

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Storms, Chair

Senator Hill, Vice Chair

MEETING DATE: Tuesday, February 22, 2011

TIME: 9:00 a.m.—12:00 noon

PLACE: James E. "Jim" King, Jr., Committee Room, 401 Senate Office Building

MEMBERS: Senator Storms, Chair; Senator Hill, Vice Chair; Senators Detert, Hays, and Rich

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 208 Fasano (Compare H 361, S 346)	Persons With Disabilities; Provides that persons with developmental disabilities have a right to be free from negligence. Specifies that entities as well as individuals are liable for damages. Prohibits the operator of a public lodging or food establishment from discriminating on the basis of disability. Applies administrative and civil remedies available under the Florida Civil Rights Act of 1992 to certain violations against persons with disabilities. Creates the "Floridians with Disabilities Act," etc. CF 02/22/2011 CM JU BC	
2	SB 388 Joyner (Similar H 133)	Children of Incarcerated Parents; Provides legislative findings and purpose. Provides guiding principles to be used by state agency personnel when dealing with children of incarcerated parents. Provides applicability. CF 02/22/2011 CJ RC	
3	Interim Project 2011-106 (Review the Forensic Hospital Diversion Pilot Program) Presentation		
4	Presentation by Able Trust on the High School High-Tech Program		
5	Introduction of Carl Littlefield, Director Agency for Persons with Disabilities		

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 208

INTRODUCER: Senator Fasano

SUBJECT: Persons with Disabilities

DATE: February 21, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Pre-meeting
2.			CM	
3.			JU	
4.			BC	
5.				
6.				

I. Summary:

This bill amends Florida’s Bill of Rights for Persons with Developmental Disabilities to provide that persons with developmental disabilities have a right to be free from negligence. The bill clarifies that entities as well as individuals may be liable to a person for violating the rights and privileges of a person with developmental disabilities.

Additionally, the bill creates the Floridians with Disabilities Act, statutorily adopts the federal Americans with Disabilities Act of 1990, as amended in 2008, and provides for civil and administrative remedies for alleged violations of the Floridians with Disabilities Act.

This bill substantially amends the following sections of the Florida Statutes: 393.13, 509.092, 760.01, 760.02, 760.05, 760.07, 760.08, 760.10, and 760.11. This bill creates section 760.15, Florida Statutes.

II. Present Situation:

Federal Americans with Disabilities Act

Prior to the enactment of the Americans with Disabilities Act (ADA), society tended to isolate and segregate individuals with disabilities and, unlike individuals who may have experienced other forms of discrimination, individuals experiencing discrimination based on a disability had no legal recourse.¹ In 1990, President George H.W. Bush signed the Americans with Disabilities

¹ See 42 U.S.C. s. 12101.

Act into law,² making it the first comprehensive declaration of equality for people with disabilities. The ADA guarantees equal opportunity for all persons with disabilities in areas such as employment, public services, public transportation, public accommodations, and telecommunications. The ADA gives persons with disabilities the same civil rights protection afforded to individuals based on race, color, sex, national origin, age, and religion.³

Many of the provisions of the ADA are based on section 504 of the Rehabilitation Act of 1973.⁴ For example, the ADA, like section 504, defines a person with a disability as someone with a physical or mental impairment that substantially limits that person in some major life activity, someone with a record of such impairment, or someone who is regarded as having such an impairment.⁵ If an organization or employer violates the ADA, a complaint must be filed with the Equal Employment Opportunity Commission (EEOC or commission) within 180 days from the alleged unlawful practices. The commission will then investigate the complaint. The commission shall dismiss the charge and notify both parties if the investigation does not reveal probable cause of discrimination. If the commission does find probable cause, it must try to eliminate the unlawful discrimination through informal methods.⁶ If the commission cannot reconcile the problem within 30 days after the complaint is filed, it may file a civil action against the party as long as the party is not a governmental entity. If the party is a governmental entity, the commission shall refer the case to the Attorney General, who may then bring a civil action against the party.⁷ The complaining party may recover compensatory and punitive damages, as well as two years of back pay, if the employer or organization is found guilty of discrimination.⁸

In 2008, Congress amended the ADA to revise the definition of “disability” and address several Supreme Court decisions⁹ and portions of the EEOC regulations. The effect of the changes was to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of law.¹⁰ The amendments to the ADA went into effect January 1, 2009,¹¹ and a United States Court of Appeals has held that they do not apply retroactively.¹²

² 42 U.S.C. s. 12101 *et seq.*

³ Disabled World, *American Disability Act*, <http://www.disabled-world.com/disability/ada/> (last visited Feb. 8, 2011).

⁴ Section 504 of the Rehabilitation Act of 1973 is a federal law that protects qualified individuals from discrimination by prohibiting organizations from excluding or denying program benefits or services to an individual with a disability. Office for Civil Rights, U.S. Dep’t of Health and Human Servs., *Your Rights Under Section 504 of the Rehabilitation Act* (2006), available at <http://www.hhs.gov/ocr/civilrights/resources/factsheets/504.pdf> (last visited Feb. 8, 2011).

⁵ 42 U.S.C. s. 12102.

⁶ 42 U.S.C. s. 2000e-5.

⁷ *Id.*

⁸ *Id.*; see also s. 42 U.S.C. s. 1981a(a)(2).

⁹ *Sutton v. United Air Lines*, 527 U.S. 471 (1999), overturned by Pub. L. 110-325 (2009); *Toyota Motor Mfg., Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), overturned by Pub. L. 110-325 (2009).

¹⁰ United States Equal Employment Opportunity Comm’n, *Notice Concerning the Americans with Disabilities Act (ADA) Amendments Act of 2008*, http://www.eeoc.gov/laws/statutes/adaaa_notice.cfm (last visited Feb. 8, 2011).

¹¹ Pub. L. 110-325 (2009).

¹² See *Lytes v. DC Water and Sewer Authority*, 572 F.3d 936 (C.A.D.C. 2009).

Civil Rights Acts

Federal

In 1964, Congress passed the Civil Rights Act (Act), which forbids discrimination on the basis of sex or race and in hiring, promoting, or firing. Specifically, the Act “made it unlawful for an employer to ‘fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.’”¹³

Title VII of the Act created the Equal Employment Opportunity Commission (EEOC or commission) to implement the law. Since its creation, Congress has expanded the powers of the EEOC to include investigatory authority, creating conciliation programs, filing lawsuits, and conducting voluntary assistance programs.¹⁴ Today the EEOC enforces a range of federal laws beyond the Civil Rights Act of 1964, including the Age Discrimination Act of 1967, the Equal Pay Act of 1963, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, and Section 501 of the Rehabilitation Act of 1973.¹⁵ In 2010, the EEOC recovered approximately \$319 million in monetary benefits from charges filed under all of the statutes enforced by the EEOC.¹⁶

Florida

Florida enacted its Civil Rights Act in 1992 (act) to “secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity.”¹⁷ Under the act, it is illegal for an employer to fire or fail to hire someone, or limit or deprive an individual of employment opportunities, or adversely affect an individual’s status as an employee, because of that person’s race, color, religion, sex, national origin, age, handicap, or marital status.¹⁸

The act created the Florida Commission on Human Relations (FCHR) in order to promote and encourage the fair treatment and equal opportunity for all persons.¹⁹ An injured party may file a complaint with the FCHR within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee. The FCHR must send a copy of the complaint to the alleged violator within five days of the complaint being filed, and that person has 25 days to file an answer. The FCHR then completes an investigation of the complaint, and it has 180 days to determine whether probable cause exists that a discriminatory

¹³ The Nat’l Archives, *Teaching with Documents: The Civil Rights Act of 1964 and the Equal Employment Opportunity Commission*, <http://www.archives.gov/education/lessons/civil-rights-act/> (last visited Feb. 8, 2011) (internal citations omitted).

¹⁴ *Id.*; see also United States Equal Employment Opportunity Comm’n, *Laws Enforced by EEOC*, <http://www.eeoc.gov/laws/statutes/index.cfm> (last visited Feb. 8, 2011).

¹⁵ The Nat’l Archives, *supra* note 13.

¹⁶ United States Equal Employment Opportunity Comm’n, *All Statutes: FY 1997 – FY 2010*, <http://www.eeoc.gov/eeoc/statistics/enforcement/all.cfm> (last visited Feb. 8, 2011).

¹⁷ Section 760.01(2), F.S.

¹⁸ Section 760.10(1), F.S.

¹⁹ Section 760.05, F.S.

practice occurred. If probable cause does not exist, the FCHR dismisses the complaint. However, if the FCHR finds probable cause, the injured party may either bring a civil action against the person or request an administrative hearing. If a civil action is instituted, the injured party may receive compensatory damages, including damages for intangible injuries, and punitive damages.²⁰

Florida Bill of Rights of Persons with Developmental Disabilities

A bill of rights for persons with developmental disabilities intends to ensure “that individuals with developmental disabilities and their families have access to community-based services and supports to promote opportunities for independence, productivity and inclusion.”²¹ Chapter 393, F.S., authorizes services to be provided to persons with developmental disabilities, which are administered by the Agency for Persons with Disabilities. Florida Statutes define “developmental disability” as a “disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”²²

In 1975, the Florida Bill of Rights of Persons with Developmental Disabilities was created to:

- Articulate the legal and human rights of persons with developmental disabilities;
- Provide a mechanism for the identification, evaluation, and treatment of persons with developmental disabilities;
- Divert individuals from institutional commitment to less costly, more effective community environments;
- Fund improvements in the program;
- Ensure that persons with developmental disabilities receive treatment and habilitation;
- Provide programs for the proper habilitation and treatment of persons with developmental disabilities, including comprehensive medical and dental care, education, recreation, therapy, training, social services, transportation, and guardianship;
- Effectuate the principles of self-determination through the establishment of community services; and
- Achieve an ongoing reduction in the use of restraint and seclusion in facilities and programs serving persons with developmental disabilities.²³

The bill of rights provides that persons with developmental disabilities have the right to:

- Dignity, privacy, and humane care, including the right to be free from sexual abuse in residential facilities;
- Religious freedom and practice;

²⁰ Section 760.11, F.S.

²¹ Disability.gov, *Developmental Disabilities Assistance and Bill of Rights Act*, http://www.disability.gov/home/i_want_to/disability_laws (follow “Developmental Disabilities Assistance & Bill of Rights Act” hyperlink) (last visited Feb. 11, 2011).

²² Section 393.063(9), F.S.

²³ Section 393.13(2)(d), F.S.

- Receive services which protect the personal liberty of the individual and which are provided in the least restrictive conditions necessary;
- Participate in an appropriate program of quality education and training services regardless of age or degree of disability;
- Social interaction;
- Physical exercise and recreational opportunities;
- Be free from harm, including unnecessary physical, chemical, or mechanical restraint, isolation, excessive medication, abuse, or neglect;
- Consent to or refuse treatment;
- Participate in any program or activity that receives public funds; and
- Vote in public elections.²⁴

If a person violates or abuses these rights and privileges, that person is liable for damages as determined by law. However, a person is immune from liability if he or she acts in good faith compliance with the provisions of s. 393.13, F.S. A person is not relieved of liability if the person is found guilty of negligence, misfeasance, nonfeasance, or malfeasance.²⁵

III. Effect of Proposed Changes:

This bill amends Florida's Bill of Rights of Persons with Developmental Disabilities to provide that all persons with developmental disabilities have a right to be free from negligence. Additionally, the bill specifies that liability may accrue to entities, as well as individuals, who violate the rights or privileges of persons with developmental disabilities. The bill clarifies that the exemption from liability for good faith compliance with the provisions of ch. 393, F.S., applies to individuals and entities unless, the individual or entity is liable for or guilty of negligence, misfeasance, nonfeasance, or malfeasance.

This bill creates the Floridians with Disabilities Act and adopts the federal Americans with Disabilities Act of 1990 (federal act), as amended in 2008, and makes it a part of the Florida Civil Rights Act of 1992. The bill provides legislative findings that barriers remain which prevent persons with disabilities from accessing the full range of public and private programs and services that are available to other citizens of the state. Accordingly, the Legislature intends to promote greater awareness of the obligations under the federal act by enacting it as the law of Florida. The bill also authorizes use of the civil and administrative remedies of the Florida Civil Rights Act to redress violations of the federal act. The bill clarifies that a person may not seek relief under the newly created Floridians with Disabilities Act if that person already has an action pending in state or federal court under the federal act. The bill also clarifies that it does not expand any substantive protections against discrimination based on disability beyond those provided in the federal act or otherwise in Florida law.

Section 760.02, F.S., is amended to add that, for the purposes of the Floridians with Disabilities Act, the term "public accommodations" includes "a facility or entity included in the definition of the term 'place of public accommodation' under Title III of the federal Americans with Disabilities Act, whichever is more inclusive." According to the Florida Commission on Human

²⁴ Section 393.13(3), F.S.

²⁵ Section 393.13(5), F.S.

Relations (FCHR), essentially three types of public accommodations are covered under current state law: hotels (places of lodging), restaurants, and theaters. Under current law, if a person experiences discrimination based on a disability in a public accommodation not covered in Florida's definition, that person must seek his or her remedy by going to the federal Equal Employment Opportunity Commission, rather than the FCHR. However, with the expansion of the definition, aggrieved individuals may be more likely to file a complaint with the FCHR.²⁶

Finally, the bill amends s. 760.11, F.S., to allow a person aggrieved by a violation of ss. 413.08 and 553.501-553.513, F.S.,²⁷ to file a complaint with the Florida Commission on Human Relations (FCHR) in order to seek administrative and civil remedies. The bill adds that a person may file a complaint with the FCHR alleging that a public accommodation (in addition to an employer, employment agency, labor organization, or joint labor-management committee) violated the Florida Civil Rights Act. The bill also specifies that the FCHR must send a copy of a filed complaint to the person who allegedly committed the violation by registered mail.

The bill also changes the term "handicap" to "disability" in appropriate sections of law and makes technical and conforming changes.

The effective date of the bill is July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁶ E-mail from Hunter Barnett, Florida Comm'n on Human Relations (Mar. 25, 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs). Information provided to Senate professional staff during the 2010 Regular Session for SB 2396, which is substantively identical to this bill.

²⁷ Section 413.08, F.S., relates to the rights of an individual with a disability, use of a service animal, and discrimination in public employment or housing accommodations. Sections 553.501-553.513, F.S., relate to accessibility standards in buildings, structures, and facilities by handicapped persons.

B. Private Sector Impact:

The bill expands the definition of “public accommodations” to include all facilities and entities included in the definition in the federal Americans with Disabilities Act. Accordingly, the bill may have a fiscal impact on businesses that are now included within the definition of “public accommodations” and are sued for discriminatory practices.

C. Government Sector Impact:

The bill establishes a cause of action under state law for disability-based discrimination and expands the legal remedies available to persons whose rights have been violated. According to the Office of the State Courts Administrator:

By expanding the remedies and financial compensation options that are available, the bill encourages individuals with disabilities to elect to file suit under the state law, rather than the federal Americans with Disabilities Act. This shift in workload from the federal courts to the state courts comes at a time when state court funding is scarce and claims of discrimination, especially with regard to employment, are rising.

The number of workers claiming job discrimination based on disability, religion, or national origin surged to a new high in 2009, as job bias complaints overall stayed at near-record levels. The EEOC [Equal Employment Opportunity Commission] reported that charges of disability discrimination rose by about 10% to 21,451 claims, the largest increase of any category.

One should also consider that the ADA Amendments Act, which became effective January 1, 2009, changed the definition of “disability” under the ADA for the express purpose of covering more people. There is considerable speculation that more lawsuits will be filed alleging violations of the ADA, due to the change in the definition.²⁸

Additionally, the bill expands the definition of “public accommodation” and adds sections of law that may be violated and provides that an aggrieved person may file a complaint with the Florida Commission on Human Relations (FCHR) for those violations. Accordingly, the bill may create additional workload for the FCHR. According to the FCHR:

Conservatively, FCHR estimates that the provisions of SB 208 could potentially generate between 900 and 1,000 additional cases each year – cases that would involve some assertion of disability, whether due to age,

²⁸ Office of the State Courts Administrator, *Judicial Impact Statement SB 2396* (March 24, 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs). Information provided to Senate professional staff during the 2010 Regular Session for SB 2396, which is substantively identical to this bill.

retaliation, etc. in employment, housing, and public accommodations. Given this additional workload, the FCHR anticipates that it will need:

- 6 FTE Investigator IIs; 2 FTE Senior Attorneys; 3 FTE Administrative Assistants
- **TOTAL: 11 FTEs; \$694,862 (includes salary and benefits, expenses, and human resources services – support from DMS)²⁹**

FCHR also anticipates needing additional resources to provide administrative support for the increased workload (*e.g.*, intake, mail, and information technology staff; supplies; and operating expenses). The exact fiscal impact of the additional administrative support is unknown at this time.

VI. Technical Deficiencies:

The intent is unclear for why the bill is adding that an individual or entity can be *liable for* negligence. It appears that current law, which provides that an individual or entity is not relieved of liability if the individual or entity *is guilty of* negligence, accomplishes the same thing. It is also unclear how an individual or entity can be “liable for” negligence. Additionally, it is unclear how a person has a right to be free from “negligence.” The Legislature may wish to amend lines 52-53 of the bill so that the sentence reads “However, this subsection does not relieve an individual or entity from liability if the individual or entity *commits an act of* negligence, misfeasance, nonfeasance, or malfeasance.”

The bill changes the term “handicap” to “disability” in appropriate sections of law and makes technical and conforming changes. The bill does not define “disability” and it is not currently defined elsewhere in ch. 760, F.S. The Legislature may wish to provide a definition for “disability” in the bill.

The bill amends s. 760.11, F.S., to allow a person aggrieved by a violation of ss. 413.08 and 553.501-553.513, F.S. (part II of ch. 553., F.S.), to file a complaint with the Florida Commission on Human Relations (FCHR) in order to seek administrative and civil remedies. The Legislature may wish to provide notice to persons of the right to file a complaint with the FCHR in s. 413.08, F.S., and somewhere in part II of ch. 553, F.S. For example, language could be added that provides “A person aggrieved by a violation of this section has a right of action pursuant to s. 760.11.”

VII. Related Issues:

None.

²⁹ Florida Comm’n on Human Relations, *General and Fiscal Comments on SB 208* (Feb. 15, 2011) (emphasis in original) (on file with the Senate Committee on Children, Families, and Elder Affairs).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Children, Families, and Elder Affairs (Rich) recommended the following:

2

Senate Amendment (with title amendment)

3

4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Paragraph (g) of subsection (3) and subsection
7 (5) of section 393.13, Florida Statutes, are amended to read:

8 393.13 Treatment of persons with developmental
9 disabilities.—

10 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL DISABILITIES.—

11 The rights described in this subsection shall apply to all
12 persons with developmental disabilities, whether or not such
13 persons are clients of the agency.



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14 (g) Persons with developmental disabilities ~~shall~~ have a
15 right to be free from harm, including unnecessary physical,
16 chemical, or mechanical restraint, isolation, excessive
17 medication, abuse, or negligence ~~neglect~~.

18 (5) LIABILITY FOR VIOLATIONS.—An individual or entity that
19 ~~Any person who~~ violates or abuses any rights or privileges of
20 persons with developmental disabilities as provided by this
21 chapter is liable for damages as determined by law. An
22 individual or entity acting ~~Any person who acts~~ in good faith
23 compliance with ~~the provisions of~~ this chapter is immune from
24 civil or criminal liability for actions in connection with the
25 evaluation, admission, habilitative programming, education,
26 treatment, or discharge of a client. However, this subsection
27 ~~section~~ does not relieve an individual or entity ~~any person~~ from
28 liability if the individual or entity ~~person is~~ commits an act
29 of ~~guilty of~~ negligence, misfeasance, nonfeasance, or
30 malfeasance.

31 Section 2. Subsection (9) is added to section 413.08,
32 Florida Statutes, to read:

33 413.08 Rights of an individual with a disability; use of a
34 service animal; discrimination in public employment or housing
35 accommodations; penalties.—

36 (9) A person aggrieved by a violation of this section has a
37 right of action pursuant to s. 760.11.

38 Section 3. Section 509.092, Florida Statutes, is amended to
39 read:

40 509.092 Public lodging establishments and public food
41 service establishments; rights as private enterprises.—Public
42 lodging establishments and public food service establishments



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43 are private enterprises, and the operator has the right to
44 refuse accommodations or service to any person who is
45 objectionable or undesirable to the operator, but such refusal
46 may not be based upon race, creed, color, sex, ~~physical~~
47 disability, or national origin. A person aggrieved by a
48 violation of this section or a violation of a rule adopted under
49 this section has a right of action pursuant to s. 760.11.

50 Section 4. Section 553.513, Florida Statutes, is amended to
51 read:

52 553.513 Enforcement.—

53 (a) It shall be the responsibility of each local government
54 and each code enforcement agency established pursuant to s.
55 553.80 to enforce the provisions of this part. This act
56 expressly preempts the establishment of handicapped
57 accessibility standards to the state and supersedes any county
58 or municipal ordinance on the subject. However, nothing in this
59 section shall prohibit municipalities and counties from
60 enforcing the provisions of this act.

61 (b) A person aggrieved by a violation of this part or a
62 violation of a rule adopted under this part has a right of
63 action pursuant to s. 760.11.

64 Section 5. Subsections (1) and (2) of section 760.01,
65 Florida Statutes, are amended to read:

66 760.01 Purposes; construction; title.—

67 (1) This part Sections 760.01-760.11 and s. 509.092 may
68 ~~shall~~ be cited as the "Florida Civil Rights Act of 1992."

69 (2) The general purposes of the Florida Civil Rights Act of
70 1992 are to secure for all individuals within the state freedom
71 from discrimination because of race, color, religion, sex,



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72 national origin, age, disability handicap, or marital status and
73 thereby to protect their interest in personal dignity, to make
74 available to the state their full productive capacities, to
75 secure the state against domestic strife and unrest, to preserve
76 the public safety, health, and general welfare, and to promote
77 the interests, rights, and privileges of individuals within the
78 state.

79 Section 6. Section 760.02, Florida Statutes, is reordered
80 and amended to read:

81 760.02 Definitions.—For the purposes of this part ~~ss.~~
82 ~~760.01-760.11~~ and s. 509.092, the term:

83 (8)(1) “Florida Civil Rights Act of 1992” means the
84 provisions of this part and s. ~~ss. 760.01-760.11~~ and 509.092.

85 (2) “Commission” means the Florida Commission on Human
86 Relations created by s. 760.03.

87 (3) “Commissioner” or “member” means a member of the
88 commission.

89 (4) “Disability” means:

90 (a) A person has a physical or mental impairment which
91 substantially limits one or more major life activities, or he or
92 she has a record of having, or is regarded as having, such
93 physical or mental impairment; or

94 (b) A person has a developmental disability as defined in
95 s. 393.063.

96 (5)(4) “Discriminatory practice” means any practice made
97 unlawful by the Florida Civil Rights Act of 1992.

98 (10)(5) “National origin” includes ancestry.

99 (11)(6) “Person” includes an individual, association,
100 corporation, joint apprenticeship committee, joint-stock



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101 company, labor union, legal representative, mutual company,
102 partnership, receiver, trust, trustee in bankruptcy, or
103 unincorporated organization; any other legal or commercial
104 entity; the state; or any governmental entity or agency.

105 ~~(6)~~⁽⁷⁾ "Employer" means any person employing 15 or more
106 employees for each working day in each of 20 or more calendar
107 weeks in the current or preceding calendar year, and any agent
108 of such a person.

109 ~~(7)~~⁽⁸⁾ "Employment agency" means any person regularly
110 undertaking, with or without compensation, to procure employees
111 for an employer or to procure for employees opportunities to
112 work for an employer, and includes an agent of such a person.

113 (9) "Labor organization" means any organization that ~~which~~
114 exists for the purpose, in whole or in part, of collective
115 bargaining or of dealing with employers concerning grievances,
116 terms or conditions of employment, or other mutual aid or
117 protection in connection with employment.

118 ~~(1)~~⁽¹⁰⁾ "Aggrieved person" means any person who files a
119 complaint with the ~~Human Relations~~ commission.

120 ~~(12)~~⁽¹¹⁾ "Public accommodations" means places of public
121 accommodation, lodgings, facilities principally engaged in
122 selling food for consumption on the premises, gasoline stations,
123 places of exhibition or entertainment, and other covered
124 establishments. The term includes ~~Each of the following~~
125 ~~establishments which serves the public is a place of public~~
126 ~~accommodation within the meaning of this section:~~

127 (a) An ~~Any~~ inn, hotel, motel, or other establishment which
128 provides lodging to transient guests, other than an
129 establishment located within a building which contains not more



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130 than four rooms for rent or hire and which is actually occupied
131 by the proprietor of such establishment as his or her residence.

132 (b) A ~~Any~~ restaurant, cafeteria, lunchroom, lunch counter,
133 soda fountain, or other facility principally engaged in selling
134 food for consumption on the premises, including, but not limited
135 to, any such facility located on the premises of any retail
136 establishment, or any gasoline station.

137 (c) A ~~Any~~ motion picture theater, theater, concert hall,
138 sports arena, stadium, or other place of exhibition or
139 entertainment.

140 (d) An ~~Any~~ establishment that ~~which~~ is physically located
141 within the premises of an ~~any~~ establishment otherwise covered by
142 this subsection, or within the premises of which is physically
143 located any such covered establishment, and that ~~which~~ holds
144 itself out as serving patrons of such covered establishment.

145 For the purposes of the Floridians with Disabilities Act
146 under s. 760.15, the term also includes a facility or entity
147 included in the definition of the term "place of public
148 accommodation" under Title III of the federal Americans with
149 Disabilities Act, whichever is more inclusive.

150 Section 7. Section 760.05, Florida Statutes, is amended to
151 read:

152 760.05 Functions of the commission.—The commission shall
153 promote and encourage fair treatment and equal opportunity for
154 all persons regardless of race, color, religion, sex, national
155 origin, age, disability ~~handicap~~, or marital status and mutual
156 understanding and respect among all members of all economic,
157 social, racial, religious, and ethnic groups; and shall endeavor
158 to eliminate discrimination against, and antagonism between,



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159 religious, racial, and ethnic groups and their members.

160 Section 8. Section 760.07, Florida Statutes, is amended to
161 read:

162 760.07 Remedies for unlawful discrimination.—Any violation
163 of any state law ~~Florida statute~~ making unlawful discrimination
164 because of race, color, religion, gender, national origin, age,
165 disability ~~handicap~~, or marital status in the areas of
166 education, employment, housing, or public accommodations gives
167 rise to a cause of action for all relief and damages described
168 in s. 760.11(5), unless greater damages are expressly provided
169 ~~for~~. If the law ~~statute~~ prohibiting unlawful discrimination
170 provides an administrative remedy, the action for equitable
171 relief and damages provided ~~for~~ in this section may be initiated
172 only after the plaintiff has exhausted his or her administrative
173 remedy. The term "public accommodations" does not include lodge
174 halls or other similar facilities of private organizations which
175 are made available for public use occasionally or periodically.
176 The right to trial by jury is preserved in any case in which the
177 plaintiff is seeking actual or punitive damages.

178 Section 9. Section 760.08, Florida Statutes, is amended to
179 read:

180 760.08 Discrimination in places of public accommodation.—
181 All persons are ~~shall be~~ entitled to the full and equal
182 enjoyment of the goods, services, facilities, privileges,
183 advantages, and accommodations of any place of public
184 accommodation, ~~as defined in this chapter~~, without
185 discrimination or segregation on the ground of race, color,
186 national origin, sex, disability ~~handicap~~, familial status, or
187 religion.



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188 Section 10. Section 760.10, Florida Statutes, is amended to
189 read:

190 760.10 Unlawful employment practices.—

191 (1) It is an unlawful employment practice for an employer
192 to:

193 (a) ~~To~~ Discharge or ~~to~~ fail ~~or refuse~~ to hire any
194 individual, or otherwise ~~to~~ discriminate against any individual
195 with respect to compensation, terms, conditions, or privileges
196 of employment, because of such individual's race, color,
197 religion, sex, national origin, age, disability ~~handicap~~, or
198 marital status.

199 (b) ~~To~~ Limit, segregate, or classify employees or
200 applicants for employment in any way that deprives ~~which would~~
201 ~~deprive~~ or tends ~~tend~~ to deprive any individual of employment
202 opportunities, or adversely affects ~~affect~~ any individual's
203 status as an employee, because of his or her ~~such individual's~~
204 race, color, religion, sex, national origin, age, disability
205 ~~handicap~~, or marital status.

206 (2) It is an unlawful employment practice for an employment
207 agency to fail ~~or refuse~~ to refer for employment, or otherwise
208 to discriminate against, any individual because of race, color,
209 religion, sex, national origin, age, disability ~~handicap~~, or
210 marital status or to classify or refer for employment any
211 individual on the basis of race, color, religion, sex, national
212 origin, age, disability ~~handicap~~, or marital status.

213 (3) It is an unlawful employment practice for a labor
214 organization to:

215 (a) ~~To~~ Exclude or ~~to~~ expel from its membership, or
216 otherwise ~~to~~ discriminate against, any individual because of



217 race, color, religion, sex, national origin, age, disability
218 ~~handicap~~, or marital status.

219 (b) ~~To~~ Limit, segregate, or classify its membership or
220 applicants for membership, or ~~to~~ classify or fail ~~or refuse~~ to
221 refer for employment any individual, in any way that deprives
222 ~~which would deprive~~ or tends ~~tend~~ to deprive any individual of
223 employment opportunities, or adversely affects ~~affect~~ any
224 individual's status as an employee or as an applicant for
225 employment, because of such individual's race, color, religion,
226 sex, national origin, age, disability ~~handicap~~, or marital
227 status.

228 (c) ~~To~~ Cause or attempt to cause an employer to
229 discriminate against an individual in violation of this section.

230 (4) It is an unlawful employment practice for an any
231 employer, labor organization, or joint labor-management
232 committee controlling apprenticeship or other training or
233 retraining, including on-the-job training programs, to
234 discriminate against any individual because of race, color,
235 religion, sex, national origin, age, disability ~~handicap~~, or
236 marital status in admission to, or employment in, any program
237 established to provide apprenticeship or other training.

238 (5) If ~~Whenever~~, in order to engage in a profession,
239 occupation, or trade, ~~it is required that~~ a person must receive
240 a license, certification, or other credential; ~~or~~ become a member
241 or an associate of any club, association, or other
242 organization; ~~or~~ pass an any examination, it is an unlawful
243 employment practice for any person to discriminate against any
244 other person seeking such license, certification, or other
245 credential; ~~or~~ seeking to become a member or associate of such



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246 club, association, or other organization; ~~or~~ seeking to take or
247 pass such examination ~~because of such other person's race,~~
248 color, religion, sex, national origin, age, disability ~~handicap,~~
249 or marital status.

250 (6) It is an unlawful employment practice for an employer,
251 labor organization, employment agency, or joint labor-management
252 committee to print, or cause to be printed or published, any
253 notice or advertisement relating to employment, membership,
254 classification, referral for employment, or apprenticeship or
255 other training ~~indicating any preference, limitation,~~
256 specification, or discrimination ~~based on race, color,~~
257 religion, sex, national origin, age, absence of disability
258 ~~handicap,~~ or marital status.

259 (7) It is an unlawful employment practice for an employer,
260 an employment agency, a joint labor-management committee, or a
261 labor organization to discriminate against any person because
262 that person has opposed any practice that ~~which~~ is an unlawful
263 employment practice under this section, or because that person
264 has made a charge, testified, assisted, or participated in any
265 manner in an investigation, proceeding, or hearing under this
266 section.

267 (8) Notwithstanding any other provision of this section, it
268 is not an unlawful employment practice under this part ~~ss-~~
269 ~~760.01-760.10~~ for an employer, employment agency, labor
270 organization, or joint labor-management committee to:

271 (a) Take or fail to take any action on the basis of
272 religion, sex, national origin, age, disability ~~handicap,~~ or
273 marital status in those ~~certain~~ instances in which religion,
274 sex, national origin, age, absence of a particular disability



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275 ~~handicap~~, or marital status is a bona fide occupational
276 qualification reasonably necessary for the performance of the
277 particular employment to which such action or inaction is
278 related.

279 (b) Observe the terms of a bona fide seniority system, a
280 bona fide employee benefit plan, such as a retirement, pension,
281 or insurance plan, or a system that ~~which~~ measures earnings by
282 quantity or quality of production and, ~~which~~ is not designed,
283 intended, or used to evade the purposes of this part ~~ss. 760.01-~~
284 ~~760.10~~. However, ~~no~~ such employee benefit plan or system that
285 ~~which~~ measures earnings does not ~~shall~~ excuse the failure to
286 hire, and ~~no~~ such seniority system, employee benefit plan, or
287 system that ~~which~~ measures earnings does not ~~shall~~ excuse the
288 involuntary retirement of, any individual on the basis of any
289 factor not related to the ability of such individual to perform
290 the particular employment for which the ~~such~~ individual has
291 applied or in which the ~~such~~ individual is engaged. This
292 subsection does ~~shall~~ not prohibit ~~be construed to make unlawful~~
293 the rejection or termination of employment if ~~when~~ the
294 individual applicant or employee has failed to meet bona fide
295 requirements for the job or position sought or held or ~~to~~
296 require any changes in any bona fide retirement or pension
297 programs or existing collective bargaining agreements during the
298 life of the contract, and ~~or for 2 years after October 1, 1981,~~
299 ~~whichever occurs first, nor shall~~ this part does not ~~act~~
300 preclude such physical and medical examinations of applicants
301 and employees as an employer may require of applicants and
302 employees to determine fitness for the job or position sought or
303 held.



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304 (c) Take or fail to take any action on the basis of age,
305 pursuant to law or regulation governing any employment or
306 training program designed to benefit persons of a particular age
307 group.

308 (d) Take or fail to take any action on the basis of marital
309 status if that status is prohibited under its antinepotism
310 policy.

311 (9) This section does ~~shall~~ not apply to any religious
312 corporation, association, educational institution, or society
313 that ~~which~~ conditions opportunities in the area of employment or
314 public accommodation to members of that religious corporation,
315 association, educational institution, or society or to persons
316 who subscribe to its tenets or beliefs. This section does ~~shall~~
317 not prohibit a religious corporation, association, educational
318 institution, or society from giving preference in employment to
319 individuals of a particular religion to perform work connected
320 with the carrying on by such corporations, associations,
321 educational institutions, or societies of its various
322 activities.

323 (10) Each employer, employment agency, and labor
324 organization shall post and keep posted in conspicuous places
325 upon its premises a notice provided by the commission setting
326 forth such information as the commission deems appropriate to
327 effectuate the purposes of this part ~~ss. 760.01-760.10~~.

328 Section 11. Subsection (1) of section 760.11, Florida
329 Statutes, is amended to read:

330 760.11 Administrative and civil remedies; construction.—

331 (1) Any person aggrieved by a violation of this part,
332 including the Floridians with Disabilities Act, ~~ss. 760.01-~~



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333 ~~760.10~~ may file a complaint with the commission within 365 days
334 after ~~of~~ the alleged violation, naming the employer, employment
335 agency, labor organization, ~~or~~ joint labor-management committee,
336 public accommodation, or, in the case of an alleged violation of
337 s. 760.10(5), the person responsible for the violation and
338 describing the violation. Any person aggrieved by a violation of
339 s. 413.08, s. 509.092, or ss. 553.501-553.513 may file a
340 complaint with the commission within 365 days after ~~of~~ the
341 alleged violation naming the person responsible for the
342 violation and describing the violation. The commission, a
343 commissioner, or the Attorney General may in like manner file
344 such a complaint. On the same day the complaint is filed with
345 the commission, the commission shall clearly stamp ~~on the face~~
346 ~~of the complaint~~ the date the complaint was filed with the
347 commission on the face of the complaint. In lieu of filing the
348 complaint with the commission, a complaint ~~under this section~~
349 may be filed with the federal Equal Employment Opportunity
350 Commission or ~~with any unit of government of the state~~ agency
351 that ~~which~~ is a fair-employment-practice agency under 29 C.F.R.
352 ss. 1601.70-1601.80. If the date the complaint is filed is
353 clearly stamped on the face of the complaint, that date is the
354 date of filing. The date the complaint is filed with the
355 commission for purposes of this section is the earliest date of
356 filing with the Equal Employment Opportunity Commission, the
357 fair-employment-practice agency, or the commission. The
358 complaint must ~~shall~~ contain a short and plain statement of the
359 facts describing the violation and the relief sought. The
360 commission may require additional information to be in the
361 complaint. ~~The commission,~~ Within 5 days after ~~of~~ the complaint



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362 is being filed, the commission shall ~~by registered mail~~ send a
363 copy of the complaint by registered mail to the person who
364 allegedly committed the violation. The person who allegedly
365 committed the violation may file an answer to the complaint
366 within 25 days after ~~of~~ the date the complaint was filed with
367 the commission. Any answer filed must ~~shall~~ be mailed to the
368 aggrieved person by the person filing the answer. ~~Both~~ The
369 complaint and the answer must ~~shall~~ be verified.

370 Section 12. Section 760.15, Florida Statutes, is created to
371 read:

372 760.15 Floridians with Disabilities Act.-

373 (1) This section may be cited as the "Floridians with
374 Disabilities Act."

375 (2) The Legislature finds that, while the federal Americans
376 with Disabilities Act applies to state and local government
377 agencies and to many private entities within this state, there
378 remain many barriers that prevent persons with disabilities from
379 accessing the full range of public and private programs and
380 services otherwise available in this state to persons without
381 disabilities. The Legislature, therefore, intends to promote a
382 greater awareness by the state's public and private entities of
383 their obligations under the federal act by enacting the
384 Americans with Disabilities Act as the law of this state by
385 making the civil and administrative remedies of the Florida
386 Civil Rights Act of 1992 available to redress violations of the
387 federal act.

388 (3) The federal Americans with Disabilities Act of 1990, as
389 amended by the Americans with Disabilities Amendments Act of
390 2008, is adopted as the law of this state and made part of the



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391 Florida Civil Rights Act of 1992, to be administered by the
392 Florida Commission on Human Relations.

393 (4) The provisions of this part, including the civil and
394 administrative remedies for alleged violations, apply to this
395 section, unless expressly exempted.

396 (5) An individual may not seek relief under this section if
397 he or she has commenced an action in state or federal court
398 under the federal Americans with Disabilities Act.

399 (6) This section does not expand substantive protections
400 against discrimination based on disability beyond those provided
401 in the federal Americans with Disabilities Act or in other
402 sections of state law.

403 Section 13. This act shall take effect July 1, 2011.

404
405

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

407 And the title is amended as follows:

408 Delete everything before the enacting clause
409 and insert:

410 A bill to be entitled

411 An act relating to persons with disabilities; amending s.
412 393.13, F.S.; providing that persons with developmental
413 disabilities have a right to be free from negligence; specifying
414 that entities as well as individuals are liable for damages;
415 amending s. 413.08, F.S., providing that that persons have a
416 right of action for a violation of the section; amending s.
417 509.092, F.S.; prohibiting the operator of a public lodging or
418 food establishment from discriminating on the basis of
419 disability; amending s. 553.513, F.S., providing that persons



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420 have a right of action for a violation of part I of ch. 553,
421 F.S.; amending s. 760.01, F.S.; conforming provisions to changes
422 made by the act; substituting the term "disability" for the term
423 "handicap"; reordering and amending s. 760.02, F.S.; conforming
424 provisions to changes made by the act; defining the term
425 "disability"; redefining the term "public accommodations";
426 amending ss. 760.05, 760.07, 760.08, and 760.10, F.S.;
427 conforming provisions to changes made by the act; substituting
428 the term "disability" for the term "handicap"; amending s.
429 760.11, F.S.; applying administrative and civil remedies
430 available under the Florida Civil Rights Act of 1992 to certain
431 violations against persons with disabilities; creating s.
432 760.15, F.S.; creating the "Floridians with Disabilities Act";
433 providing legislative intent; adopting the federal Americans
434 with Disabilities Act into state law and making it part of the
435 Florida Civil Rights Act of 1992; providing an effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 388

INTRODUCER: Senator Joyner

SUBJECT: Children of Incarcerated Parents

DATE: February 15, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides legislative findings relating to children of incarcerated parents. The bill also provides guiding principles for use by state agencies when dealing with these children, but does not obligate a state agency to either provide support or services or give priority to these children when delivering support and services.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Background

On any given day in the United States, it is estimated that more than 1.5 million children have a parent incarcerated in a state or federal prison. More than 10 million children are living with a parent who has come under some form of supervision by the criminal justice system at some point in the child's life. Most of these children are young, low-income, black, or Hispanic.¹

The physical and emotional well being of children can be threatened or harmed in a multitude of ways, including the absence of a parent from their lives. While parental absences can occur through marital separation or even death, the removal of a parent through incarceration creates unique and multiple stressors in a child's life. While most children have a means of personal

¹ Bouchet, S.M. *Children and Families with Incarcerated Parents*, Annie E. Casey Foundation, January 2008. Available at: <http://www.fcnetwork.org/AECFChildren%20and%20Families%20with%20Incarcerated%20Parents%20Report.pdf>. (Last visited February 11, 2011).

contact with a parent who is absent because of marital separation, the barriers to communication between a child and his or her incarcerated parent are much greater and are complicated by the fact that caregivers may be reluctant to facilitate such contact.²

Children of incarcerated parents are also subject to significant uncertainty and instability, as many incarcerated parents repeatedly rotate in and out of prison. In addition to the trauma of this loss, these children face uncertainty in their living arrangements, relationships with other family members and friends, and family financial stability,³ which may lead to long-term emotional and behavioral challenges. Children with incarcerated parents often do not receive the help they need, because the stigma and shame associated with parental incarceration make these children difficult to identify by schools and social service agencies.⁴

Florida

Florida's Department of Corrections (DOC or department) reports that as of December 31, 2010, there are 74,180 children in Florida who have a parent in prison.⁵ Florida law recognizes that maintaining an inmate's family and community relationships through enhancing visitor services and programs and increasing the frequency and quality of the visits is an underutilized correctional resource that can improve an inmate's behavior in the correctional facility and, upon an inmate's release from a correctional facility, will help to reduce recidivism.⁶ The law also requires the department to provide, at designated visiting areas for approved visitors in state correctional facilities, minimal equipment and supplies that will assist staff and visitors in managing and occupying the time and meeting the needs of children and youth visitors.⁷

In addition, the department's Bureau of Inmate Transition is responsible for managing a three year Memorandum of Agreement with the Service Network for Children of Inmates,⁸ to provide services for children with incarcerated parents. The objective of the program is to promote family bonding, preparation for family reunification and personal growth for children of inmates. Currently letter writing, video visitations, and in-person visits between child and parent are being provided at Martin, Homestead, Lowell, Marion, Dade, Okeechobee, Everglades and Broward correctional institutions. The Service Network is also working to establish programs at Hendry and Glades correctional institutions.

Due to funding constraints, the department also relies heavily on volunteers to carry out initiatives involving maintaining family relationships at most correctional institutions. In Fiscal Year 2009-2010, the department recorded over 270,000 hours of volunteer services to incarcerated parents.

² La Vigne, N.G., Davies, E. and Brazzell D. Broken Bonds: *Understanding and Addressing the Needs of Children with Incarcerated Parents*, Justice Policy Center. Urban Institute. February 2008. Available at: http://www.urban.org/UploadedPDF/411616_incarcerated_parents.pdf. (Last visited February 11, 2011).

³ *Id.*

⁴ *Id.*

⁵ Written communication from the Office of Legislative Affairs, Department of Corrections. February 14, 2011.

⁶ See s. 944.8031, F.S.

⁷ *Id.*

⁸ The Service Network is funded by the Children's Trust of Miami-Dade.

These initiatives include:

- Long Distance Dads – A fatherhood curriculum developed by the National Fatherhood Initiative.
- Marriage Enrichment Seminars – Prison Fellowship and other groups offer these seminars that are usually held in prison without the spouse.
- Writing Family Ties – Inmates at Tomoka Correctional Institute are encouraged to write to reestablish contact with family members.
- Visions of Manhood – This is a weekly class taught at Wakulla Correctional Institute that addresses issues related to parenting.
- Father Hunger – A weekly class and support group that explores problems resulting from absent fathers.
- Responsible Fatherhood - The curriculum includes a workbook that examines such topics as communication, discipline, and reunification, to enable the offender to become a responsible father.

III. Effect of Proposed Changes:

The bill requires state agencies to use a set of guiding principles when dealing with children of incarcerated parents, but also provides that provisions of the bill do not obligate any state agency to provide services or support to children with incarcerated parents or to give these children priority in the delivery of services or support.

- The children should be treated with respect and dignity at all times.
- The children's safety and care should be of paramount importance to all involved.
- If children so choose, they should be allowed to see, speak to, or visit parents, if appropriate.
- Support for the children should be provided as resources permit and as authorized by law.
- The children should be kept safe and informed at the time of the parent's arrest.
- The children's wishes should be considered regarding decisions made about their welfare.
- The children's wishes should be considered regarding decisions made about the incarcerated parent.
- Children should be well cared for when a parent is absent due to incarceration.
- Children should receive proper support while struggling with the parent's incarceration.
- Children should not be judged, blamed, or labeled because of a parent's incarceration.
- Children should be supported in maintaining a relationship with an incarcerated parent.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department reports that the bill could result in frivolous legal challenges by inmates and result in a workload increase and a fiscal impact on the department and the courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Some of the guiding principles would appear to be more appropriate for the caregivers of these children rather than state agencies, such as:

- Children should be well cared for when a parent is absent due to incarceration;
- Children should receive proper support while struggling with the parent's incarceration; and
- Children should not be judged, blamed or labeled because of a parent's incarceration.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

Forensic Hospital Diversion Pilot Program Interim Report 2001-106



Committee on Children, Families, and Elder Affairs
February 22, 2011

Forensic mental health services are the fastest growing segment of Florida's mental health system

- Services cost the state \$250,000,000 per year
- 125,000 people with mental illnesses are placed in Florida jails annually
- Average annual increase is 1,700 individuals
- Capital/operating costs over next 10 years expected to be \$3.6 billion for new beds alone



Consequences of the current system

- Substantial cost shifts from less expensive front-end services to more expensive back-end services
- Compromised public safety
- Increased arrest, incarceration, and criminalization of people with mental illnesses
- Increased police injuries
- Increased rates of chronic homelessness



Forensic Services for Persons who are Mentally Ill

- Court appoints experts to evaluate the defendant's mental condition
- Expert provides a report to the court
- Defendant may be involuntarily committed for treatment
- If involuntarily committed, DCF takes custody of the Defendant
- Alternatively, the court may order a conditional release of the Defendant



DCF Mental Health Services

- Three forensic mental health treatment facilities
- Cost to fund 1,700 beds is \$210M annually
- These facilities provide:
 - Basic support services
 - Healthcare services
 - Recovery services
 - Continuity of care services
 - Competency restoration training and evaluation services



DOC Mental Health Services

- Outpatient care
- Infirmatory mental health care
- Crisis stabilization unit
- Transitional care unit
- Acute inpatient mental health care



Related Issues

- Constitutional right to adequate health care
- Forensic bed shortage
- County court judges and forensic commitment proceedings



Diversion

The process of diverting individuals with severe mental illness or co-occurring substance abuse disorders away from the justice system and into the community mental health system, where they are more appropriately served.



Benefits of Diversion

- Enhances public safety
- Provides an alternative to incarceration
- Reduces the social costs of providing inadequate mental health services
- Provides an effective link to community-based services



Miami-Dade Forensic Alternative Center

- Provides comprehensive care
- Admission is limited to persons charged with a less serious offense
- Screening includes a review of the person's criminal history, the appropriateness of treatment, and the likelihood of incarceration
- Services provided include crisis stabilization, short-term residential treatment, and competency restoration



Miami-Dade Forensic Alternative Center

- 24 persons admitted in first year at a cost of \$1,000,100
- Reduced number of days to restore competency
- Reduced burden on jails
- Symptoms do not worsen from incarceration
- Quicker accessibility to treatment
- Additional services provided (competency restoration, re-entry skills, federal benefits assistance)



Jail Diversion Program Factors

- Interagency collaboration
- Active involvement
- Boundary spanner
- Leadership
- Early identification
- Cross-trained case managers



Services to Participants

- Forensic intensive care management
- Supportive housing
- Peer support
- Accessible and appropriate medication
- Integrated dual diagnosis treatment
- Supported employment
- Assertive community treatment
- Cognitive behavioral interventions



Funding

Treatment setting	Total bed x days	Average bed/day cost	Total cost
MD-FAC	10 x 365 = 3,650	\$274.00	\$1,000,100
Forensic hospital	10 x 365 = 3,650	\$337.00	\$1,230,050
Cost difference		\$63.00	\$229,950

Treatment setting	Total bed x days	Average bed/day cost	Total cost
MD-FAC	20 x 365 = 7,300	\$229.50	\$1,675,350
Forensic hospital	20 x 365 = 7,300	\$337.00	\$2,460,100
Cost difference		\$107.50	\$784,750



Funding

- Long-term cost savings
- Will still need secure forensic treatment
- Possible funding sources
 - Reinvestment grants,
 - Private grant money,
 - Partnerships with private universities,
 - DCF appropriation



Options and Recommendations

- Expand the Forensic Hospital Diversion Pilot Program to Hillsborough and Escambia Counties
- Provide program-specific training to judges in the pilot areas
- Authorize county court judges to order involuntary outpatient treatment as a condition of release





The Florida Senate

Interim Report 2011-106

October 2010

Committee on Children, Families, and Elder Affairs

FORENSIC HOSPITAL DIVERSION PILOT PROGRAM

Issue Description

Roughly 125,000 people with serious mental illnesses are arrested and booked into Florida jails annually. The cost to local governments to house these individuals is estimated to be over \$500 million. Another \$600 million annually is spent housing people with mental illnesses in state prisons and forensic treatment facilities. Based on historic growth rates, it has been projected that the number of state prison beds serving inmates with mental illnesses will more than double from 17,000 to over 35,000 beds over the next ten years, with capital and operating costs of more than \$3.6 billion for new beds alone.

In 2006, the demand for state hospital beds in Florida to provide services to persons found incompetent to proceed to trial (ITP) and not guilty by reason of insanity (NGI) outpaced the supply of beds in state treatment facilities. The state was forced to allocate \$16 million in emergency funding and \$48 million in recurring annual funding to create 300 additional forensic treatment beds to timely serve these individuals. Florida currently spends more than \$210 million annually – one third of all adult mental health dollars and two thirds of all state mental health hospital dollars – on 1,700 beds, serving roughly 3,000 individuals under forensic commitment.

Provision of mental health services to mentally ill defendants is a collaborative effort among the Department of Children and Family Services (DCF), the Department of Corrections (DOC), and the courts. In recent years, those entities have worked to provide and expand services for mentally ill defendants outside of the existing systems. However, lack of funding and legislative authority have made implementation of alternative systems difficult. The intention of these efforts is to keep mentally ill offenders out of forensic facilities and in less expensive, more effective forms of community control.

It has been suggested that this model be tested by implementing a limited number of pilot programs to divert selected individuals from state hospitals to locked community-based residential treatment facilities that will provide assistance in accessing community-based treatment and support services following discharge.

Background

Forensic Mental Health

On any given day in Florida, there are approximately 17,000 prison inmates, 15,000 local jail detainees, and 40,000 individuals under correctional supervision in the community who experience serious mental illnesses. Annually, as many as 125,000 adults with mental illnesses or substance use disorders requiring immediate treatment are arrested and booked into Florida jails. Of the 150,000 children and adolescents who are referred to Florida's Department of Juvenile Justice (DJJ) every year, over 70 percent have at least one mental health disorder.¹

Over the past nine years, the population of inmates with mental illnesses or substance use disorders in Florida prisons increased from 8,000 to nearly 17,000 individuals. In the next nine years, this number is projected to reach more than 35,000 individuals, with an average annual increase of 1,700 individuals. A population this size is enough to fill more than 20 correctional institutions, or the equivalent of one new prison added every year.²

¹ DCF, *Staff Analysis and Economic Impact, Senate Bill Number 2018* (Mar. 2, 2009).

² *Id.*

Forensic mental health services cost the state a quarter-billion dollars a year and are now the fastest growing segment of Florida's public mental health system. Over the past nine years, forensic commitments have increased from 863 to 1,549 admissions annually. At this rate, commitments are projected to reach nearly 2,800 by 2016.³

People with serious mental illnesses or substance use disorders who come in contact with the criminal justice system are typically poor, uninsured, homeless, members of minority groups, and experiencing co-occurring mental health and substance use disorders.⁴ The majority of these individuals are charged with minor misdemeanor and low-level felony offenses that are a direct result of untreated psychiatric conditions.⁵

Due in large part to inadequate community-based treatment capacity and infrastructure, individuals with mental illnesses or substance use disorders who become involved in the justice system are at increased risk of subsequent recidivism to the justice system. According to a 2006 report by the Bureau of Justice Statistics, "a quarter of both state and jail inmates who have a mental health problem have been incarcerated three or more times previously."⁶ As many as half of individuals with mental illnesses and/or substance use disorders who recidivate to the justice system are charged, not with committing new offenses, but for violating conditions of probation or parole, such as failing to report to treatment or to maintain stable housing or employment.⁷

Consequences of the current system include:

- Substantial and disproportionate cost shifts from less expensive, front-end services provided in the community to much more expensive, back-end services provided in the juvenile justice, criminal justice, and forensic mental health settings;
- Compromised public safety;
- Increased arrest, incarceration, and criminalization of people with mental illnesses;
- Increased police injuries; and
- Increased rates of chronic homelessness.⁸

Incompetent to Proceed to Trial/Not Guilty by Reason of Insanity

Part II of ch. 916, F.S., relates to forensic services for persons who are mentally ill and describes the criteria and procedures for the examination, involuntary commitment, and adjudication of persons who are incompetent to proceed due to mental illness or who have been adjudicated not guilty by reason of insanity. Persons committed under ch. 916, F.S., remain under the jurisdiction of the committing court but are committed to the custody of the Florida Department of Children and Family Services (DCF).

Chapter 916, F.S., authorizes the court to appoint experts to evaluate a criminal defendant's mental condition, including competency, insanity, and the need for involuntary hospitalization or placement. Pursuant to this chapter, an individual is incompetent to proceed if he or she "does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him."⁹

In considering the issue of competence to proceed, the statute requires that the examining expert must report to the court regarding the defendant's capacity to appreciate the charges or allegations against him, appreciate the range and nature of possible penalties, understand the adversarial nature of the legal process, consult with counsel

³ *Id.*

⁴ Often, individuals with mental health problems have difficulty accessing resources in the community for a variety of reasons, including: lack of knowledge regarding available services; lack of funds; stigma of criminal records; or a lack of capacity to access services. *State and County Collaboration: Mental Health and the Criminal Justice System*, National Association of Counties, available at <http://www.ojp.usdoj.gov/newsroom/testimony/2009/statecountycollabo.pdf> [hereinafter *State and County Collaboration*] (last visited October 1, 2010).

⁵ DCF, *Staff Analysis and Economic Impact, Senate Bill Number 2018* (Mar. 2, 2009).

⁶ *State and County Collaboration*, *supra* note 4.

⁷ DCF, *Staff Analysis and Economic Impact, Senate Bill Number 2018* (Mar. 2, 2009).

⁸ *Id.*

⁹ FLA. STAT. § 916.12(1) (2010).

regarding the facts pertinent to the case, behave appropriately in court, and testify relevantly. The report to the court must also include any other information deemed relevant. If the expert finds the defendant incompetent to proceed, she must also report on recommended treatment that will allow the defendant to regain competence. The expert's report to the court must also address the defendant's mental illness, recommended treatments and alternatives and their availability in the community, the likelihood of the defendant's attaining competence under the treatment recommended, an assessment of the probable duration of the treatment, and the probability that the defendant will attain competence to proceed in the foreseeable future.¹⁰

Chapter 916, F.S., also provides the criteria for defendants who are adjudicated incompetent to proceed to be involuntarily committed for treatment. The court must find by clear and convincing evidence that the defendant is mentally ill and because of the mental illness:

- The defendant is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, the defendant is likely to suffer from neglect or refuse to care for herself or himself and such neglect or refusal poses a real and present threat of substantial harm to the defendant's well-being; and
- There is a substantial likelihood that in the near future the defendant will inflict serious bodily harm on herself or himself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available, less restrictive treatment alternatives, including treatment in community residential facilities or community inpatient or outpatient settings, which would offer an opportunity for improvement of the defendant's condition have been judged to be inappropriate; and
- There is a substantial probability that the mental illness causing the defendant's incompetence will respond to treatment and the defendant will regain competency to proceed in the reasonably foreseeable future.¹¹

This part also provides that a defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed if he or she is mentally ill and, because of the mental illness, is manifestly dangerous to himself or herself or others.¹²

Department of Children and Family Services Mental Health Services

Under the authority of Chapter 916, Florida Statutes, DCF provides mental health assessment, evaluation, and treatment of individuals committed to DCF following adjudication as incompetent to proceed during a criminal proceeding or not guilty by reason of insanity. The individuals committed for involuntary treatment are charged with a felony offense and are mandated to be admitted to a treatment facility within 15 days of the department's receipt of a complete commitment packet from the courts.¹³ The state civil¹⁴ and forensic¹⁵ treatment facilities provide the following services:¹⁶

¹⁰ A defendant may not automatically be deemed incompetent to proceed simply because his or her satisfactory mental functioning is dependent upon psychotropic medication. *See* FLA. STAT. § 916.12(5) (2010).

¹¹ FLA. STAT. § 916.13 (2010).

¹² FLA. STAT. § 916.15 (2010).

¹³ In a criminal case involving a client who has been adjudicated incompetent to proceed or not guilty by reason of insanity, a jail may be used as an emergency facility for up to 15 days following the date the department or agency receives a completed copy of the court commitment order. FLA. STAT. § 916.107(1)(a) (2010).

¹⁴ A "civil facility" is a mental health facility established within DCF or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and those defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting, as defined in s. 393.063, F.S., designated by the agency to serve those defendants who do not require the security provided in a forensic facility. FLA. STAT. § 916.106(4) (2010).

¹⁵ A "forensic facility" is a separate and secure facility established within DCF or agency to serve forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons with retardation or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from nonforensic residents. FLA. STAT. § 916.106(10) (2010).

¹⁶ *State Mental Health Treatment Facilities*, Florida Department of Children and Family Services, available at <http://www.dcf.state.fl.us/facilities/> (last visited October 1, 2010).

- Basic Support Services includes provision of the basic requirements for survival such as shelter, food, clothing, and a sense of personal safety.
- Healthcare Services intended to identify and treat physical and mental illness and promote good health. The priorities of health care services are: a) routine physical and mental health assessment, evidence-based treatment, and health education; b) rapid response to acute illness or injury; c) ongoing management of chronic health conditions; and d) provision of pharmacotherapy with clinical pharmacology oversight.
- Recovery Services consists of psychiatric evaluation, diagnosis, holistic recovery planning with the individual and interdisciplinary team, stabilization of the symptoms of mental illness through psychotherapeutic medication and recovery therapies, restoration of optimum level of functioning, and transition to community placement with the appropriate support services in place.
- Continuity of Care Services includes internal case management services and community linkages designed to ensure that essential services are being provided consistent with the individual's recovery plan. The state mental health treatment facilities work in partnership with the community providers and circuits to facilitate continuous services and supports for people transitioning from the facility back into the community.
- Competency Restoration Training and Evaluation Services (in forensic facilities) involves group or individual processes. The focus of training is on helping individuals to understand the judicial process, the role of the court, the nature of their charges, the possible penalties, and their personal legal rights. Competency evaluations are completed, as needed, and competency evaluation reports are prepared for the courts indicating the individual's progress, as required.

Persons committed to the custody of DCF are usually treated at one of the three forensic mental health treatment facilities — Florida State Hospital in Chattahoochee, North Florida Evaluation and Treatment Center in Gainesville, or South Florida Evaluation and Treatment Center in Miami. These three facilities contain 1,700 forensic and forensic step-down beds and serve approximately 3,000 people each year. The cost to fund these beds is more than \$210 million annually, equating to one third of all adult mental health dollars and two thirds of all state mental health hospital dollars.

As an alternative to commitment, the circuit court may also order conditional release of a defendant who has been found incompetent to proceed or not guilty by reason of insanity. Conditional release must be based on an approved plan for providing appropriate outpatient care. The circuit court may also order conditional release in lieu of an involuntary commitment to a facility. If outpatient treatment is appropriate, a written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the circuit court.¹⁷

Prisoner's Constitutional Right to Adequate Health Care

Prison inmates have a constitutional right to adequate health care, including mental health treatment. "Deliberate indifference to serious medical needs" by a prison system has been found to be a violation of the Eighth Amendment prohibition against cruel and unusual punishment.¹⁸ "The growth of local correctional populations has strained the limited capacity of jails to respond to the health needs of inmates."¹⁹ "This situation is particularly challenging in the case of inmates with serious mental illnesses, who require specialized treatment and services."²⁰

Department of Corrections Mental Health Services

The delivery of mental health services for inmates begins at the reception centers and continues throughout incarceration according to the individual's needs. Inmates move between five levels of mental health care depending on their needs. The five levels of care include:

¹⁷ FLA. STAT. § 916.17 (2010).

¹⁸ *Estelle v. Gamble*, 429 U.S. 97 (1976); *Annual Report 2008-2009*, State of Florida Correctional Medical Authority, Dec. 2009, available at <http://www.doh.state.fl.us/cma/reports/AnnualReportCMA08-09.pdf> (last visited October 1, 2010).

¹⁹ Henry Steadman, *Prevalence of Serious Mental Illness Among Jail Inmates*, American Psychiatric Association, available at <http://psychservices.psychiatryonline.org/cgi/content/full/60/6/761> (last visited October 1, 2010).

²⁰ *Id.*

- Outpatient Care involves regular monitoring, evaluation, group counseling, individual counseling and psychotropic medications, when clinically indicated. Inmates reside in the general prison community, and report to the institutional health clinic to receive medications or other mental health services.
- Infirmery Mental Health Care is the first and least restrictive of four levels of inpatient mental health care, and consists of brief admission (1-14 days) to the institutional infirmary for inmates residing in the general prison community. Infirmery Mental Health Care is indicated whenever mental health staff determines that an inmate who is residing in the general prison community presents with mental health problems or conditions that cannot be safely or effectively managed on an outpatient basis. Admission to Infirmery Mental Health Care is often precipitated by mental health crisis involving assessed risk of serious self-injurious behavior. If the crisis is not resolved within 14 days, the inmate is typically transferred to the next level of inpatient care, which is Crisis Stabilization Unit.
- Crisis Stabilization Unit involves admission to a locked, highly structured, specially designed mental health unit that is separate from the general prison community. Inmates in a Crisis Stabilization Unit are classified very severe mental impairment. If the inmate's condition stabilizes to the point that he/she can be safely discharged, he/she will be transferred to outpatient care or to a lower level of inpatient care, which is a Transitional Care Unit.
- Transitional Care Unit is appropriate for inmates who require more intensive service than what can be provided in Outpatient Care or Infirmery Mental Health Care, but whose condition is not so acute as to require care in a Crisis Stabilization Unit. Inmates in a Transitional Care Unit are classified as having severe or chronic impairment and they typically remain in the unit for extended periods (six months or longer). Some inmates remain in the unit for years because their level of functioning does not reach the threshold required for discharge to outpatient care. If the inmate who is assigned to a Crisis Stabilization Unit requires a higher level of care, he/she is referred for admission to Acute Inpatient Mental Health Care at a Corrections Mental Health Facility, the highest, most intensive level of mental health care available to inmates.
- Acute inpatient mental health care is provided at a Corrections Mental Health Facility, which is a locked, secure, and highly structured setting away from the general prison community. Admission to a Corrections Mental Health Facility requires judicial commitment, which lasts for six months. Staff may request additional commitments in six-month increments indefinitely, commensurate with the inmate's ongoing needs assessment.²¹

The Forensic Bed Shortage

In late 2006, the number of persons waiting for forensic treatment reached unprecedented levels, and the department was unable to comply with the law mandating admission to a treatment facility within 15 days.²² The forensic waiting list reached a peak of 343 individuals on October 2, 2006, with 277 of those persons awaiting admission in excess of 15 days.²³ The average number of days to wait for admission to a forensic facility by January 2007 was 72 days.²⁴

To address the immediate problem, the Legislative Budget Commission took action in January 2007 and re-allocated funds. The department opened additional forensic beds with the funding and enhanced use of community forensic services. On July 1, 2007, there were no offenders exceeding the statutorily-required 15-day period after court referral, and no offenders were awaiting transport from local jails to a forensic facility. The department reduced the average number of days an individual must wait in jail prior to admission to a state mental health facility from 4.2 days in July 2007 to 3.3 days in August 2007.

²¹ Email from Tommy Maggitas, Department of Corrections, (March 9, 2009, 5:07 PM EST)(on file with the committee).

²² See FLA. STAT. § 916.107(1)(a) (2010).

²³ Additionally, there were several instances in which mentally ill inmates died while awaiting transfer to a psychiatric hospital. Abby Goodnough, *Officials Clash Over Mentally Ill in Florida Jails*, N.Y. TIMES, Nov. 15, 2006, available at <http://query.nytimes.com/gst/fullpage.html?sec=health&res=9E04E5DA173EF936A25752C1A9609C8B63> (last visited October 1, 2010).

²⁴ *Forensic Mental Health Update*, Department of Children and Families, Nov. 15, 2007. This situation also resulted in the Secretary of DCF, Ludy Hadi, being held in criminal contempt of court for DCF's failure to comply with the 15 day requirement. Goodnough, *supra* note 21.

At the same time, the Supreme Court of Florida appointed Judge Steven Leifman as Special Advisor on Criminal Justice and Mental Health. Judge Leifman coordinated several workgroups on behalf of the court including Criminal Justice. The efforts of the Supreme Court and the appointed workgroups culminated in a report/plan titled “Transforming Florida’s Mental Health System.” The report included recommendations for a mental health system to prevent individuals (with mental illness) from entering the justice system and assisting persons already involved with the justice system to get the treatment they need.²⁵

Delivery Across Systems

Individuals admitted to state forensic treatment facilities for competency restoration receive services primarily focused on resolving legal issues, but not necessarily targeting long-term wellness and recovery from mental illnesses. Once competency is restored, individuals are discharged from state treatment facilities and generally returned to jails, where they are rebooked and incarcerated while waiting for their cases to be resolved. A sizable number of individuals experience a worsening of symptoms while waiting in jail, and some are readmitted to state facilities for additional treatment and competency restoration services.

The majority of individuals who enter the forensic treatment system do not go on to prison,²⁶ but return to court, and either have their charges dismissed for lack of prosecution or the defendant takes a plea such as conviction with credit for time served or probation.²⁷ Most are then released to the community, often with few or no community supports and services in place.²⁸ Many are subsequently rearrested and return to the justice and forensic mental health systems, either as the result of committing a new offense or failing to comply with the terms of probation or community control.²⁹

Provision of mental health services to mentally ill defendants is a collaborative effort among the Department of Children and Family Services (DCF), the Department of Corrections (DOC), and the courts. In recent years, those entities have worked to provide and expand services for mentally ill defendants outside of the existing systems.

Diversion

“Diversion is the process of diverting individuals with severe mental illness and/or co-occurring substance abuse disorders away from the justice system and into the community mental health system, where they are more appropriately served.”³⁰ The typical diversion program operates in one of the following stages of criminal justice involvement: initial interaction with police; arraignment; court; or jail. The individual is then linked to community-based services, where they receive outpatient residential services, housing, health, entitlements, or employment.³¹ By providing more appropriate community-based services, diversion programs prevent individuals with mental illness and substance abuse disorders from becoming unnecessarily involved in the criminal justice system.³² There are numerous benefits to the community, criminal justice system and the diverted individual, including:

- Enhancing public safety by making jail space available for violent offenders.
- Providing judges and prosecutors with an alternative to incarceration.
- Reducing the social costs of providing inappropriate mental health services or no services at all.

²⁵ Bills to implement recommendations in the report were considered during the 2008, 2009, and 2010 sessions. See HB 7085 (2009); CS/CS/CS/SB 1150 (2008); CS/SB 2018 (2009); CS/SB 1180 (2009); SB 1140 (2010); and HB 1189 (2010).

²⁶ H. Richard, Lamb, *Community Treatment of Severely Mentally Ill Offenders Under the Jurisdiction of the Criminal Justice System: A Review*, American Psychiatric Association, available at <http://psychservices.psychiatryonline.org/cgi/content/full/50/7/907> (last visited October 12, 2010).

²⁷ Interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (Aug. 20, 2010).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Mental Health: Transforming Florida’s Mental Health System*, Supreme Court of the State of Florida, available at http://www.floridasupremecourt.org/pub_info/documents/11-14-2007_Mental_Health_Report.pdf [hereinafter *Mental Health*] (last visited October 1, 2010).

³¹ *Jail Diversion*, The Center for Mental Health Services National GAINS Center, available at http://www.gainscenter.samhsa.gov/html/jail_diversion/what_is_jd.asp (last visited October 1, 2010).

³² *Id.*

- Providing an effective linkage to community-based services, enabling people with mental illness to live successfully in their communities, thus reducing the risk of homelessness, run-ins with the criminal justice system, and institutionalization.³³

This system of diversion is becoming an important component of national, state and local mental healthcare.³⁴

Miami-Dade Forensic Alternative Center

In Florida, this approach is being tested in the Miami-Dade Forensic Alternative Center (MD-FAC), a pilot program implemented in August 2009 by DCF, the Eleventh Judicial Circuit of Florida,³⁵ and the Bayview Center for Mental Health (Bayview). The pilot program was established to demonstrate the feasibility of diverting individuals with mental illness adjudicated incompetent to proceed to trial from state hospital placement to placement in community-based treatment and competency restoration services.³⁶

“Admission to MD-FAC is limited to individuals who otherwise would be committed to DCF and admitted to state forensic hospitals.”³⁷ In order to be eligible for MD-FAC, an individual must be charged with a less serious offense, such as a second or third degree felony. A team, composed of the judge, mental health staff from DCF, Bayview, and the state attorney’s office, assesses the individual further and reach a consensus on whether the individual should be admitted to the program.³⁸ Screening includes a review of the individual’s criminal history for indications of risk of violence or public safety concerns, a review of the appropriateness of treatment in an alternative community-based setting, and the likelihood that the individual would face incarceration if convicted of the alleged offense.³⁹

To date, all of the individuals committed to MD-FAC have been committed to DCF under s. 916.13, F.S., as incompetent to proceed to trial.⁴⁰ The current contract between DCF and Bayview allows for the admission of individuals committed to DCF under s. 916.15, F.S., not guilty by reason of insanity, but the court anticipates that this type of admission will rarely occur.⁴¹

Following admission, individuals are initially placed in a locked inpatient setting where they receive crisis stabilization, short-term residential treatment, and competency restoration services.⁴² Upon stabilization, participants are transferred to a locked, short-term residential treatment facility. When participants are ready to step-down to a less restrictive placement in the community, they are provided assistance with re-entry and ongoing service engagement.⁴³ “Once competency is restored or the participant no longer meets the criteria for continued commitment, the program prepares a treatment summary and recommendations for community

³³ *Jail Diversion for People with Mental Illness: Developing Supportive Community Coalitions*; TAPA Center for Jail Diversion, a branch of the National GAINS Center, Oct. 2003, available at http://www.gainscenter.samhsa.gov/pdfs/jail_diversion/NMHA.pdf (last visited October 1, 2010).

³⁴ *Id.*

³⁵ MD-FAC is part of Eleventh Judicial Circuit Criminal Mental Health Project (CMHP). This CMHP runs four diversion programs (Pre-Arrest Diversion, Post-Arrest Misdemeanor Diversion, Post-Arrest Felony Diversion, and Forensic Hospital Diversion). Interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (Aug. 20, 2010). This report will discuss the Forensic Hospital Diversion Pilot Program. The Eleventh Judicial Circuit includes Miami-Dade County, which has one of the nation’s largest percentages of mentally ill residents. Goodnough, *supra* note 21.

³⁶ Miami-Dade Forensic Alternative Center, *Pilot Program Status Report*, August 2010 (on file with the Children, Families, and Elder Affairs Committee).

³⁷ *Id.*

³⁸ *Id.*; Interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (Aug. 30, 2010).

³⁹ *Id.*

⁴⁰ Miami-Dade Forensic Alternative Center, *Pilot Program Status Report*, August 2010 (on file with the Children, Families, and Elder Affairs Committee).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

placement.”⁴⁴ “The committing court then holds a hearing to review the recommendations and appropriateness of the recommended community placement.”⁴⁵ “Upon authorization of step down from inpatient services into community placement by the court, MD-FAC staff provides assistance with re-entry and continues to monitor individuals to ensure efficient and ongoing linkage to necessary treatment and support services.”⁴⁶ Some of the re-entry services include assistance in assessing entitlement benefits and other means to build economic self-sufficiency, developing effective community supports, and providing living skills.⁴⁷ Thus, the pilot program follows a model of comprehensive care, which contributes to more effective community re-entry and recovery outcomes.⁴⁸

As of September 2010, 44 individuals have been referred to the MD-FAC program.⁴⁹ Of the 44 individuals referred, 30 were determined by the team to meet the criteria for admission.⁵⁰ Twenty-four individuals have been admitted to the pilot program and diverted from admission to state forensic facilities.⁵¹ Two individuals were re-evaluated and found competent to proceed to trial without being admitted to the program.⁵² One individual is pending admission to the program, but will most likely be admitted to a state hospital as the program is currently above capacity.⁵³

To serve these 24 people, MD-FAC operates 10 beds, with an average bed per day cost of \$274.00 for a total cost of \$1,000,100.⁵⁴ MD-FAC reports that increasing the bed capacity will decrease the average bed per day cost at MD-FAC to less than \$230, with the possibility of further decreasing costs in the future.⁵⁵

As a result of the MD-FAC program:

- The average number of days to restore competency has been reduced, as compared to forensic treatment facilities.⁵⁶

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Referral rates range from 1 to 7 individuals per month (average of 3.4 referrals per month). *Id.*

⁵⁰ *Id.*

⁵¹ Additionally, three individuals who met criteria for admission to the program were subsequently admitted to a state hospital because of lack of bed availability at MD-FAC, i.e., the program was at or above capacity. On average, the program has diverted 2.2 individuals per month from admission to state forensic facilities. *Id.*

⁵² *Id.*

⁵³ Out of the 14 individuals who were found by the assessment team not to meet the criteria for admission: 6 individuals did not meet legal criteria; 3 individuals did not meet criteria for commitment; 2 individuals did not meet clinical/diagnostic criteria; 2 individuals required medical treatment beyond what the program could provide; and 1 individual refused to participate in screening. *Id.*

⁵⁴ *Id.*

⁵⁵ Staffing standards at MD-FAC allow for additional bed capacity without substantially increasing program staff or fixed costs. As a result, operations will become more efficient as program capacity is increased. *Id.*

⁵⁶

Comparison of competency restoration services provided in forensic treatment facilities and MD-FAC (average number of days year to date, FY2009-10):	Forensic facilities	MD-FAC	Difference*
Average days to restore competency (admission date to date court notified as competent)	138.9	99.3	39.6 days (-29%)
Average length of stay for individuals restored to competency (this includes the time it takes for counties to pick up individuals)	157.8	139.6	18.2 days (-12%)

“The diminishing advantage of MD-FAC over forensic facilities in terms of average number of days to restore competency (39.6 day reduction) and overall average length of stay for individuals restored to competency (18.2 day reduction) relates to the fact that individuals enrolled in MD-FAC are not rebooked into the jail following restoration of competency. Instead, they remain at the treatment program where they are re-evaluated by court appointed experts while the treatment team develops a comprehensive transition plan for eventual step-down into a less restrictive community placement. When court hearings are held to determine competency and/or authorize step-down into community placements, individuals are brought directly to

- The burden on local jails has been reduced, as individuals served by MD-FAC are not returned to jail upon restoration of competency.⁵⁷
- Because individuals are not returned to jail, it prevents the individual's symptoms from worsening while incarcerated, possibly requiring readmission to state treatment facilities.⁵⁸
- Individuals access treatment more quickly and efficiently because of the ongoing assistance, support, and monitoring following discharge from inpatient treatment and community re-entry.
- Individuals in the program receive additional services not provided in the state treatment facilities, such as intensive services targeting competency restoration, as well as community-living and re-entry skills.
- It is standard practice at MD-FAC to provide assistance to all individuals in accessing federal entitlement benefits that pay for treatment and housing upon discharge.

Related Issue

As described above, Chapter 916, F.S., allows the circuit court to order forensic commitment proceedings for a defendant adjudicated incompetent to proceed to trial. The Florida Supreme Court, in *Onwu v. State*, ruled that only the circuit court, and not the county court, has the authority to order forensic commitment of persons found incompetent to proceed to trial (ITP) through Chapter 916, F.S.⁵⁹ The Court noted that the county court may still commit misdemeanor defendants found ITP through the Baker Act.⁶⁰

However, county court judges are without recourse when a misdemeanor defendant found ITP does not meet the criteria for Baker Act involuntary hospitalization, but may still pose a danger to himself or others in the future, and thus requires treatment. In this instance, the county court judge can conditionally release the defendant into the community, but has no authority to order any mental health treatment services. If the defendant receives mental health services while on conditional release, competency may be restored so that a plea can be entered within the year. It is reported that many misdemeanor defendant cases are dismissed by the end of the year because competency has not been restored. In other cases, by the end of the year, the individual has either disappeared or has been rearrested.⁶¹

Findings and/or Conclusions

Creation of a Jail Diversion Program

“There are six key features that have emerged as essential for creating a successful jail diversion program. These elements are crucial in linking the criminal justice and community treatment systems:

1. Interagency Collaboration. Service integration at the community level, including involvement of social services, housing, mental health, health, local corrections (institutional and community), criminal justice and substance abuse agencies.
2. Active Involvement. Regular meetings for service coordination and information sharing and the establishment of written Memoranda of Understanding (MOUs).

court by MD-FAC staff. This not only reduces burdens on the county jail, but eliminates the possibility that individuals will decompensate while incarcerated and require subsequent readmission to state treatment facilities. It also ensures that individuals remain linked to the service provider through the community re-entry and re-integration process.” *Id.*

⁵⁷ MD-FAC program staff provides ongoing assistance, support and monitoring following discharge from inpatient treatment and community re-entry. Additionally, individuals are less likely to return to state hospitals, emergency rooms, and other crisis settings. *Id.*

⁵⁸ Of the 44 individuals referred to MD-FAC to date, 10 (23%) had one or more previous admissions a state forensic hospital for competency restoration and subsequent readmission to the Miami-Dade County Jail. *Id.*

⁵⁹ This is true even if even if the county court judge is appointed to act as circuit judge for purposes of determining competency. *Onwu v. State*, 692 So.2d 881 (Fla. 1997).

⁶⁰ Ch. 394, Part 1, F.S. *Id.*

⁶¹ Telephone interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (Sep. 28, 2010).

3. “Boundary Spanner.” Boundary spanners are staff who bridge the mental health, criminal justice, and substance abuse systems and manage cross-system staff interactions.
4. Leadership. There needs to be a strong leader to network and coordinate.
5. Early Identification. Individuals should be screened, at the earliest point possible, for mental health treatment needs and to determine whether they meet the criteria for diversion.
6. Cross-Trained Case Managers. Case managers should have adequate knowledge and experience with mental health and criminal justice systems.⁶²

Services to Participants

Once the jail diversion program is established, research has shown that there are eight essential elements that will keep participants from reoffending.⁶³

1. Forensic Intensive Case Management. This system provides services to mentally ill criminal defendants when and where they are needed.⁶⁴
2. Supportive Housing. Supportive housing is “permanent, affordable housing linked to a broad range of supportive services, including treatment for mental and substance abuse disorders.”⁶⁵ Many mentally ill individuals have a difficult time securing public housing assistance because of their previous involvement with the criminal justice system. The MD-FAC program, for example, establishes housing for a mentally ill criminal defendant before that individual is released, as part of a comprehensive care plan. On a daily basis, it is less costly to provide public housing assistance than for an individual that a space in on a jail or prison.⁶⁶ Researchers note that the need for supervision and the provision of social services should be considered with regard to housing.⁶⁷
3. Peer Support. These “services can expand the continuum of services available to people with mental and substance abuse disorders and may help them engage in treatment.”⁶⁸ Studies note that “[f]orensic peer specialists bring real-world experience with multiple service systems and an ability to relate one-on-one to people struggling to reclaim their lives.”⁶⁹ MD-FAC has several individuals that serve as peer specialists.⁷⁰
4. Accessible and Appropriate Medication. When mentally ill individuals become involved in the criminal justice system, any treatment that they had been receiving prior to involvement often gets disrupted. For example, often mentally ill individuals are not getting the medication they need in jail.⁷¹ Additionally, one of the criticisms of the current system has been that once the individual is released from jail, the individual does not receive follow-up services when he or she returns to the community.⁷² It is imperative

⁶² *Jail Diversion*, The Center for Mental Health Services National GAINS Center, available at http://www.gainscenter.samhsa.gov/html/jail_diversion/what_is_jd.asp (last visited October 1, 2010).

⁶³ The Essential System of Care has been implemented in several cities, including San Antonio, Texas and Lincoln, Nebraska. *Ending an American Tragedy: Addressing the Needs of Justice-Involved People with Mental Illness and Co-Occurring Disorders*, National Leadership Forum on Behavioral Health/Criminal Justice Services, Sep. 2009, available at <http://www.gainscenter.samhsa.gov/html/nlf/pdfs/AmericanTragedy.pdf> [hereinafter *Ending an American Tragedy*] (last visited October 1, 2010).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Miami-Dade Forensic Alternative Center, *Pilot Program Status Report*, August 2010 (on file with the Children, Families, and Elder Affairs Committee).

⁷¹ *Ending an American Tragedy*, *supra* note 60.

⁷² *Id.*

that people with mental illness and co-occurring substance abuse disorders get the proper medication and treatment.⁷³ Researchers note that often individuals can overcome mental illness with access to appropriate community treatment and support.⁷⁴

5. Integrated Dual Diagnosis Treatment. This system “provides treatment for mental and substance use disorders simultaneously and in the same setting.”⁷⁵
6. Supported Employment. These services will help person with mental illness find and secure competitive work.⁷⁶
7. Assertive Community Treatment (ACT)/Forensic Assertive Community Treatment. It is a service delivery model in which treatment is provided by a team of professionals, with services determined by an individual’s needs for as long as required.⁷⁷ FACT Teams successfully operate in numerous areas in Florida, including St. Petersburg, Gainesville, Jacksonville, and Stuart.⁷⁸
8. Cognitive Behavioral Interventions Targeted to Risk Factors for Recidivism. The strongest risk factors for recidivism are shared by all defendants, irrespective of their mental health status.⁷⁹ Those factors include previous criminal history; lack of education/low employment opportunities; family/marital stresses; lack of leisure/recreation activities; procriminal attitudes; antisocial patterns; and criminogenic companions.⁸⁰ Research has shown that offenders with mental illness have more of these risk factors for recidivism than others.⁸¹ Cognitive behavioral interventions⁸² to address these factors should be included in community treatment programs.⁸³

Funding the Program

Initial funding for the MD-FAC was an appropriation of \$1 million in general revenue, which was then continued by budget amendment.⁸⁴

It is suggested that implementing the pilot program state-wide would result in significant cost-savings to the state. Judge Leifman reports that compared with the average cost to provide services in state forensic treatment facilities, MD-FAC (operating at a capacity of 10 beds) has resulted in a savings of nearly \$250,000 annually over services funded in state hospitals:⁸⁵

⁷³ Research has found that often people with mental illness have been improperly diagnosed, and often treated in a way that exacerbates their symptoms. Making a proper diagnosis is an important component of a treatment plan. *Id.*

⁷⁴ This is most applicable to the less severe cases of mental illness. *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Directory: Adult Mental Health Providers and Services by Region/Circuit*, Florida Department of Children and Family Services, available at www.dcf.state.fl.us/programs/samh/publications/dir051109.doc (last visited October 1, 2010).

⁷⁹ Skeem, J. (2009, March). Offenders with Mental Illness: What (really) works? Part I. Workshop provided at the biennial meeting of the Forensic Mental Health Association of California (Seaside, CA) available at http://webfiles.uci.edu/skeem/Downloads_files/FMHAC_Seaside2009.pdf (last visited October 1, 2010).

⁸⁰ *Id.*

⁸¹ Skeem, J., Nicholson, E., & Kregg, C. (2008, March). Understanding Barriers to Re-entry for Parolees with Mental Disorder. In D. Kroner (Chair), Mentally disordered offenders: A special population requiring special attention. Symposium conducted at the meeting of the American Psychology-Law Society (Jacksonville, FL) available at http://webfiles.uci.edu/skeem/Downloads_files/barrierstoreentry.pptx.pdf (last visited October 1, 2010).

⁸² Cognitive behavioral therapy, or cognitive therapy, focuses on present thinking, behavior, and communication rather than on past experiences and is oriented toward problem solving. <http://www.medterms.com/script/main/art.asp?articlekey=31748> (last visited October 1, 2010).

⁸³ *Ending an American Tragedy*, *supra* note 60.

⁸⁴ Florida House of Representatives Staff Analysis for HB 5003, Policy & Budget Council, Apr. 2, 2007 available at <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=36863&SessionId=54> (last visited October 1, 2010).

⁸⁵ Miami-Dade Forensic Alternative Center, *Pilot Program Status Report*, August 2010 (on file with the Children, Families, and Elder Affairs Committee).

Current costs based on 10 beds funded:

Treatment setting	Total bed/days	Average bed/day cost	Total cost
MD-FAC	10 beds x 365 days = 3,650	\$274.00	\$1,000,100
Forensic hospital	10 beds x 365 days = 3,650	\$337.00	\$1,230,050
Cost difference		-\$63.00	-\$229,950

Judge Leifman notes, however, that a substantial proportion of the bed per day costs associated with MD-FAC are reflected in minimum staffing standards required for short-term residential treatment facilities as well as fixed costs (*e.g.*, rent, utilities, property insurance).⁸⁶

As noted above, it is also reported that the program would operate more efficiently and result in increased cost savings if the number of beds were increased, because staffing standards at MD-FAC allow for additional bed capacity without substantially increasing program staff or fixed costs. Based on projections developed by Bayview and DCF, increasing the program capacity by 10 additional beds would decrease the average bed per day cost at MD-FAC to less than \$230, with the possibility of further decreasing costs in the future. By contrast, MD-FAC reports that state hospitals currently operate hundreds of beds to achieve an economy of scale that contributes to the observed average bed per day rate of \$337.⁸⁷

Projected costs based on 20 beds funded:

Treatment setting	Total bed/days	Average bed/day cost	Total cost
MD-FAC	20 beds x 365 days = 7,300	\$229.50	\$1,675,350
Forensic hospital	20 beds x 365 days = 7,300	\$337.00	\$2,460,100
Cost difference		-\$107.50	-\$784,750

Appropriations staff reports that there would likely be cost avoidance in the long run, *i.e.*, long-term cost-savings. For example, county jails would realize cost savings because they would not have to continually pay for mentally ill individuals that recidivate and are constantly involved in the criminal justice system. However, staff notes that any significant cost-savings will not result in the current fiscal year. Although services in the community may be provided more cheaply than in the mental health facility, implementation of a pilot program will not reduce the costs of operating the existing forensic facilities. While over time some facility fixed costs may be reduced, such as food costs or staff, there will not be a dollar-for-dollar reduction for implementing community-based services. In other words, the cost of the mental health facility cannot be reduced by an equivalent cost of pilot program beds.⁸⁸

Additionally, there will still be a need for secure forensic treatment. Forensic hospital services and the pilot program target different groups of individuals. Forensic hospitals house more serious offenders, those committed for first-degree felonies and/or who pose a serious safety risk to the community. These individuals would not be eligible for participation in the pilot program. Therefore, appropriations staff notes that there cannot be an immediate reduction in the number of hospital forensic beds, as the pilot program is not offering an identical service.⁸⁹ A dollar-for-dollar reduction resulting in a cost-savings during the current fiscal year is not possible.

There are several possible funding sources in addition to general revenue dollars appropriated by the legislature that should be investigated.⁹⁰ The funding effort should utilize reinvestment grants, wherein counties match

⁸⁶Telephone interview with Judge Steven Leifman, Special Advisor to the Florida Supreme Court on Criminal Justice and Mental Health (Sep. 28, 2010).

⁸⁷*Id.*

⁸⁸Interview with Marta Hardy, Legislative Analyst, Health and Human Services Appropriations (Sep. 7, 2010).

⁸⁹*Id.*

⁹⁰ While it has been suggested that Medicaid dollars may be available, both the Agency for Health Care Administration and Senate Appropriations staff suggest that it is unlikely. *Review of Forensic Hospital Diversion Pilot Program*, Agency for Health Care Administration, Aug. 6, 2010 (on file with the Children, Families, and Elder Affairs Committee); interview with Marta Hardy, Legislative Analyst, Health and Human Services Appropriations Committee.(Sep. 7, 2010);

federal contributions dollar-for-dollar.⁹¹ Other possible sources include private grant money and partnerships with private universities. In such a partnership, the provider might for example work with the local university to fund internships for students doing clinical rotations in the medical school.

DCF reports that it may be able to pay for the additional pilot programs out of the money it is appropriated by the Legislature; however, the agency believes it would need statutory authority to move funds from forensic institutional beds to the community.⁹² Appropriations staff suggests that statutory change is not required.⁹³ If DCF has sufficient funds, it can move those dollars with legislative budget authority.⁹⁴ DCF must identify the amount of appropriated funds that will be used for the pilot program and receive approval to do so from the Legislative Budget Commission.⁹⁵

Options and/or Recommendations

Based upon the findings in this report, the Legislature may wish to consider the following options:

Expand the Forensic Hospital Diversion Pilot Program to Two Other Areas in the State

As noted above, reports from MD-FAC indicate that diversion is a promising strategy to more effectively treat mentally ill defendants. The Legislature may wish to consider expanding the forensic hospital diversion pilot program to see if its successes can be replicated in other demographic and geographic areas. DCF and representatives from OSCA suggest pilots be implemented in Hillsborough County and the Pensacola area.⁹⁶ These areas have the largest forensic need in the state,⁹⁷ and in both areas the infrastructure is already in place that will allow for efficient pilot implementation.⁹⁸

Provide Program-Specific Training to Judges in the Pilot Areas

The Department of Children and Families has recognized that judicial education will be an important part of implementing a pilot program.⁹⁹ Chief Justice Canady of the Florida Supreme Court has reconstituted the Supreme Court Mental Health and Substance Abuse Committee, which will raise awareness of the issue.

Authorize County Court Judges to Order Involuntary Outpatient Treatment as a Condition of Release

As to the Related Issue, the Legislature may wish to amend Chapter 394, F.S., to provide that in a case where a defendant is found incompetent to proceed to trial on a misdemeanor, but does not meet the criteria for involuntary commitment under the Baker Act, county court judges have the authority to order involuntary outpatient mental health treatment as a condition of release.

⁹¹ The Criminal Justice, Mental Health, and Substance Abuse Reinvestment Grant Program was established by the Legislature in 2007 for the purpose of providing funding to counties to allow them to plan, implement, or expand initiatives to address issues related to forensic mental health. There are two types of grants available: a one-year planning grant with a maximum grant award of \$100,000 and a three-year implementation or expansion grant with a maximum grant award of \$1,000,000. In order to be eligible to receive a grant, a county must have a county planning council or committee. In addition, county recipients of grant funding legislation must provide matching funds or in-kind resources. Staff Analysis for Committee Substitute for Senate Bill 2018, Committee on Children, Families, and Elder Affairs, Apr. 15, 2009, available at <http://www.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s2018.cj.pdf> (last visited October 1, 2010).

⁹² Interview with Kate Lyon and Sally Cunningham, Mental Health Program Officer, Florida Department of Children and Families (Aug. 6, 2010).

⁹³ Interview with Marta Hardy, Legislative Analyst, Health and Human Services Appropriations (Sep. 7, 2010).

⁹⁴ *Id.*

⁹⁵ However, appropriations staff reports that the limitation is that it cannot be done mid-year. *Id.*

⁹⁶ Interview with Kate Lyon and Sally Cunningham, Mental Health Program Officer, Florida Department of Children and Families (Aug. 6, 2010); Interview with Brenda Johnson, Office of the State Courts Administrator (Aug. 30, 2010).

⁹⁷ Interview with Kate Lyon and Sally Cunningham, Mental Health Program Officer, Florida Department of Children and Families (Aug. 6, 2010).

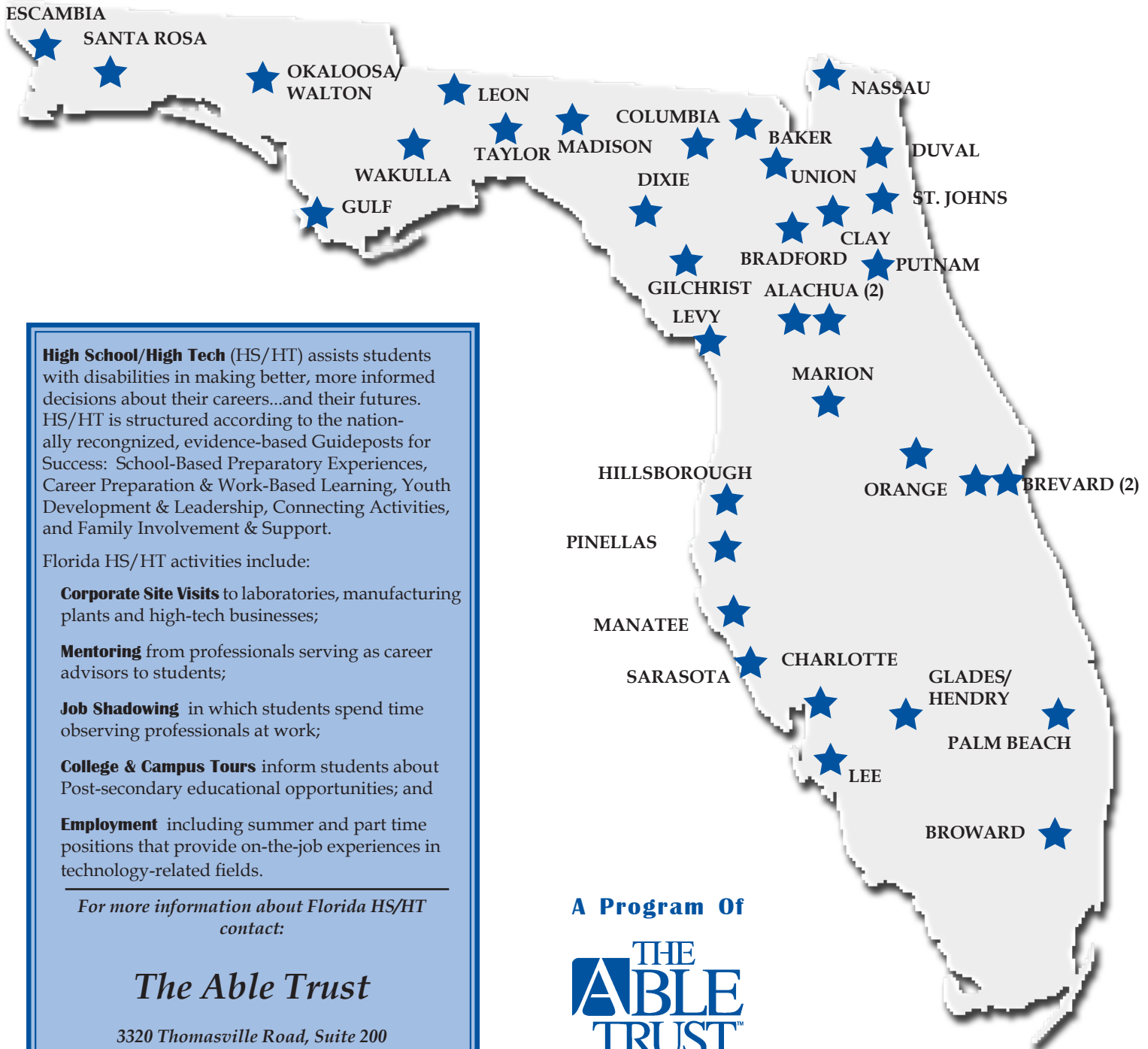
⁹⁸ For example, each area has implemented the reinvestment grant program, which will provide a starting point for funding and operating the programs.

⁹⁹ Interview with Kate Lyon and Sally Cunningham, Mental Health Program Officer, Florida Department of Children and Families (Aug. 6, 2010).



Florida High School / High Tech

Promoting Technology-Related Careers for
Students with Disabilities



High School/High Tech (HS/HT) assists students with disabilities in making better, more informed decisions about their careers...and their futures. HS/HT is structured according to the nationally recognized, evidence-based Guideposts for Success: School-Based Preparatory Experiences, Career Preparation & Work-Based Learning, Youth Development & Leadership, Connecting Activities, and Family Involvement & Support.

Florida HS/HT activities include:

Corporate Site Visits to laboratories, manufacturing plants and high-tech businesses;

Mentoring from professionals serving as career advisors to students;

Job Shadowing in which students spend time observing professionals at work;

College & Campus Tours inform students about Post-secondary educational opportunities; and

Employment including summer and part time positions that provide on-the-job experiences in technology-related fields.

For more information about Florida HS/HT contact:

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During the 2009-2010 school year, the Florida High School/High Tech (HS/HT) Program served **1,559 students with disabilities** in 37 Florida counties. Students were provided transition services based on the five nationally recognized evidence-based Guideposts for Success: School-Based Preparatory Experiences, Career Preparation & Work-Based Learning, Connecting Activities, Youth Leadership & Development, and Family Involvement & Supports.

The Florida HS/HT Impact:

- The Florida HS/HT Program experienced a high school dropout rate of **less than 1%**.
- **86%** of Florida HS/HT graduates entered postsecondary education or employment (unduplicated) as compared to the Florida Department of Education rate of 50% of graduates with disabilities (unduplicated).*
 - Florida HS/HT students entered postsecondary education at over **three times** the rate of other Florida graduates with disabilities. Approximately 74% of Florida HS/HT graduates entered postsecondary education after graduation compared to only 24% of other graduates with disabilities in Florida.*
 - Services were provided in 105 schools and alternative education settings including but not limited to foster care group homes and Department of Juvenile Justice facilities.
 - 169 high school students (representing all grades) secured employment.
- Disability diversity of enrolled students includes: autism spectrum disorder, 6%; attention deficit/hyperactivity disorder, 9%; emotional disturbance, 6%; hearing impairment including deafness, 1%; intellectual disability, 10%; other health impairment, 5%; orthopedic impairment, 3%; specific learning disability, 53%; speech or language impairment, 5%; traumatic brain injury, 1%; visual impairment including blindness, 1%.

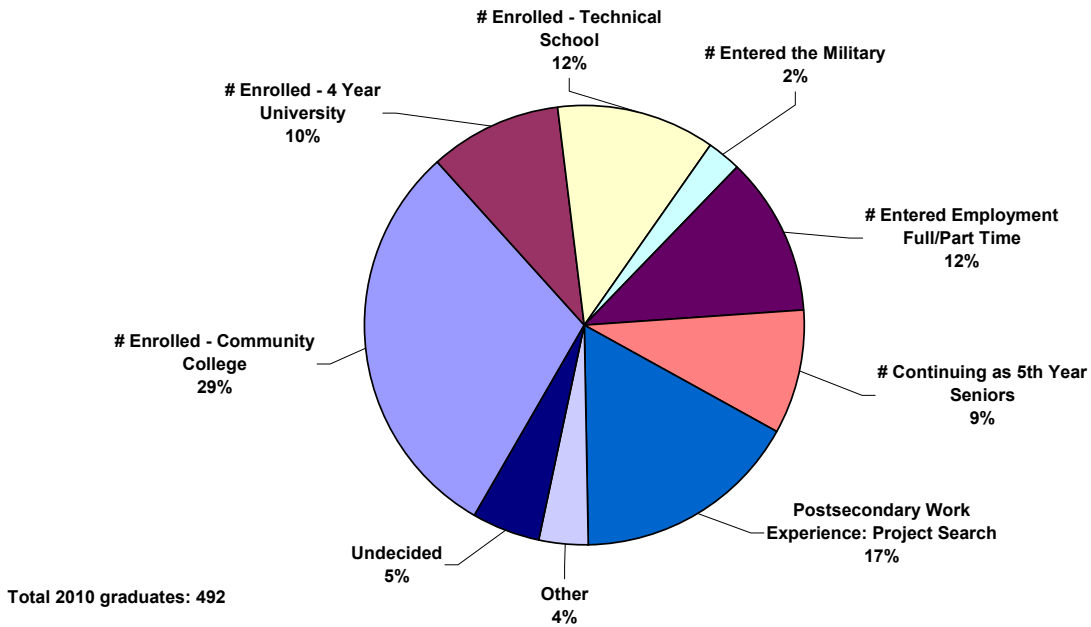
The Able Trust serves as the state affiliate for The Florida HS/HT Program, Florida Disability Mentoring Day and the Florida Youth Leadership Forum. These nationally recognized programs serve to reduce the dropout rate of youth with disabilities and improve their participation in employment-related activities.

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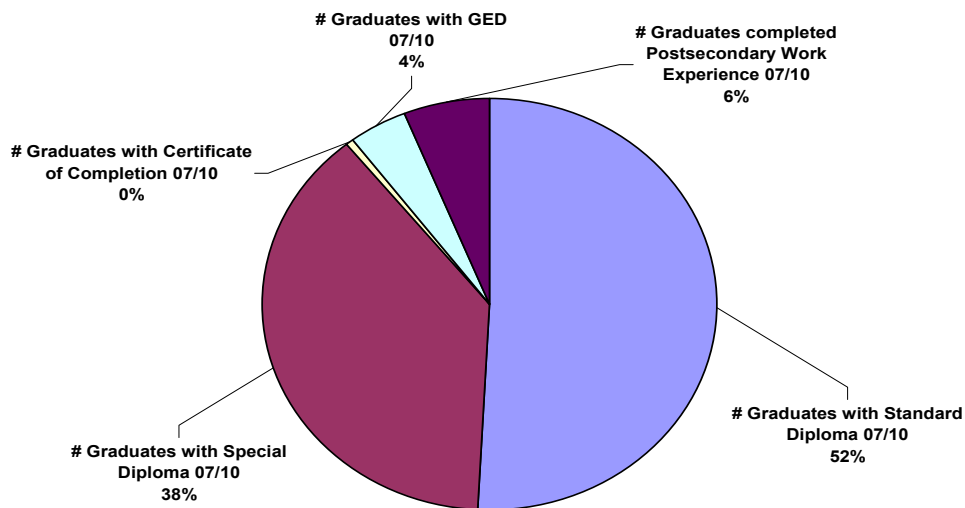


**Florida Department of Education, Bureau of Exceptional Education and Student Services. (2010). 2010 SEA Profile. Retrieved July 20, 2010 from, <http://www.fldoe.org/ese/pdf/2010lea/SEA>.*

Florida HS/HT Postsecondary and Employment Outcomes July 2010



Florida HS/HT Graduation Outcomes July 2010



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