office of the Attorney General coordinated with certain local governments in the state to enter into the Florida Opioid Allocation and Statewide Response Agreement. The agreement required the state to establish an opioid abatement task force or council to advise on and monitor the spending of settlement funds. The bill changes the membership determined by this agreement by adding nine additional members beyond the existing membership balanced between state and local representatives.

The bill has no fiscal impact on state government and has an indeterminate, negative fiscal impact on local government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] Substance use disorders is the recurrent use of alcohol and/or drugs leading to clinically significant impairment, including health problems, disability, and failure fulfil responsibilities.[2] Substance use disorders can happen with both legal substances such as alcohol, nicotine or prescription drugs and illicit or illegal drugs.[3] In the United States, the most common substance use disorders are from alcohol, opioid, stimulants, hallucinogens, cannabis, and tobacco.[4]

Substance Abuse Treatment in Florida

DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse or dependence:[5]

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.[6]
- **Treatment Services:** Treatment services[7] include a wide array of assessment, counseling, case management, and support services that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support. Some of these services may also be offered to the family members of the individual in treatment.[8]
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.[9]

Licensure of Substance Abuse Service Providers

DCF regulates substance abuse treatment, establishing licensure requirements and licensing service providers and individual service components under ch. 397, F.S., and rule 65D-30, F.A.C. Licensed

[1] World Health Organization, *Substance Abuse*, https://www.afro.who.int/health-topics/substance-abuse (last visited January 25, 2024).
[2] The Rural Health Information Hub, *Defining Substance Abuse and Substance Abuse Use Disorders*, https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition (last visited January 25, 2024).
[3] *Id.*
[4] *Id.*
[5] Department of Children and Families, *Treatment for Substance Abuse* https://www.myflfamilies.com/services/samh/treatment, (last visited January 25, 2024).
[6] *Id.*
[7] *Id.* Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child protective system, employment, increased earnings, and better health.
[8] *Supra*, note 5.
[9] *Id.*

service components include a continuum of substance abuse prevention,[10] intervention,[11] and clinical treatment services.[12] DCF uses a tier-based system of classifying violations and may issue administrative fines of up to $500 for violations committed by a licensee.[13]

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.[14] "Clinical treatment services" include, but are not limited to, the following licensable service components:[15]

- Addictions receiving facility;
- Day or night treatment;
- Day or night treatment with community housing;
- Detoxification;
- Intensive inpatient treatment;
- Intensive outpatient treatment;
- Medication-assisted treatment for opiate addiction;
- Outpatient treatment; and
- Residential treatment.

Recovery Residences

Recovery residences (also known as "sober homes" or "sober living homes") are non-medical residential settings designed to support recovery from substance use disorders, helping individuals transition from highly structured residential treatment programs back into their day-to-day lives. Most recovery residences require or encourage attendance in a 12-step mutual-help organizations and are self-funded through resident fees.[16]

In Florida, a recovery residence is a residential dwelling unit, or other form of group housing, which is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment. In 2019 the definition was amended to also include as a recovery residence a community housing component of a licensed day or night treatment facility with community housing.[17]

Recovery residences can be located in single-family and two-family homes, duplexes, and apartment complexes. Most recovery residences are located in single-family homes, zoned in residential neighborhoods.[18] To live at a recovery residence, occupants may be required to pay a monthly fee or rent, which supports the cost of maintaining the home. Generally, recovery residences provide short-term residency, typically a minimum of at least 90 days. However, the length of time a person stays at a

[10] S. 397.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles. *See also,* Department of Children and Families, *Substance Abuse: Prevention* https://www.myflfamilies.com/services/samh/substance-abuse-prevention, (last visited January 26, 2024). Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, in recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments.
[11] S. 397.311(26)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.
[12] S. 397.311(26), F.S.
[13] S. 397.415, F.S.
[14] S. 397.311(25)(a), F.S.
[15] *Id*.
[16] Douglas L. Polcin, Ed.D., MFT, and Diane Henderson, B.A., *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses,* 40(2) J Psychoactive Drugs 153–159 (June 2008).
[17] Chapter 2019-159, Laws of Fla.
[18] Hearing before the Subcommittee on the Constitution and Civil Justice of the Committee on the Judiciary, House of Representatives, One Hundred Fifteenth Congress, Sept. 28, 2018, https://www.govinfo.gov/content/pkg/CHRG-115hhrg33123/html/CHRG-115hhrg33123.htm. *See also* The National Council for Behavioral Health, *Building Recovery: State Policy Guide for Supporting Recovery Housing* (2017), https://www.thenationalcouncil.org/wp-content/uploads/2018/05/18_Recovery-Housing-Toolkit_5.3.2018.pdf?daf=375ateTbd56 (last visited January 26, 2024).

recovery residence varies based on the individuals' treatment needs.[19] Because recovery residences essentially provide short-term rental or leasing of living quarters, recovery residences may be classified as a transient rental accommodation and subject taxation of rental fees.

Day or Night Treatment: Community Housing Component

Community housing is a type of group home that provides supportive housing for individuals who are undergoing treatment for substance abuse.

Day or night treatment is one of the licensable service components of clinical treatment services. This service is provided in a nonresidential environment with a structured schedule of treatment and rehabilitative services.[20] Some day or night treatment programs have a community housing component, which is a program intended for individuals who can benefit from living independently in peer community housing while participating in treatment services at a day or night treatment facility for a minimum of 5 hours a day for a minimum of 25 hours per week.[21]

Prior to 2019, the community housing component of a licensed day or night treatment program was not included in the definition of "recovery residence". In 2019, after the Legislature amended the definition of "recovery residence" to include the community housing component, DCF addressed the statutory change to the definition of "recovery residence" in a memo. The department stated that as a result of the change in definition, providers licensed for day or night treatment with community housing must be certified as a recovery residence in order to accept or receive patient referrals from licensed treatment providers or existing recovery residences.[22] The memo did not specifically address whether the community housing component requires certification if the only individuals residing there were clients of the licensed day or night treatment program.

Voluntary Certification of Recovery Residences

A certified recovery residence is a recovery residence that holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator.[23] Florida has a voluntary certification program for recovery residences and recovery residence administrators, implemented by private credentialing entities.[24] Under the voluntary certification program, two DCF-approved credentialing entities administer certification programs and issue certificates: the Florida Association of Recovery Residences (FARR) certifies the recovery residences and the Florida Certification Board (FCB) certifies recovery residence administrators.[25]

As the credentialing entity for recovery residences in Florida, FARR is statutorily authorized to administer certification, recertification, and disciplinary processes as well as monitor and inspect recovery residences to ensure compliance with certification requirements. FARR is also authorized to deny, revoke, or suspend a certification, or otherwise impose sanctions, if recovery residences are not in compliance or fail to remedy any deficiencies identified. However, any decision that results in an adverse determination is reviewable by the Department.[26]

In order to become certified, a recovery residence must submit the following documents with an application fee to the credentialing entity:[27]

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[19] American Addiction Center, *Length of Stay at a Sober Living Home*, (October 2022), available at https://americanaddictioncenters.org/sober-living/length-of-stay, (last visited January 25, 2024).
[20] S. 397.311(26)(a)2., F.S.
[21] S. 397.311(26)(a)3., F.S.
[22] DCF Memo to the Substance Abuse Prevention, Intervention, and Treatment Providers, dated July 1, 2019 (on file with the House Children, Families, & Seniors Subcommittee).
[23] Ss. 397.487–397.4872, F.S.
[24] *Id.*
[25] The DCF, *Recovery Residence Administrators and Recovery Residences,* available at https://www.myflfamilies.com/services/samh/recovery-residence-administrators-and-recovery-residences (last visited January 25, 2024).
[26] S. 397.487, F.S.
[27] *Id.*

- A policy and procedures manual containing:
  - Job descriptions for all staff positions;
  - Drug-testing procedures and requirements;
  - A prohibition on the premises against alcohol, illegal drugs, and the use of prescription medications by an individual other than for whom the medication is prescribed;
  - Policies to support a resident's recovery efforts; and
  - A good neighbor policy to address neighborhood concerns and complaints.;
- Rules for residents;
- Copies of all forms provided to residents;
- Intake procedures;
- Sexual predator and sexual offender registry compliance policy;
- Relapse policy;
- Fee schedule;
- Refund policy;
- Eviction procedures and policy;
- Code of ethics;
- Proof of insurance;
- Proof of background screening; and
- Proof of satisfactory fire, safety, and health inspections.

There are currently 675 certified recovery residences in Florida.[28] DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.[29]

National Alliance for Recovery Residences

The National Alliance for Recovery Residences (NARR) was established to develop and promote best practices in the operation of recovery residences.[30] The organization works with federal government agencies, national addiction and recovery organizations, state-level recovery housing organizations, and with state addiction services agencies to improve the effectiveness and accessibility of recovery housing.

In 2011, NARR established the national standard for all recovery residences. This standard defines the spectrum of recovery oriented housing and services and distinguishes four different types, which are known as "levels" or "levels of support." The standard was developed through a strength-based and collaborative approach that solicited input from all major regional and national recovery housing organizations.[31] NARR's levels of support are included in the Substance Abuse and Mental Health Services Administration's Best Practices for Recovery Housing.[32]

NARR Recovery Residence Levels of Support

A recovery residence is a broad term that describes safe and sober living environments that promote recovery from substance use disorders. These residences may also be referred to as halfway houses, three-quarter houses, transitional living facilities, or sober living homes. Since this is a broad term, to help categorize recovery residences into more specific groups, NARR distinguishes these residences based on their levels of care. There are four levels of care for recovery residences; peer-run, monitored, supervised, and service provider.

Level I – Peer-Run

[28] DCF, 2023 *Agency Bill Analysis SB 1180*, on file with House Children, Families, and Seniors Subcommittee.
[29] S. 397.4872, F.S.
[30] NARR, *About Us,* available at https://narronline.org/about-us/, (last visited January 26, 2024).
[31] NARR, *Standards and Certification Program¸ available at https://narronline.org/affiliate-services/standards-and-certification-program/, (last visited January 26, 2024).*
[32] Substance Abuse and Mental Health Services Administration, *Best Practices for Recovery Housing,* available https://store.samhsa.gov/sites/default/files/pep23-10-00-002.pdf, (last visited January 26, 2024).

A Peer-Run recovery residence is a home operated by the residents themselves. In this type of residence, there is no external management or oversight from outside sources such as an administrative director. The administration of these facilities is done democratically by the residents. Services may include house meetings for accountability, drug screenings, and self-help meetings. These residences are generally set up in single-family residences like a house. [33]

Level II -Monitored

A monitored recovery residence has an external management structure, usually in the form of an administrative director. The director oversees operations, provides guidance and support, and ensures that all tenants are following rules. These facilities, provide a structured environment with documented rules, policies and procedures. These residences are typically managed by a house manager or senior resident and may offer peer-run groups, house meetings, drug screenings, and involvement in self-help treatment. These facilities are primarily single-family residences, but they may also be apartments or other dwelling types. [34]

Level III – Supervised

Supervised recovery residences have more intense levels of oversight than monitored residences and typically have an on-site staff member who provides 24/7 support to residents. The staff at a Level III residence includes a facility manager and certified staff or case managers. Staff members may also provide counseling services or facilitate group activities. Residents at Level III houses are expected to adhere to a strict set of rules and guidelines while living in this type of residence. Level III residences have an organizational hierarchy with administrative oversight for service providers, and documented policies and procedures. This type of residence emphasizes life skill development. In these residences, services may be utilized in the outside community while service hours may be provided in-house. The type of dwelling for Level III residences varies and may include all types of residential settings. [35]

Level IV – Service Provider

Service provider recovery residences are typically operated by organizations or corporations. These residences offer a wide range of services and activities for residents. Staff levels in Level IV residences are higher than staff levels for Levels I-III residences, and the environments are more structured and institutionalized. These residences have an overseen organizational hierarchy. Level IV recovery residence employ credentialed staff and have both clinical and administrative supervision for residents. These residences also provide clinical services and programming in-house and may offer residents life skill development. While Level IV residences may have a more institutionalized environment, all types of residence may be included as a client moves through the care continuum of a treatment center. [36]

NARR Recovery Residence Levels of Support[37]

[33] Isaiah House, *NARR Levels of Care for Addiction Recovery Residences,* (December 2022), available at https://isaiah-house.org/narr-levels-of-care-for-addiction-recovery-residences/, (last visited January 26, 2024).
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] NARR, *Recovery Residence Levels of Support,* available at https://narronline.org/wp-content/uploads/2016/12/NARR_levels_summary.pdf, (last visited January 26, 2024).

NARR National Association of Recovery Residences		RECOVERY RESIDENCE LEVELS OF SUPPORT			
		LEVEL I Peer-Run	LEVEL II Monitored	LEVEL III Supervised	LEVEL IV Service Provider
STANDARDS CRITERIA	ADMINISTRATION	• Democratically run • Manual or P& P	• House manager or senior resident • Policy and Procedures	• Organizational hierarchy • Administrative oversight for service providers • Policy and Procedures • Licensing varies from state to state	• Overseen organizational hierarchy • Clinical and administrative supervision • Policy and Procedures • Licensing varies from state to state
	SERVICES	• Drug Screening • House meetings • Self help meetings encouraged	• House rules provide structure • Peer run groups • Drug Screening • House meetings • Involvement in self help and/or treatment services	• Life skill development emphasis • Clinical services utilized in outside community • Service hours provided in house	• Clinical services and programming are provided in house • Life skill development
	RESIDENCE	• Generally single family residences	• Primarily single family residences • Possibly apartments or other dwelling types	• Varies – all types of residential settings	• All types – often a step down phase within care continuum of a treatment center • May be a more institutional in environment
	STAFF	• No paid positions within the residence • Perhaps an overseeing officer	• At least 1 compensated position	• Facility manager • Certified staff or case managers	• Credentialed staff

FARR Recovery Residence Levels of Support

FARR recognizes four distinct support levels for recovery residences which were developed based on the NARR standards.[38] The levels are not a rating scale regarding the efficacy of valuation of any individual certified recovery residence, but instead offer a unique service structure most appropriate for a particular resident.[39] FARR recovery residence levels of support include:[40]

Level I

Level I residences are structured after the Oxford House model.[41] Individuals who enter FARR Level I homes have a high recovery capital with a minimum of 9 months of sobriety and the length of stay is determined by the resident. Level I homes are democratically run by the members who reside in the home through a guided policy and procedure manual or charter.

Level II

Level II residences encompass the traditional perspective of sober living homes. Oversight is provided from a house manager with lived experience, typically a senior resident. Residents are expected to

[38] FARR, *Levels of Support*, available at https://www.farronline.org/levels-of-support-1, (last visited January 27, 2024).
[39] *Id.*
[40] *Id.*
[41] Oxford House Model is a concept and a system of operation in recovery from drug and alcohol addiction. The concept is that recovering individuals can live together and democratically run an alcohol and drug-free living environment which supports the recovery of every resident. Oxford Houses are the one of the largest self-help residential programs in the US. See Oxford House, *The Purpose and Structure of Oxford House,* available at https://oxfordhouse.org/purpose_and_structure, and the National Library of Medicine, Oxford House Recovery Homes: Characteristics and Effectiveness, *available at* *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2888149/*, (last visited January 27, 2024).

follow the rules outlined in the resident handbook, pay dues, and work on achieving milestones within a chosen recovery path. This level of support is a resident-driven length of stay, while providers may suggest a minimum commitment length.

Level III

Level III residences offer higher supervision by staff with formal training to ensure resident accountability. Level III homes offer peer-support services and are staffed 24 hours a day. No clinical services are performed at the residence. The services offered usually include life skills, mentoring, recovery planning, and meal preparation. This support structure is most appropriate for residents who require a more structured environment during early recovery from addiction. Length of stay is determined by the resident; however, providers may ask for a minimum commitment length of stay to fully complete programming.

Level IV

A Level IV residence is any recovery residence offered or provided by a licensed service provider that provides housing to patients who are required to reside at the residence while receiving intensive outpatient and higher levels of outpatient care at facilities that are operated by the same licensed service provider or a recovery residence used as the housing component of a day or night treatment with community housing, license issued pursuant to Rule 65D-30.0081, Florida. Administrative Code.

Opioids

Opioids are a class of medications derived from the opium poppy plant or mimic its naturally occurring substances.[42] Opioids function by binding to specific receptors in the brain that are associated with pain sensation, resulting in pain relief.[43] The opioid family includes several drugs, such as oxycodone, fentanyl, morphine, codeine, and heroin.[44] These drugs are effective at reducing pain; however, they can be highly addictive even when prescribed by a doctor. Overtime, individuals who use opioids can develop a tolerance to the drug, a physical dependence on it, and ultimately, succumb to an opioid use disorder. This condition can have grave consequences, including a heightened risk of overdose and even death.

Opioid Overdose

Opioid overdoses result from an overabundance of opioid in the body which leads to suppression of the respiratory system. Opioids account for two thirds of all deaths relating to drug use, most of which are the result of overdoses.[45] More than 106,000 Americans died from drug-involved overdose in 2021, including illicit drugs and prescription opioids.[46] Opioid-involved overdose deaths increased from 21,088 in 2010 to 47,600 in 2017; the rate of such deaths remained relatively consistent for the next two years with 49,860 opioid-involved overdose deaths in 2019.[47] This was followed by a sharp increase in opioid-involved overdose deaths associated with the COVID-19 pandemic beginning in 2020.[48] Nationally, there were 63,630 reported opioid-involved overdose deaths in 2020 and 80,411 in 2021.[49]

Multistate Opioid Lawsuit and Settlement

[42] John Hopkins Medicine, *Opioids*, https://www.hopkinsmedicine.org/health/treatment-tests-and-therapies/opioids (last visited January 25, 2024).
[43] *Id.*
[44] *Id.*
[45] United Nations Office on Drugs and Crime, World Drug Report 2022, Global Overview: Drug Demand and Drug Supply (Jun. 2022), https://www.unodc.org/res/wdr2022/MS/WDR22_Booklet_1.pdf (last visited January 25, 2024).
[46] National Institute on Drug Abuse, *Overdose Death Rates*, https://www.drugabuse.gov/drug-topics/trends-statistics/overdose-death-rates (last visited January 25, 2024).
[47] *Id.*
[48] Ghose, R., Forati, A.M. & Mantsch, J.R. *Impact of the COVID-19 Pandemic on Opioid Overdose Deaths: A Spatiotemporal Analysis.* J Urban Health 99, 316–327 (2022), https://doi.org/10.1007/s11524-022-00610-0 (last visited January 25, 2024).
[49] *Supra*, note 46.

In 2018, the Florida Attorney General filed a lawsuit against multiple opioid manufacturers and distributors. The lawsuit was later expanded to include the pharmacies CVS and Walgreens.[50] The complaint alleged that the defendants caused the opioid crisis by, among other things:[51]

- Engaging in a campaign of misrepresentations and omissions about opioid use designed to increase opioid prescriptions and opioid use, despite the risks.
- Funding ostensibly neutral and independent "front" organizations to publish information touting the benefits of opioids for chronic pain while omitting the information about the risks of opioid treatment.
- Paying ostensibly neutral medical experts called "key opinion leaders" who were really manufacturer "mouthpieces" to publish articles promoting the use of opioids to treat pain while omitting information regarding the risks.

In 2021, McKesson, Cardinal Health, and AmerisourceBergen, the nation's three largest pharmaceutical distributors, as well as manufacturer Janssen Pharmaceuticals, Inc., agreed to a national settlement in which the distributors agreed to pay $21 billion over 18 years and Janssen agreed to pay $5 billion over nine years.[52] Of the $26 billion available, approximately $22.7 billion was earmarked for use by states that participated in the lawsuit, including Florida.[53]

Florida additionally negotiated individual settlements with multiple other companies including:[54]

- $65 million settlement with Endo Health Solutions;
- $440 million settlement with CVS Pharmacy, Inc.;
- $177,114,999 settlement with Teva Pharmaceuticals Industries, Ltd.;
- $122 million settlement with Allergan Finance, LLC.;
- $620 million settlement with Walgreens Boots Alliance, Inc. and Walgreens Co.; and
- $215 million settlement with Walmart.

Additionally, Teva Pharmaceuticals has agreed to provide the state with a supply of Naloxone Hydrochloride, an opioid antagonist,[55] valued at $84 million.[56]

These settlements will pay out over a period of time ranging from 10 to 18 years. In general, the monies from the settlements must be used for opioid abatement, including prevention efforts, treatment, and recovery services, and to pay litigation fees and costs incurred by the state, cities, and counties.[57]

Florida Opioid Allocation and Statewide Response Agreement

To ensure the settlement proceeds are used to fund opioid and substance abuse education, treatment, prevention, and other related programs and services, the Office of the Attorney General coordinated with certain local governments in the state to enter into the Florida Opioid Allocation and Statewide

[50] Sullivan, E., NPR, *Florida Sues Walgreens, CVS for Alleged Role in Opioid Crisis*, (Nov. 2018), available at https://www.npr.org/2018/11/19/669146432/florida-sues-walgreens-cvs-for-alleged-role-in-opioid-crisis (last visited January 27, 2024).
[51] Florida Attorney General, *Florida's Opioid Lawsuit*, available at http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AYSNED/$file/Complaint+summary.pdf (last visited January 27, 2024).
[52] National Opioid Settlement, *Executive Summary of National Opioid Settlements*, (Feb. 2023), available at https://nationalopioidsettlement.com/executive-summary/#:~:text=In%20all%2C%20the%20Distributors%20will,additional%20manufacturers%E2%80%94Allergan%20and%20Teva, (last visited January 27, 2024).
[53] Office of the Attorney General, Attorney General Moody Secures Relief for Opioid Crisis, available at https://myfloridalegal.com/opioidsettlement,(last visited January 27, 2024).
[54] *Id.*
[55] An opioid antagonist, such as Narcan or Naloxone Hydrochloride, is a drug that blocks the effects of exogenously administered opioids. They are used in opioid overdoses to counteract life-threatening depression of the central nervous system and respiratory system, allowing an overdose victim to breathe normally. See Harm Reduction Coalition, *Understanding Naloxone,* (Sept. 8, 2020), available at http://harmreduction.org/issues/overdose-prevention/overview/overdose-basics/understanding-naloxone/ (last visited January 27, 2024).
[56] *Id.*
[57] *Id.*

Response Agreement.[58] The agreement requires the state to establish an opioid abatement task force or council to advise the Governor, the Legislature, DCF, and local governments on the priorities that should be addressed by the expenditure of settlement funds, as well as review the spending of such funds and the results achieved.

The Council's membership, administration, and duties are outlined in the agreement.[59] Per the agreement, the Council's membership must consist of ten members equally balanced between state and local government representatives.

Appointments from the local governments must include:

- Two municipality representatives appointed by or through the Florida League of Cities.
- Two county representatives, one appointed from a qualified county and one appointed from a county within the state that is not a qualified county.
- One representative appointment that will alternate every two years between being a county representative appointed by or through the Florida Association of Counties or a municipality representative appointed by or through the Florida League of Cities.

Further, the agreement requires that one municipality representative must be from a city of less than 50,000 people and that one county representative must be from a county of less than 2000,000 people and the other county representative must be from a county with a population greater than 200,000 people.

Appointments from the state must include:

- Two members appointed by the Governor.
- One member appointed by the Speaker of the House.
- One member appointed by the President of the Senate.
- The Attorney General or a designee.

Statewide Council on Opioid Abatement

In 2023, the Florida Legislature established the Statewide Council on Opioid Abatement (council). The council is tasked with enhancing the development and coordination of state and local efforts to abate the opioid epidemic and to support the victims and families of the crisis.[60] The council is composed of the following 10 members:[61]

- The Attorney General, or a designee, who serves as a chair.
- The Secretary of DCF, or a designee, who services as vice-chair.
- A member appointed by the Governor.
- A member appointed by the President of the Senate.
- A member appointed by the Speaker of the House.
- Two members appointed by the Florida League of Cities who are commissioners or mayors of municipalities. At least one of such members must be from a municipality with a population of less than 50,000.

[58] *Florida Opioid Allocation and Statewide Response Agreement Between State of Florida Department of Legal Affairs, Office of the Attorney General and Certain Local Governments in the State of Florida* (Nov. 2021), available at https://nationalopioidsettlement.com/wp-content/uploads/2021/11/FL-Opioid-AllocSW-Resp-Agreement.pdf (last visited January 27, 2024).
[59] *Florida Opioid Allocation and Statewide Response Agreement Between State of Florida Department of Legal Affairs, Office of the Attorney General and Certain Local Governments in the State of Florida* (Nov. 2021), available at https://nationalopioidsettlement.com/wp-content/uploads/2021/11/FL-Opioid-AllocSW-Resp-Agreement.pdf (last visited January 27, 2024).
[60] S. 397.335, F.S.
[61] *Id.*

- Two members appointed by, or though, the Florida Association of Counties who are county commissioners or mayors. One of such members must represent a county with a population of more than 200,000; the other must represent a county with a population of fewer than 200,000.
- One member who is appointed on a rotational basis by either the Florida Association of Counties or the Florida League of Cities.

The council has a series of duties associated with the monitoring of the abatement of the opioid epidemic in Florida and review of settlement fund expenditures associated with opioid litigation.[62]

Transient Rental Accommodations

Under current law, rental charges or room rates paid for the right to use or occupy living quarters or sleeping or housekeeping accommodations for a rental period of six months or less are subject taxation.[63] Such rentals are often referred to as "transient rental accommodations" or "transient rentals."[64] Examples of transient rentals include hotel and motel rooms, condominium units, timeshare resort units, single-family homes, apartments or units in multiple unit structures, mobile homes, beach or vacation houses, campground sites, and trailer or RV parks.[65]

In Florida, a 6 percent state sales tax, plus any applicable discretionary sales surtax, is assessed on the total rental charges or room rates for transient rental accommodations, unless a statutory exemption applies.[66] Counties may also impose a local option tax on transient rental accommodations, such as the tourist development tax,[67] convention development tax,[68] tourist impact tax,[69] or a municipal resort tax.[70] These taxes are often called local option transient rental taxes and are in addition to the state sales tax.

Currently, transient rentals are potentially subject to the following taxes:

1. Local Option Tourist Development Taxes: Current law authorizes five separate tourist development taxes on transient rental transactions. Section 125.0104(3)(a), F.S., provides that the local option tourist development tax is levied on the "total consideration charged for such lease or rental."
   a. The tourist development tax may be levied at the rate of 1 or 2 percent.[71] Currently, 62 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.[72]
   b. An additional tourist development tax of 1 percent may be levied.[73] Currently 56 counties levy this tax; only 59 counties are currently eligible to levy this tax.[74]
   c. A professional sports franchise facility tax may be levied up to an additional 1 percent on transient rental transactions.[75] Currently 46 counties levy this additional tax; all 67 counties are eligible to levy this tax.[76]

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[62] *Id.*
[63] S. 212.03, F.S.
[64] Department of Revenue, *Sales and Use Tax on Rental of Living or Sleeping Accommodations*, available at https://floridarevenue.com/Forms_library/current/gt800034.pdf, (last visited January 25, 2024).
[65] S. 212.03, F.S.
[66] Rental charges or room rates paid by a person with a written lease longer than six months, a full-time student enrolled in postsecondary institution offering housing, and military personnel on active duty and present in the community under official orders are exempt. S. 212.03(4) and (7), F.S.
[67] S. 125.0104, F.S.
[68] S. 212.0305, F.S.
[69] S. 125.0101, F.S.
[70] Certain municipalities may impose a municipal resort tax as authorized under chapter 67-930, Laws of Florida. Currently, there are only three municipalities in Miami-Dade County are eligible to impose the tax.
[71] S. 125.0104(3)(c), F.S.
[72] Florida Tax Handbook (2023), available on the Office of Economic and Demographic Research website at http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2023.pdf (last visited January 25, 2024).
[73] S. 125.0104(3)(d), F.S.
[74] Supra, note 72.
[75] Section 125.0104(3)(l), F.S.
[76] Supra, note 72.

d. A high tourism impact county may levy an additional 1 percent on transient rental transactions.[77] Currently 10 counties levy this tax; only 14 are eligible to levy.[78]
e. An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.[79] Out of 65 eligible counties, 36 levy this tax.[80]

2. Local Option Tourist Impact Tax: The local option tourist impact tax under s. 125.0108, F.S., is levied at the rate of 1 percent of the total consideration charged. Only Monroe County is eligible and does levy this tax in areas designated as areas of critical state concern because they created a land authority pursuant to s. 380.0663(1), F.S.

3. Local Convention Development Tax: The convention development tax under s. 212.0305, F.S., is imposed on the total consideration charged for the transient rental. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII of the State Constitution that had a tourist advertising district on January 1, 1984, may levy the tax at up to 3 percent (Volusia County).[81] No county authorized to levy this tax can levy more than 2 percent of the tourist development tax, excluding the professional sports franchise facility tax.[82]

4. Municipal Resort Tax: Certain municipalities may levy the municipal resort tax at a rate of up to 4 percent on transient rental transactions.[83] The tourist development tax may not be levied in any municipality imposing the municipal resort tax. The tax is collected by the municipality. Currently only three municipalities in Miami-Dade County are eligible to impose the tax.

5. State Sales Tax: The state sales tax on transient rentals under s. 212.03, F.S., is levied in the amount of 6 percent of the "total rental charged" for the living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.

6. Local Option Discretionary Sales Surtax: Counties have been granted limited authority to levy a discretionary sales surtaxes for specific purposes on transactions subject to state sales tax.[84] Rates range from 0.5% to 1.5%, and are levied by 66 of the 67 counties.[85] Approved purposes include:
a. Operating a transportation system in a charter county;[86]
b. Financing local government infrastructure projects;[87]
c. Providing additional revenue for specified small counties;[88]
d. Providing medical care for indigent persons;[89]
e. Funding trauma centers;[90]
f. Operating, maintaining, and administering a county public general hospital;[91]
g. Constructing and renovating schools;[92]

[77] Section 125.0104(3)(m), F.S.
[78] Supra, note 72.
[79] Section 125.0104(3)(n), F.S.
[80] Supra, note 72.
[81] Id.
[82] Section 125.0104(3)(b), (3)(l)4., and (3)(n)2., F.S.
[83] Chapter 67-930, L.O.F., amended by chs. 82-142, 83-363, 93-286, and 94-344, L.O.F.
[84] Ss. 212.054, 212.055, F.S.
[85] Discretionary Sales Surtax Information for Calendar Year 2024, Form DR-15DSS, available at https://floridarevenue.com/Forms_library/current/dr15dss.pdf (last visited January 25, 2024).
[86] S. 212.055(1), F.S.
[87] S. 212.055(2), F.S.
[88] S. 212.055(3), F.S. Note that the small county surtax may be levied by extraordinary vote of the county governing board if the proceeds are to be expended only for operating purposes.
[89] S. 212.055(4)(a), F.S. (for counties with more than 800,000 residents); s. 212.055(7), F.S. (for counties with less than 800,000 residents).
[90] S. 212.055(4)(b), F.S.
[91] S. 212.055(5), F.S.
[92] S. 212.055(6), F.S.

h. Providing emergency fire rescue services and facilities; and[93]
i. Funding pension liability shortfalls.[94]

Certain rentals or leases are exempt from the taxes; these include rentals to active-duty military personnel, full-time students, bona fide written leases for continuous residence longer than 6 months, and accommodations in migrant labor camps.[95]

Effect of the Bill

Certified Recovery Residence

PCS for HB 1065 amends the definition of certified recovery residence to include standards regarding the levels of care offered within those residences. This amendment will help to better align recovery residences in Florida with industry best practices. The levels of care are as follows:

- Level I: these homes house individuals in recovery who are post-treatment, with a minimum of 9 months of sobriety. These homes are run by the members who reside in them.
- Level II: in these homes, there is oversight from a house manager (typically a senior resident). Residents are expected to follow rules outlines in a resident handbook, pay dues, and work toward achieving milestones.
- Level III: these homes offer 24-hour supervision by staff with formal training with peer-support services
- Level IV: these homes are offered, referred to, or provided to patients by licensed service providers. The patients receive intensive outpatient and higher levels of outpatient care. These homes are staffed 24 hours a day.

PCS for HB 1065 defines "community housing" to mean a certified recovery residence, offered, referred to, or provided by a licensed service provider that provides housing to its patients who are required to reside at the residence while receiving intensive outpatient and higher levels of outpatient care. The bill also requires a certified recovery residence used by a licensed service provider that meets the definition of community housing to be classified as a Level IV level of support.

Statewide Council on Opioid Abatement

PCS for HB 1065 expands the Statewide Council on Opioid Abatement by adding more members, increasing its membership from 10 to 19. The additional members include:

- Two members appointed by or through the State Surgeon General. One of such members must be from the department with experience coordinating state and local efforts to abate the opioid epidemic; the other must be a licensed physician board certified in both addiction medicine and psychiatry.
- One member appointed by the Florida Association of Recovery Residences.
- One member appointed by the Florida Association of EMS Medical Directors.
- One member appointed by the Florida Society of Addiction Medicine who is a medical doctor board certified in addiction medicine.
- One member appointed by the Florida Behavioral Health Association.
- One member appointed by Floridians for Recovery.
- One member appointed by the Florida Certification Board.
- One member appointed by the Florida Association of Managing Entities.

[93] S. 212.055(8), F.S.
[94] S. 212.055(9), F.S.
[95] S. 212.03(7), F.S. See also ss. 125.0104(3)(a), 125.0108(1)(b), 212.0305(3)(a), F.S.

This will add additional members to represent the providers and clinicians providing behavioral health services, but will expand membership beyond those named in the agreement between the Attorney General and local governments, which included only state and local government representatives.

Transient Rental Accommodations

PCS for HB 1065 specifies that recovery residences that rent properties are not subject to any taxes that are imposed on transient accommodations, including transient rental taxes, convention development taxes, tourist development tax, and tourist impact tax. This may reduce their operating costs.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.02, F.S., relating definitions.
Section 2: Amends s. 397.311, F.S., relating to definitions.
Section 3: Amends s. 397.355, F.S., relating to Statewide Council on Opioid Abatement.
Section 4: Provides an effective date of July 1, 2024.

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:

The bill may have a negative fiscal impact on some local governments who will no longer be able to levy local option transient rental taxes on recovery residences. The impact is indeterminate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive fiscal impact on recovery residences which will no longer be required to pay transient rental taxes. The elimination of the taxes may reduce operational costs for recovery residences. The tax elimination and reduction of costs may also incentivize recovery residences that are not certified to become certified to benefit from the tax elimination.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill reduces the county/municipality's ability to levy local option transient rental taxes on recovery residences; however, an exemption may apply if the fiscal impact is insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority to implement the bill. However, the department has sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to substance abuse treatment; amending s. 212.02, F.S.; eliminating certain tax liabilities imposed on certified recovery residences; amending s. 397.311, F.S.; providing the levels of care at certified recovery residences and their respective levels of care for residents; amending s. 397.335, F.S.; revising the membership of the Statewide Council on Opioid Abatement to include additional members; providing an effective date.

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

Section 1. Paragraph (k) is added to subsection (10) of section 212.02, Florida Statutes, to read:

212.02 Definitions.—The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(10) "Lease," "let," or "rental" means leasing or renting of living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps and real property, the same being defined as follows:

(k) For purposes of this chapter, recovery residences certified pursuant to s. 397.487 which rent properties are not

subject to any taxes imposed on transient accommodations, including taxes imposed under s. 212.03; any locally imposed discretionary sales surtax or any convention development tax imposed under s. 212.0305; any tourist development tax imposed under s. 125.0104; or any tourist impact tax imposed under s. 125.0108.

Section 2. Subsection (5) of section 397.311, Florida Statutes, is amended and a new subsection(9)is added to that section to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(5) "Certified recovery residence" means a recovery residence that holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator.

(a) Level I certified recovery residences that house individuals in recovery who are post-treatment, with a minimum of 9 months of sobriety. Level I certified homes are democratically run by the members who reside in the home.

(b) Level II certified recovery residences encompass the traditional perspectives of sober living homes. There is oversight from a house manager with lived experience, typically a senior resident. Residents are expected to follow rules outlined in a resident handbook, pay dues, if applicable, and work toward achieving milestones within a chosen recovery path.

(c) Level III certified recovery residences offer higher supervision by staff with formal training to ensure resident accountability. These homes offer peer-support services and are staffed 24 hours a day. Clinical services are not performed at the residence. The services offered may include, but are not limited to, life skill mentoring, recovery planning, and meal preparation. This support structure is most appropriate for residents who require a more structured environment during early recovery from addiction.

(d) A Level IV certified recovery residence are dwellings offered, referred to, or provided by, a licensed service provider to its patients who are required to reside at the residence while receiving intensive outpatient and higher levels of outpatient care. Level IV recovery residences are staffed 24 hours a day and combine outpatient licensable services with recovery residential living. Residents are required to follow a treatment plan, attend group and individual sessions, in addition to developing a recovery plan within the social model of recovery spectrum. No clinical services are provided at the residence and all licensable services are provided off-site.

(9) "Community housing" means a certified recovery residence offered, referred to, or provided by a licensed service provider that provides housing to its patients who are required to reside at the residence while receiving intensive outpatient and higher levels of outpatient care. A certified

recovery residence used by a licensed service provider that meets the definition of community housing shall be classified as a Level IV level of support, as described in subsection (5).

Section 3. Paragraph (a) of subsection (2) of section 397.335, Florida Statutes, is amended to read:

397.335 Statewide Council on Opioid Abatement.—

(2) MEMBERSHIP.—

(a) Notwithstanding s. 20.052, the council shall be composed of the following members:

1. The Attorney General, or his or her designee, who shall serve as chair.

2. The secretary of the department, or his or her designee, who shall serve as vice chair.

3. One member appointed by the Governor.

4. One member appointed by the President of the Senate.

5. One member appointed by the Speaker of the House of Representatives.

6. Two members appointed by the Florida League of Cities who are commissioners or mayors of municipalities. One member shall be from a municipality with a population of fewer than 50,000 people.

7. Two members appointed by or through the Florida Association of Counties who are county commissioners or mayors. One member shall be appointed from a county with a population of fewer than 200,000, and one member shall be appointed from a

county with a population of more than 200,000.

8. One member who is either a county commissioner or county mayor appointed by the Florida Association of Counties or who is a commissioner or mayor of a municipality appointed by the Florida League of Cities. The Florida Association of Counties shall appoint such member for the initial term, and future appointments must alternate between a member appointed by the Florida League of Cities and a member appointed by the Florida Association of Counties.

9. Two members appointed by or through the State Surgeon General. One shall be a staff member from the department who has experience coordinating state and local efforts to abate the opioid epidemic, and one shall be a licensed physician who is board certified in both addiction medicine and psychiatry.

10. One member appointed by the Florida Association of Recovery Residences.

11. One member appointed by the Florida Association of EMS Medical Directors.

12. One member appointed by the Florida Society of Addiction Medicine who is a medical doctor board certified in addiction medicine.

13. One member appointed by the Florida Behavioral Health Association.

14. One member appointed by Floridians for Recovery.

15. One member appointed by the Florida Certification

Board.

16. One member appointed by the Florida Association of Managing Entities.

Section 4. This act shall take effect July 1, 2024.

PCS for HB 1169

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1169 Coordinated Systems of Care for Children
SPONSOR(S): Children, Families & Seniors Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee		Curry	Brazzell

SUMMARY ANALYSIS

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services.

DCF must establish a coordinated system of care that includes an array of services to meet the individual mental health service and treatment needs of children and adolescents who are members of the target population and experiencing an acute mental or emotional crisis, have a serious emotional disturbance or mental illness, have an emotional disturbance or are risk of an emotional disturbance.

PCS for HB 1169 establishes a mental health treatment and support system within school districts. The bill requires school districts providing certain mental health services to students diagnosed with, or at risk of being diagnosed with, one or more mental health issues or any co-occurring substance use disorder to adhere to the certain guiding principles and performance outcome requirements when implementing and developing a mental health treatment and support system within the school district. Adhering to these principles and guidelines will help to further promote effective implementation of a coordinated system of care.

The bill requires each school district to annually report to the Department of Education the general performance outcomes for the child and adolescent mental health treatment and support system and how funding for the support system is allocated and spent.

The bill has an indeterminate, negative fiscal impact on state and local government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.[1] The primary indicators used to evaluate an individual's mental health are:[2]

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

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[3] 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. Nearly one in five adults lives with a mental illness.[4] During their childhood and adolescence, almost half of children will experience a mental disorder, though the proportion experiencing severe impairment during childhood and adolescence is much lower, at about 22%.[5]

Mental Health Safety Net Services

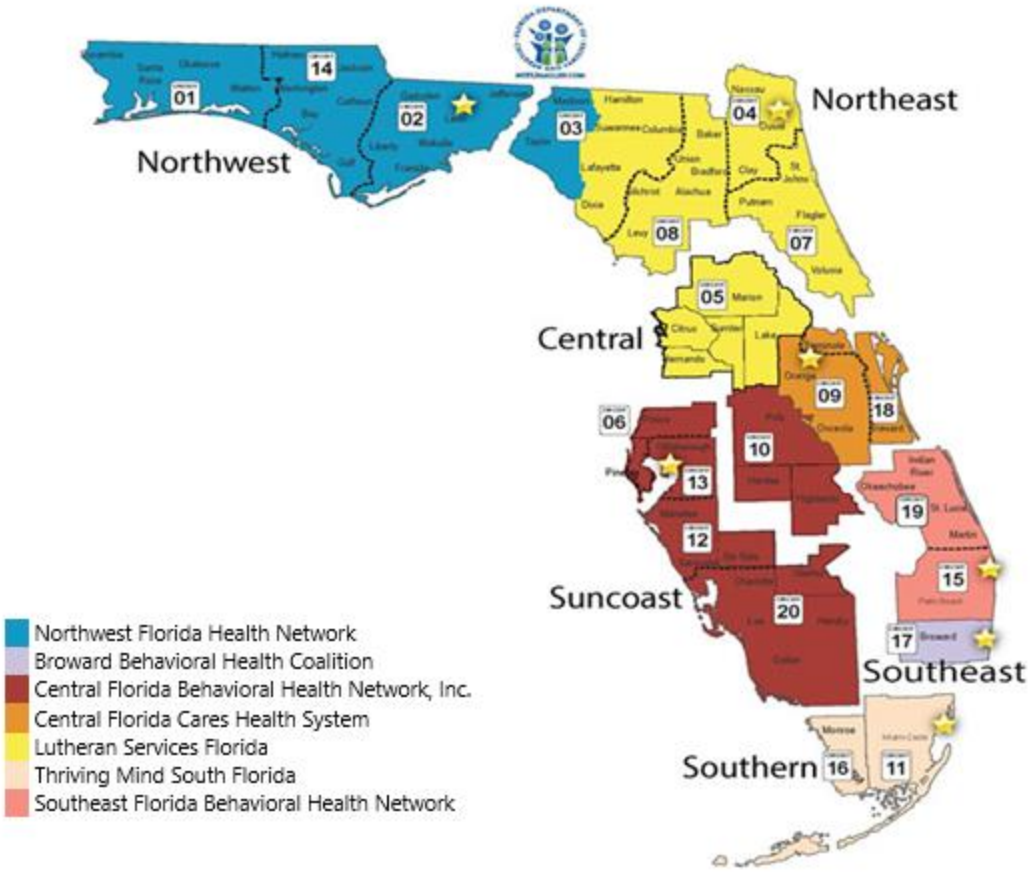
The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.

Behavioral Health Managing Entities

In 2001, the Legislature authorized DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.[6] The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.[7] MEs were fully implemented statewide in 2013, serving all geographic regions.

[1] World Health Organization, *Mental Health: Strengthening Our Response,* https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited January 21, 2024).
[2] Centers for Disease Control and Prevention, *Mental Health Basics*, http://medbox.iiab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm (last visited January 21, 2024).
[3] *Id*.
[4] National Institute of Mental Health (NIH), *Mental Illness*, https://www.nimh.nih.gov/health/statistics/mental-illness (last visited January 21, 2024).
[5] *Id*.
[6] Ch. 2001-191, Laws of Fla.
[7] Ch. 2008-243, Laws of Fla

DCF currently contracts with seven MEs for behavioral health services throughout the state. These entities do not provide direct services; rather, they contract with local service providers[8] for the delivery of mental health and substance abuse services.[9] This allows the department's funding to be tailored to the specific behavioral health needs in the various regions of the state.



Coordinated System of Care

Managing entities are required to promote the development and implementation of a coordinated system of care.[10] A coordinated system of care means a full array of behavioral and related services in a region or community offered by all service providers, participating either under contract with a managing entity or by another method of community partnership or mutual agreement.[11] A community or region provides a coordinated system of care for those with a mental illness or substance abuse disorder through a no-wrong-door model, to the extent allowed by available resources. If funding is provided by the Legislature, DCF may award system improvement grants to managing entities.[12] MEs must submit detailed plans to enhance crisis services based on the no-wrong-door model or to meet specific needs identified in DCF's assessment of behavioral health services in this state.[13] DCF must use performance-based contracts to award grants.[14]

There are several essential elements which make up a coordinated system of care, including:[15]

[8] Managing entities create and manage provider networks by contracting with service providers for the delivery of substance abuse and mental health services.
[9] DCF, *Managing Entities,* available at https://www.myflfamilies.com/services/samh/prov/*d*ers/managing-entities, (last visited January 21, 2024).
[10] S. 394.9082(5)(d), F.S.
[11] S. 394.4573(1)(c), F.S.
[12] S. 394.4573(3), F.S. The Legislature has not funded system improvement grants.
[13] *Id.*
[14] *Id.*
[15] S. 394.4573(2), F.S.

- Community interventions;
- Case management;
- Care coordination;
- Outpatient services;
- Residential services;
- Hospital inpatient care;
- Aftercare and post-discharge services;
- Medication assisted treatment and medication management; and
- Recovery support.

A coordinated system of care must include, but is not limited to, the following array of services:[16]

- Prevention services;
- Home-based services;
- School-based services;
- Family therapy;
- Family support;
- Respite services;
- Outpatient treatment;
- Crisis stabilization;
- Therapeutic foster care;
- Residential treatment;
- Inpatient hospitalization;
- Case management;
- Services for victims of sex offenses;
- Transitional services; and
- Trauma-informed services for children who have suffered sexual exploitation.

DCF must define the priority populations which would benefit from receiving care coordination.[17] In defining priority populations, DCF must consider the number and duration of involuntary admissions, the degree of involvement with the criminal justice system, the risk to public safety posed by the individual, the utilization of a treatment facility by the individual, the degree of utilization of behavioral health services, and whether the individual is a parent or caregiver who is involved with the child welfare system.

MEs are required to conduct a community behavioral health care needs assessment once every three years in the geographic area served by the managing entity, which identifies needs by sub-region.[18] The assessments must be submitted to DCF for inclusion in the state and district substance abuse and mental health plan.[19]

Child and Adolescent Mental Health System of Care

Under current law, DCF must establish a system of care that includes an array of services to meet the individual mental health service and treatment needs of children and adolescents who reside with their parents or legal guardians or who are placed in state custody and:[20]

- Are experiencing an acute mental or emotional crisis.
- Have a serious emotional disturbance or mental illness.

[16] S. 394.495(4), F.S
[17] S. 394.9082(3)(c), F.S.
[18] S. 394.9082(5)(b), F.S.
[19] S. 394.75(3), F.S.
[20] S. 394.495, F.S.

- Have an emotional disturbance.
- Are at risk of emotional disturbance.

The services must include assessment services that provide a professional interpretation of the nature of the problems of the child or adolescent and his or her family; family issues that may impact the problems; additional factors that contribute to the problems; and the assets, strengths, and resources of the child or adolescent and his or her family. The assessment services to be provided must be determined by the clinical needs of each child or adolescent and include, but are not limited to, evaluation and screening in the following areas:[21]

- Physical and mental health for purposes of identifying medical and psychiatric problems;
- Psychological functioning, as determined through a battery of psychological tests;
- Intelligence and academic achievement;
- Social and behavioral functioning; and
- Family functioning.

The guiding principles of the system require that services be community-based, individualized, provide timely access to a comprehensive array of cost-effective mental health treatment and support services, be culturally competent, integrated, and coordinated. The goal is to provide a smooth transition, from children's mental health to the adult mental health system for continued age-appropriate services and supports. These services are designed to build resilience and to prevent, severity, duration and disabling aspects of children's mental and emotional disorders.[22]

The system must achieve certain general performance outcomes for the children and adolescents who receive services through the system of care, which include the:[23]

- Stabilization or improvement of the emotional condition or behavior of the child or adolescent, as evidenced by resolving the presented problems and symptoms of the serious emotional disturbance recorded in the initial assessment;
- Stabilization or improvement of the behavior or condition of the child or adolescent with respect to the family and school, so that the child or adolescent can function in the family and the school with minimum appropriate support; and
- Stabilization or improvement of the behavior or condition of the child or adolescent with respect to the way he or she interacts in the community, so that the child or adolescent can avoid behaviors that may be attributable to the emotional disturbance, such as substance abuse, unintended pregnancy, delinquency, sexually transmitted diseases, and other negative consequences.

Community Action Treatment Teams

Community Action Treatment (CAT) Teams are an important component of the child and adolescent mental health system of care. CAT teams are multi-disciplinary clinical teams that provide comprehensive, intensive community-based treatment to families with youth and young adults, ages 11 up to 21, who are at risk of out-of-home placement due to a mental health or co-occurring disorder and related complex issues for whom traditional services are not or have not been adequate.[24] CAT teams help these children and young adults recover at home safely and provide a safe and effective alternative to out-of-home treatment or residential care for children with serious behavioral health

[21] *Id.*
[22] *Id.*
[23] S. 394.494, F.S.
[24] Central Florida Cares Health System, *House Bill 945 Children's Coordinated System of Care Plan Central Region: Circuits 9 & 18 2022-2025*, available at https://centralfloridacares.org/wp-content/uploads/2022/01/CFCHS_Coordinated-Childrens-System-Plan_Rev-12.29.21.pdf, (last visited January 23, 2024)

conditions. These teams also assist families in building and maintaining a support system within their community. CAT teams are available to:[25]

- Children and young adults with serious behavioral health conditions.
- Youth with complex needs that contribute to family disruption or increase the risk of family separation such as:
  - Multiple behavioral health hospitalizations;
  - Involvement with the Department of Juvenile Justice or law enforcement;
  - School challenges like poor academic performance or suspensions; and
  - Repeated failures at lower levels of care.

Mobile Response Teams

A mental health crisis can be an extremely frightening and difficult experience for both the individual in crisis and those around him or her. It can be caused by a variety of factors and occur at any hour of the day.[26] Family members and caregivers of an individual experiencing a mental health crisis are often ill-equipped to handle these situations and need the advice and support of professionals.[27] Law enforcement or EMTs may be called to respond to mental health crises, and may lack the training and experience to effectively handle the situation.[28] Mobile response teams (MRT) can be beneficial in such instances.

MRTs support the child and adolescent mental health system of care and the behavioral health crisis response system as these teams travel to the acute situation or crisis to provide assistance. MRTs provide on-demand, community-based crisis intervention services 24 hours a day, seven days per week, in any setting in which a behavioral health crisis is occurring.[29] Mobile response services are typically provided by a team of crisis-intervention trained professionals and paraprofessionals who use face-to-face professional and peer intervention. MRTs are deployed in real time to the location of the person in crisis in order to achieve the best outcomes necessary for that individual, ensuring timely access to assessment, evaluation, support, and other services.[30] MRTs provide a warm handoff to other services, coordinate care, and ensure that the individual is engaged in services. MRTs are required to remained engaged for a minimum of 72 hours to ensure that the individual is actively connected to another service provider.[31]

In 2020, the Legislature required crisis response services be provided through MRTs under the Comprehensive Child and Adolescent Mental Health Services Act, which requires DCF to contract with the managing entities to procure mobile response teams throughout the state to provide immediate, onsite behavioral health crisis services to children, adolescents, and young adults ages 18-25, inclusive, who.[32]

- Have an emotional disturbance;
- Are experiencing an acute mental or emotional crisis;
- Are experiencing escalating emotional or behavioral reactions and symptoms that impact their ability to function normally within their environment; or
- Are served by the child welfare system and are experiencing or are at high risk of placement instability.

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[25] DCF, *Community Action Treatment Teams, available at https://www.myflfamilies.com/services/samh/community-action-treatment-teams#:~:text=Community%20Action%20Treatment%20(CAT)%20Teams,support%20system%20within%20their%20community., (last visited January 23, 2024).*
[26] Department of Children and Families, *Mobile Response Teams Framework*, (August 29, 2018), p. 4 https://myflfamilies.com/sites/default/files/2022-12/Mobile%20Response%20Framework.pdf (last visited December 18, 2023).
[27] Id.
[28] Id.
[29] *Id*.
[30] *Id*.
[31] DCF correspondence to House Children, Families, & Seniors Subcommittee staff (Email dated December 4, 2023, on file with House Children, Families, & Seniors Subcommittee).
[32] See Chapter 2020-107, L.O.F. and s. 394.495(7), F.S.

In Fiscal Year 2022-23, DCF received additional funding for MRTs allowing for the implementation of 12 new MRTs and the expansion of 30 existing teams. Currently there are 51 MRTs serving all 67 counties in Florida.[33] A recent review of MRT data from 2019 through 2022 shows that approximately 82 percent of MRT engagements resulted in community stabilization rather than involuntary admission or deeper penetration into the behavioral health system.[34]

The Baker Act

The Florida Mental Health Act, commonly referred to as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.[35] The Act includes 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.[36]

Involuntary Examination and Receiving Facilities

Individuals in an 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.[37] Individuals receiving services on an involuntary basis must be taken to a facility that has been designated by DCF as a receiving facility.

Receiving facilities, often referred to as Baker Act receiving facilities, are public or private facilities designated by DCF to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider.[38] A public receiving facility is a facility that has contracted with a managing entity to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.[39] Funds appropriated for Baker Act services may only be used to pay for services to diagnostically and financially eligible persons, or those who are acutely ill, in need of mental health services, and the least able to pay.[40]

Crisis Stabilization Units (CSUs) are public receiving facilities that receive state funding and provide a less intensive and less costly alternative to inpatient psychiatric hospitalization for individuals presenting as acutely mentally ill. CSUs screen, assess, and admit individuals brought to the unit under the Baker Act, as well as those individuals who voluntarily present themselves, for short-term services. CSUs provide services 24 hours a day, seven days a week, through a team of mental health professionals. The purpose of the CSU is to examine, stabilize, and redirect people to the most appropriate and least restrictive treatment settings, consistent with their mental health needs.[41] Individuals often enter the public mental health system through CSUs. For this reason, crisis services are a part of the comprehensive, integrated, community mental health and substance abuse services established by the Legislature in the 1970s to ensure continuity of care for individuals.[42]

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, has refused voluntary examination, is likely to refuse to care for him or herself to the extent that such refusal threatens to cause substantial harm to that person's

[33] DCF, Agency *Legislative Budget Request for Fiscal Year 2024-2025*, available at http://floridafiscalportal.state.fl.us/Document.aspx?ID=26122&DocType=PDF , (last visited January 22, 2024).
[34] Department of Children and Families, *Triennial Plan for the Delivery of Mental Health and Substance Abuse Services: State Fiscal Years 2023-2024 and 2025-2026, pg. 6, available at* https://www.google.com/url?client=internal-element-cse&cx=b5f7422ffe5734ed7&q=https://www.my_flfamilies.com/sites/default/files/2023-06/Substance%2520Abuse%2520%2526%2520Mental%2520Health%2520Services%2520Triennial%2520State%2520and%2520Regional%2520Master%2520Plan%2520%25202023-2025.pdf (last visited Nov. 28, 2023).
[35] The Baker Act is contained in Part I of ch. 394, F.S.
[36] S. 394.459, F.S.
[37] Ss. 394.4625 and 394.463, F.S.
[38] S. 394.455(40), F.S. This term does not include a county jail.
[39] S. 394.455(38), F.S
[40] R. 65E-5.400(2), F.A.C.
[41] S. 394.875, F.S.
[42] Id. Ss 394.65-394.9085, F.S.

well-being, and such harm is unavoidable through help of willing family members or friends, or will cause serious bodily harm to him or herself or others in the near future based on recent behavior.[43]

An involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;[44]
- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination; or[45]
- A qualified professional (physician, clinical psychologist, psychiatric nurse, an autonomous advanced practice registered nurse, mental health counselor, marriage and family therapist, or clinical social worker) executing 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, including a statement of the professional's observations supporting such conclusion; or[46]

Involuntary patients must be taken to either a public or a private facility that has been designated by DCF as a Baker Act receiving facility. Under the Baker Act, a receiving facility must examine an involuntary patient within 72 hours of arrival.[47] During that 72 hours, an involuntary patient must be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility to determine if the criteria for involuntary services are met.[48] If the patient is a minor, the examination must be initiated within 12 hours.[49]

Within that 72-hour examination period, or if the 72 hours ends on a weekend or holiday, no later than the next business day, one of the following must happen:[50]

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

Involuntary Examination of Minors

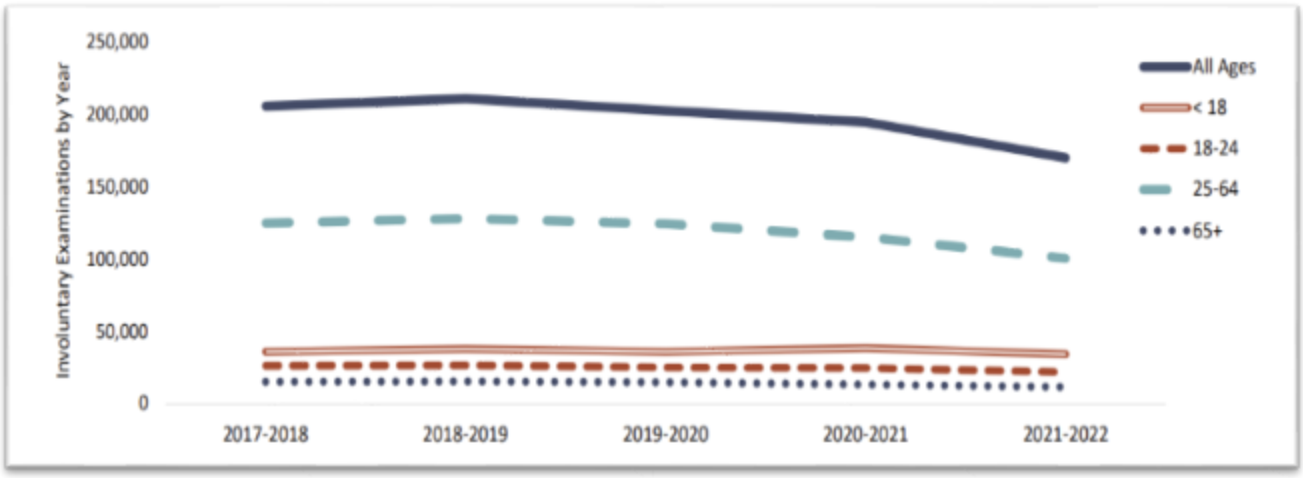
During fiscal year (FY) 2021-2022, 170,048 involuntary examinations were conducted for 115,239 individuals under the Baker Act;[51] of those examined, just over 36,000 were minors.[52] Individuals with multiple involuntary examinations accounted for a disproportionate number of examinations. Of the total involuntary examinations, there were 21.78 percent of individuals with two or more exams in FY 2021-

[43] S. 394.463(1), F.S.
[44] S. 394.463(2)(a)1., F.S. The order of the court must be made a part of the patient's clinical record.
[45] S. 394.463(2)(a)2., F.S.
[46] S. 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record.
[47] S. 394.463(2)(g), F.S.
[48] S. 394.463(2)(f), F.S.
[49] S. 394.463(2)(g), F.S.
[50] S. 394.463(2)(g), F.S.
[51] DCF, *The Baker Act Florida Mental Health Act Fiscal Year 2021-2022 Report,* available at https://www.myflfamilies.com/sites/default/files/2023-07/FY%202021%202022%20Annual%20Report.pdf, (last visited January 21, 2024).
[52] DCF, *Report on Involuntary Examination of Minors,* available at https://www.usf.edu/cbcs/baker-act/documents/ba_minors_report_nov2023.pdf, (last visited January 21, 2024).

2022. These individuals accounted for 46.99 percent of involuntary exams during the three-year period for FY 2019-2020 through FY 2021-2022.[53]

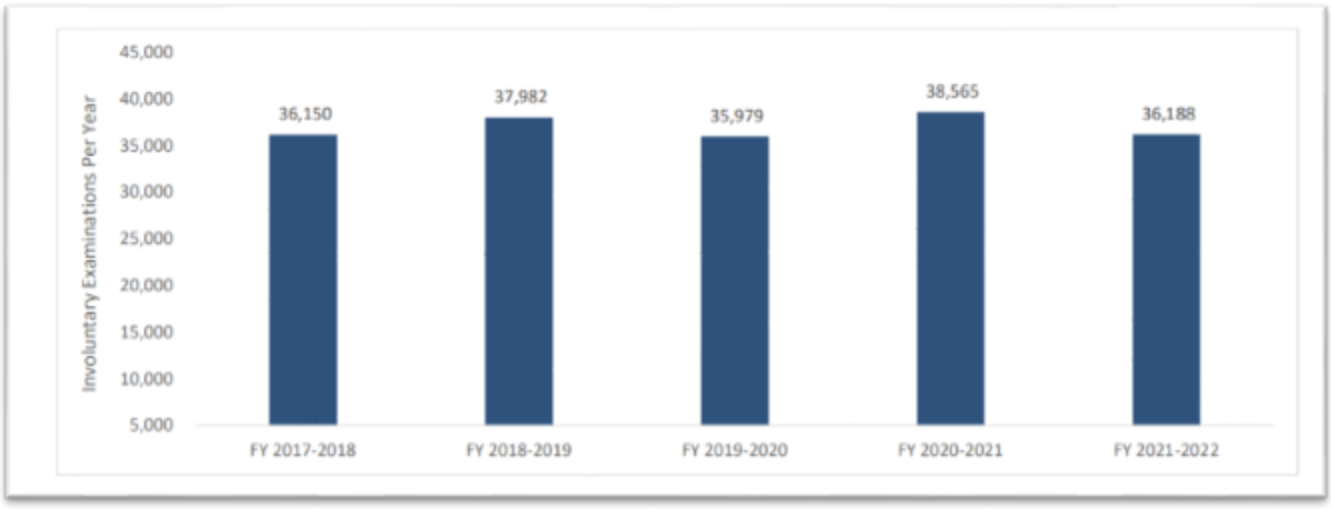
Approximately one in five (21.23 percent) of children with an involuntary examination in FY 2021-2022 had two of more involuntary exams. These children accounted for 44.93 percent of the of the involuntary examinations for the year.[54] According to the annual Baker Act Report, 12.40 percent of Baker Act examinations for children were initiated while at school.[55]

Involuntary Examinations For 5 FY for All Ages[56]

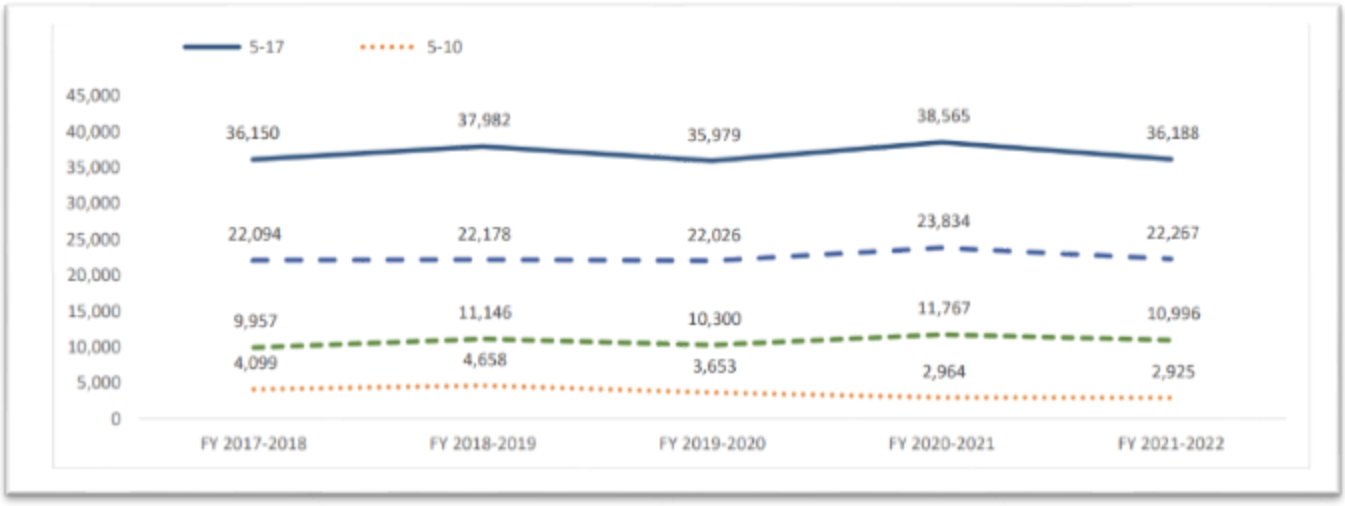


Involuntary Examinations for Children (< 18) for 5 FY Years[57]

[53] *Id.*
[54] *Id.*
[55] DCF, *The Baker Act Florida Mental Health Act Fiscal Year 2021-2022 Report,* available at https://www.myflfamilies.com/sites/default/files/2023-07/FY%202021%202022%20Annual%20Report.pdf, (last visited January 21, 2024).
[56] DCF, *Report on Involuntary Examination of Minors*, available at https://www.usf.edu/cbcs/baker-act/documents/ba_minors_report_nov2023.pdf, (last visited January 21, 2024).
[57] *Id.*



Involuntary Examinations for Children by Age Group for 5 FY Years[58]



Report on Involuntary Examinations of Minors

Under current law, DCF is required to prepare a report on the initiation of involuntary examinations of minors age 17 years and younger and submit the report by November 1 of each year.[59] The report must:[60]

- Analyze data on both the initiation of involuntary examinations of children and the initiation of involuntary examinations of students who are removed from a school[61];
- Identify any patterns or trends and cases in which involuntary examinations are repeatedly initiated on the same child or student;
- Study root causes for such patterns, trends, or repeated involuntary examinations; and
- Make recommendations to encourage the use of alternatives to eliminate inappropriate initiations of such examinations.

Student Mental Health

[58] *Id.*
[59] S. 394.463(4), F.S. The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.
[60] *Id.*
[61] Each district school board is required to annually report to DCF the number of involuntary examinations that were initiated at school, on school transportation, or at a school-sponsored activity. S. 1006.07(10), F.S.

In 2018, the Marjory Stoneman Douglas High School Public Safety Act[62] created the Mental Health Assistance Allocation within the Florida Education Finance Program.[63] The allocation is intended to provide funding to assist school districts in establishing or expanding school-based mental health care, train educators and other school staff in detecting and responding to mental health issues, and connect children, youth, and families who may experience behavioral health issues with appropriate services.[64] For the 2023-2024 school year $160,000,000 was appropriated for the allocation.[65] Each school district receives a minimum of $100,000, and the remaining balance is allocated based on each district's proportionate share of the state's total unweighted full-time equivalent student enrollment.[66]

To receive allocation funds, a school district must develop and submit to the district school board for approval a detailed plan outlining its local program and planned expenditures.[67] A school district's plan must include all district schools, including charter schools, unless a charter school elects to submit a plan independently from the school district.[68] Each approved plan must be submitted to the Commissioner of Education by August 1 each year.[69]

The plan must be focused on a multitiered system of supports to deliver evidence-based mental health care assessment, diagnosis, intervention, treatment, and recovery services to students with one or more mental health or co-occurring substance abuse diagnoses and to students at high risk of such diagnoses. The provision of these services must be coordinated with a student's primary mental health care provider and with other mental health providers involved in the student's care.[70]

Plans must include components such as:[71]

- Direct employment of school-based mental health service providers to expand and enhance school-based student services and reduce the ratio of students to staff to align with nationally recommended ratio models.
- Contracts or interagency agreements with one or more local community behavioral health providers or providers of Community Action Team services to provide behavioral health staff presence and services at district schools.
- Policies and procedures which ensure:
    - Students who are referred to a school-based or community-based mental health service provider for mental health screening are assessed within 15 days of referral;
    - School-based mental health services are initiated within 15 days after identification and assessment and community-based mental health services are initiated within 30 days after school or district referral;
    - Parents and of a student receiving services are provided information about other behavioral services available through the student's school or local community-based behavioral health service providers; and
    - Individuals living in a household with a student receiving services are provided information about behavioral health services available through other delivery systems or payors for which the individuals may qualify, if such services appear to be needed or enhancement in such individual's behavioral health would contribute to the improve well-being of the student.
- Strategies or programs to reduce the likelihood of at-risk students developing social, emotional, or behavioral health problems; depression; anxiety disorders; suicidal tendencies; or substance use disorders.

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[62] Chapter 2018-3, L.O.F.
[63] Section 1006.041, F.S.
[64] *Id*.
[65] Specific Appropriations 5 and 80, s. 2, ch. 2023-239, L.O.F.
[66] S. 1011.62(13), F.S.; *See also* Florida Department of Education, *Florida Education Finance Program 2023-24 Second Calculation*, p. 28, *available at* https://www.fldoe.org/core/fileparse.php/7507/urlt/2324FEFP2ndCalc.pdf, (last visited January 22, 2024).
[67] S. 1006.041(1), F.S.
[68] *Id*.
[69] S. 1006.041(3), F.S.
[70] S. 1006.041(2), F.S.
[71]

- Strategies to improve the early identification of social, emotional, or behavioral problems or substance use disorders; to improve the provision of early intervention services; and to assist students in dealing with trauma and violence.
- Procedures to assist a mental health services provider or a behavioral health provider, or a school resource officer or school safety officer who has completed mental health crisis intervention training with attempting to verbally de-escalate a student's crisis situation before initiating an involuntary examination.
- Policies requiring that school or law enforcement personnel, prior to initiating an involuntary examination, make a reasonable attempt to contact a mental health professional authorized to initiate an involuntary examination, unless the student in crisis poses an imminent danger to him- or herself or others.

School districts are also required to report program outcomes and expenditures for the previous fiscal year by September 30 each year.[72] The report must, at a minimum, provide the number of each of the following:[73]

- Students who receive screenings or assessments.
- Students who are referred to either school-based or community-based providers for services.
- Students who receive either school-based or community-based interventions, or assistance.
- School-based and community-based mental health providers, including licensure type, that were paid out of the mental health assistance allocation.
- Contract-based or interagency agreement-based collaborative efforts or partnerships with community mental health programs, agencies, or providers.

Effect of the Bill

PCS for HB 1169 establishes a mental health treatment and support system within school districts. The bill requires school districts that provide mental health assessment, diagnosis, intervention, treatment, and recovery services to students diagnosed with, or at risk of being diagnosed with, one or more mental health issues or any co-occurring substance use disorder to adhere to the guiding principles and the performance outcomes requirements under DCF child and adolescent mental health treatment and support system when implementing and developing a mental health support system within the school district. Adhering to these principles and guidelines will help to further promote effective implementation of a coordinated system of care.

The bill requires each school district to report to the Department of Education, annually, the general performance outcomes for the child and adolescent mental health treatment and support system and how funding for the support system is allocated and spent.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 397.96, F.S., relating to care coordination.
Section 2: Creates s. 1006.041, F.S., relating to mental health coordinated system of care.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[72] Section 1006.041(4), F.S.
[73] *Id.*

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on the Department of Education to accommodate the annual reporting requirement for school districts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

School districts may incur additional expenses related to implementing the provisions of the bill and complying with the additional reporting requirements. The impact is indeterminate.

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:

The bill does not provide rulemaking authority to implement the bill. However, the department has sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to coordinated systems of care for children; creating s. 1006.05, F.S.; requiring certain school districts to adhere to a specified mental health and treatment support system for certain children and meet specified performance outcomes; requiring each school district to report annually to the Department of Education on certain outcomes and funding; providing an effective date.

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

Section 1. Section 1006.05, Florida Statutes, is created to read:

1006.05 Mental health coordinated system of care.—

(1) Pursuant to s. 394.491 and to further promote the effective implementation of a coordinated system of care pursuant to ss. 394.4573 and 394.495, each school district that provides mental health assessment, diagnosis, intervention, treatment, and recovery services to students diagnosed with one or more mental health or any co-occurring substance use disorder and students at high risk of such diagnoses shall be guided by and adhere to the guiding principles of the mental health treatment and support system as provided under s. 394.491.

(2)(a) Pursuant to s. 394.494, each school district shall

meet the general performance outcomes for the child and adolescent mental health treatment and support system.

(b) Each school district shall report annually to the department on the general performance outcomes for the child and adolescent mental health treatment and support system and how the support system funding is allocated and spent.

Section 2. This act shall take effect July 1, 2024.