Tab 2	**SB 692** by **Stewart (CO-INTRODUCERS) Harrell**; (Similar to H 00341) Sexual Offenses Definitions

Tab 3	**SB 1436** by **Garcia**; (Compare to CS/H 00615) Training on Human Trafficking

940686	A	S	CF, Garcia	Delete L.19 - 40:	01/31 12:21 PM

Tab 4	**SB 1600** by **Bradley**; (Identical to H 01249) Treatment of Defendants Adjudicated Incompetent to Stand Trial

584884	A	S	CF, Bradley	Before L.13:	01/31 09:01 AM

Tab 5	**SB 1708** by **Garcia**; (Identical to H 01577) Child Welfare

Tab 6	**SB 1844** by **Bean**; (Similar to CS/H 01143) Mental Health and Substance Abuse

678898	D	S	CF, Bean	Delete everything after	01/31 10:20 AM
703898	SD	S	CF, Bean	Delete everything after	02/01 10:02 AM

Tab 7	**SB 1846** by **Bean**; (Identical to H 01157) Public Records/Respondent's Name

650168	A	S	CF, Bean	Delete L.155:	01/31 10:19 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS
Senator Garcia, Chair
Senator Book, Vice Chair

MEETING DATE: Tuesday, February 1, 2022
TIME: 1:00—3:00 p.m.
PLACE: *Mallory Horne Committee Room,* 37 Senate Building

MEMBERS: Senator Garcia, Chair; Senator Book, Vice Chair; Senators Albritton, Brodeur, Harrell, Rouson, Torres, and Wright

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION

Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

Secretary of Elderly Affairs

1	Branham, Michelle ()	Pleasure of Governor	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
2	**SB 692** Stewart (Similar H 341, Compare S 878)	Sexual Offenses Definitions; Creating and revising a definition relating to sexual abuse of a child; creating and revising definitions relating to obscene telephone communications and possession or promotion of certain images of child pornography, respectively; creating and revising definitions relating to sexual battery; creating and revising definitions relating to sexual performance by a child and obscenity definitions, respectively; creating and revising definitions relating to abuse of a dead human body, etc. CF 02/01/2022 CJ RC	
3	**SB 1436** Garcia (Compare CS/H 615)	Training on Human Trafficking; Requiring the Florida Forensic Institute for Research, Security, and Tactics to develop specified training for firesafety inspectors; providing that such training is eligible for continuing education credits; requiring foster parents and agency staff to complete preservice and inservice training related to human trafficking, etc. CF 02/01/2022 AHS AP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1600** Bradley (Identical H 1249)	Treatment of Defendants Adjudicated Incompetent to Stand Trial; Providing that a forensic client who is being held in a jail awaiting admission to a Department of Children and Families facility and who is likely to regain competence to proceed may receive treatment at any facility designated by the department, etc. CF 02/01/2022 AHS AP	
5	**SB 1708** Garcia (Identical H 1577)	Child Welfare; Requiring the Department of Health to waive fees for certified copies of birth certificates issued to certain unaccompanied homeless youth and young adults; revising requirements for required collaboration among the Board of Governors, the Florida College System, and the Department of Education in working with the Department of Children and Families to assist specified children and young adults; revising eligibility and requirements for a certain driver education, licensure, and insurance program to include certain unaccompanied homeless youth; specifying certification criteria for unaccompanied homeless youth; requiring district school boards to provide cards that contain specified information to certain unaccompanied homeless youth, etc. CF 02/01/2022 AP	
6	**SB 1844** Bean (Similar H 1143, Compare H 1157, Linked S 1846)	Mental Health and Substance Abuse; Revising review requirements for specified restrictions relating to a patient's right to communicate or to receive visitors; authorizing the state to establish that a transfer evaluation was performed by providing the court with a copy of the evaluation before the close of the state's case in chief; revising the requirements for when a person may be taken to a receiving facility for involuntary examination, etc. CF 02/01/2022 JU AP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 1846** Bean (Identical H 1157, Compare H 1143, H 7011, S 7008, Linked S 1844)	Public Records/Respondent's Name; Exempting from public records requirements a respondent's name in certain documents at trial and on appeal; expanding exemptions from public records requirements for certain petitions, court orders, and related records to include applications for voluntary and involuntary mental health examinations and substance abuse treatment, respectively; revising the date for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CF 02/01/2022 JU AP	

Other Related Meeting Documents

By Senator Stewart

13-00876-22 2022692__

A bill to be entitled

An act relating to sexual offenses definitions; amending s. 39.01, F.S.; creating and revising a definition relating to sexual abuse of a child; amending ss. 365.161 and 775.0847, F.S.; creating and revising definitions relating to obscene telephone communications and possession or promotion of certain images of child pornography, respectively; amending s. 794.011, F.S.; creating and revising definitions relating to sexual battery; conforming provisions to changes made by the act; amending ss. 827.071 and 847.001, F.S.; creating and revising definitions relating to sexual performance by a child and obscenity definitions, respectively; amending s. 872.06, F.S.; creating and revising definitions relating to abuse of a dead human body; amending ss. 288.1254, 395.0197, 415.102, and 847.0141, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (77) of section 39.01, Florida Statutes, is amended to read:

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

(77) "Sexual abuse of a child" for purposes of finding a child to be dependent means one or more of the following acts:

(a) Any penetration, however slight, of the genitals ~~vagina~~

or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.

(d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:

1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or

2. Any act intended for a valid medical purpose.

(e) The intentional masturbation of the perpetrator’s genitals in the presence of a child.

(f) The intentional exposure of the perpetrator’s genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

(g) The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, or the act of allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution;

2. Engage in a sexual performance, as defined by chapter 827; or

3. Participate in the trade of human trafficking as provided in s. 787.06(3)(g).

As used in this subsection, the term "genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

Section 2. Subsection (1) of section 365.161, Florida Statutes, is amended to read:

365.161 Prohibition of certain obscene telephone communications; penalty.—

(1) For purposes of this section, the term:

(c) ~~(a)~~ "Obscene" means that status of a communication which:

1. The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interests;

2. Describes, in a patently offensive way, deviate sexual intercourse, sadomasochistic abuse, sexual battery, bestiality, sexual conduct, or sexual excitement; and

3. Taken as a whole, lacks serious literary, artistic, political, or scientific value.

(a) ~~(b)~~ "Deviate sexual intercourse" means sexual conduct between persons consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(b) "Genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

(d) ~~(c)~~ "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered,

bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(e) ~~(d)~~ "Sexual battery" means oral, anal, or genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or genital ~~vaginal~~ penetration of another by any other object.

(f) ~~(e)~~ "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or genitals ~~vagina~~ of the other.

(g) ~~(f)~~ "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; or any act or conduct which constitutes sexual battery.

(h) ~~(g)~~ "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

Section 3. Present paragraphs (c) through (f) of subsection (1) of section 775.0847, Florida Statutes, are redesignated as paragraphs (d) through (g), respectively, a new paragraph (c) is added to that subsection, and present paragraphs (d) and (e) of that subsection are amended, to read:

775.0847 Possession or promotion of certain images of child pornography; reclassification.—

(1) For purposes of this section:

(c) "Genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

(e) ~~(d)~~ "Sexual battery" means oral, anal, or genital ~~vaginal~~ penetration by, or union with, the sexual organ of

another or the anal or genital ~~vaginal~~ penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(f) ~~(e)~~ "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or genitals ~~vagina~~ of the other.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this section is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 4. Subsections (1), (3), and (8) of section 794.011, Florida Statutes, are amended to read:

794.011 Sexual battery.—

(1) As used in this chapter:

(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

(b) "Genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

(c) ~~(b)~~ "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

(d) ~~(c)~~ "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance

administered without his or her consent or due to any other act committed upon that person without his or her consent.

(e) ~~(d)~~ "Offender" means a person accused of a sexual offense in violation of a provision of this chapter.

(f) ~~(e)~~ "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(h) ~~(f)~~ "Retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(i) ~~(g)~~ "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(j) ~~(h)~~ "Sexual battery" means oral, anal, or genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or genital ~~vaginal~~ penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(k) ~~(i)~~ "Victim" means a person who has been the object of a sexual offense.

(g) ~~(j)~~ "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof:

(a) Uses or threatens to use a deadly weapon; or

(b) Uses actual physical force likely to cause serious personal injury

commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery as defined in this section ~~under paragraph (1)(h)~~ commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Engages in any act with that person while the person is 12 years of age or older but younger than 18 years of age which constitutes sexual battery as defined in this section ~~under paragraph (1)(h)~~ commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery as defined in this section ~~under paragraph (1)(h)~~, or in an attempt to commit sexual battery injures the sexual organs of such person, commits a capital or life felony, punishable pursuant to subsection (2).

Section 5. Present paragraphs (b) through (j) of subsection (1) of section 827.071, Florida Statutes, are redesignated as paragraphs (c) through (k), respectively, a new paragraph (b) is added to that subsection, and present paragraphs (f), (g), and (j) of that subsection are amended, to read:

827.071 Sexual performance by a child; penalties.—

(1) As used in this section, the following definitions shall apply:

(b) "Genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

(g) ~~(f)~~ "Sexual battery" means oral, anal, or genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or genital ~~vaginal~~ penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(h) ~~(g)~~ "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or genitals ~~vagina~~ of the other.

(k) ~~(j)~~ "Simulated" means the explicit depiction of conduct set forth in paragraph (i) ~~(h)~~ which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Section 6. Present subsections (6) through (20) of section 847.001, Florida Statutes, are redesignated as subsections (7) through (21), respectively, a new subsection (6) is added to that section, and present subsections (14), (15), and (19) of that section are amended, to read:

847.001 Definitions.—As used in this chapter, the term:

(6) "Genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

(15) ~~(14)~~ "Sexual battery" means oral, anal, or genital ~~vaginal~~ penetration by, or union with, the sexual organ of another or the anal or genital ~~vaginal~~ penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(16)~~(15)~~ "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or genitals ~~vagina~~ of the other.

(20)~~(19)~~ "Simulated" means the explicit depiction of conduct described in subsection (17) ~~(16)~~ which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Section 7. Section 872.06, Florida Statutes, is amended to read:

872.06 Abuse of a dead human body; penalty.—

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

(a) "Genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

(b) "Sexual abuse" means:

1.~~(a)~~ Anal or genital ~~vaginal~~ penetration of a dead human body by the sexual organ of a person or by any other object;

2.~~(b)~~ Contact or union of the penis, genitals ~~vagina~~, or anus of a person with the mouth, penis, genitals ~~vagina~~, or anus of a dead human body; or

3.~~(c)~~ Contact or union of a person's mouth with the penis, genitals ~~vagina~~, or anus of a dead human body.

(2) A person who mutilates, commits sexual abuse upon, or otherwise grossly abuses a dead human body commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any act done for a bona fide medical purpose or for any other lawful purpose does not under any circumstance constitute a violation of this section.

Section 8. Paragraph (j) of subsection (1) of section

288.1254, Florida Statutes, is amended to read:

288.1254 Entertainment industry financial incentive program.—

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

(j) "Qualified production" means a production in this state meeting the requirements of this section. The term does not include a production:

1. In which, for the first 2 years of the incentive program, less than 50 percent, and thereafter, less than 60 percent, of the positions that make up its production cast and below-the-line production crew, or, in the case of digital media projects, less than 75 percent of such positions, are filled by legal residents of this state, whose residency is demonstrated by a valid Florida driver license or other state-issued identification confirming residency, or students enrolled full-time in a film-and-entertainment-related course of study at an institution of higher education in this state; or

2. That contains obscene content as defined in s. 847.001(11) ~~s. 847.001(10)~~.

Section 9. Subsection (10) of section 395.0197, Florida Statutes, is amended to read:

395.0197 Internal risk management program.—

(10) Any witness who witnessed or who possesses actual knowledge of the act that is the basis of an allegation of sexual abuse shall:

(a) Notify the local police; and

(b) Notify the hospital risk manager and the administrator.

For purposes of this subsection, "sexual abuse" means acts of a

sexual nature committed for the sexual gratification of anyone upon, or in the presence of, a vulnerable adult, without the vulnerable adult's informed consent, or a minor. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a vulnerable adult's or minor's sexual organs, or the use of the vulnerable adult or minor to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act which may reasonably be construed to be a normal caregiving action.

Section 10. Subsection (26) of section 415.102, Florida Statutes, is amended to read:

415.102 Definitions of terms used in ss. 415.101-415.113.— As used in ss. 415.101-415.113, the term:

(26) "Sexual abuse" means acts of a sexual nature committed in the presence of a vulnerable adult without that person's informed consent. "Sexual abuse" includes, but is not limited to, the acts defined in s. 794.011(1)(j) ~~s. 794.011(1)(h)~~, fondling, exposure of a vulnerable adult's sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. "Sexual abuse" does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.

Section 11. Subsection (1) of section 847.0141, Florida Statutes, is amended to read:

847.0141 Sexting; prohibited acts; penalties.—

(1) A minor commits the offense of sexting if he or she

knowingly:

(a) Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity~~, as defined in s. 847.001(9),~~ and is harmful to minors, as those terms are defined in s. 847.001 ~~s. 847.001(6)~~.

(b) Possesses a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity~~, as defined in s. 847.001(9),~~ and is harmful to minors, as those terms are defined in s. 847.001 ~~s. 847.001(6)~~. A minor does not violate this paragraph if all of the following apply:

1. The minor did not solicit the photograph or video.

2. The minor took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official.

3. The minor did not transmit or distribute the photograph or video to a third party.

Section 12. This act shall take effect October 1, 2022.

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 Committee on Criminal Justice

BILL:	SB 692
INTRODUCER:	Senator Stewart
SUBJECT:	Sexual Offenses Definitions
DATE:	January 31, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Cox	CF	**Pre-meeting**
2.			CJ	
3.			RC	

I. Summary:

SB 692 amends multiple statutes relating to various sexual offenses, to replace the terms "vagina" or "vaginal" with "genital" or "genitals." Additionally, this bill provides that "genitals" include the labia minora, labia majora, vulva, hymen, and vagina.

The bill amends the following sections to create and revise such definitions:

- Section 39.01(77), F.S., which provides the definition of "sexual abuse of a child" for purposes of finding a child to be dependent.
- Section 365.161(1), F.S., which provides definitions relating to the prohibition of certain obscene telephone communications.
- Section 775.0847(1), F.S., which provides definitions relating to the possession or promotion of certain images of child pornography.
- Section 794.011(1), F.S., which provides definitions relating to sexual battery.
- Section 827.071, F.S., which provides definitions relating to sexual performance by a child.
- Section 847.001, F.S., which provides definitions relating to obscenity.
- Section 872.06(1), F.S., which provides definitions relating to abuse of a dead human body.

Additionally the bill amends ss. 288.1254, 395.0197, 415.102, and 847.0141, F.S., to make conforming cross-reference changes to comply with the act.

This bill is effective October 1, 2022.

II. Present Situation:

The term "vagina" is used to describe prohibited sexual conduct in various sections of the Florida Statutes, but is not statutorily defined. Currently, the Florida District Courts of Appeals (DCA) have conflicting opinions on the definition of the term "vagina." Specifically, the Second and Fourth DCAs have held that the vagina has a specific anatomical meaning, and that it is

internal.[1] However, the Fifth DCA has held the term vagina includes the entire vulva area not just the internal passageway.[2]

Florida Statutes

Florida law currently contains a variety of statutes that prohibit acts relating to sexual battery, sexual conduct, obscenity, and sexual abuse. A summary of these laws follows.

Sexual battery

Section 794.011, F.S., defines the crime of "sexual battery" to mean oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.[3]

Sexual battery is a capital felony[4] or life felony[5] when:

- A person 18 years of age or older commits a sexual battery on, or in an attempt to commit a sexual battery injures the sexual organs of, a person less than 12 years of age.[6]
- A person less than 18 years of age commits sexual battery on, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age.[7]
- A person commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury.[8]
- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age engages in any act, which constitutes sexual battery, with that person while the person is less than 12 years of age, or in an attempt to commit sexual battery injures the sexual organs of the person.[9]

[1] *See Richards v. State*, 738 So. 2d 415, 419 (Fla. 2nd DCA, 1999)(holding that the vagina should be defined as "the canal between the vulva and the uterus."); *Firekey v. State*, 557 So. 2d 582 (Fla. 4th DCA, 1989)(holding that penetration of the labia does not constitute sexual battery).
[2] *See Palumbo v. State*, 52 So. 3d 834 (Fla. 5th DCA, 2011).
[3] Section 794.011(1)(h), F.S.
[4] A capital felony is generally punishable by death or life imprisonment. Section 775.082, F.S. The courts have held that the death penalty may not be imposed for sex offenses. In Florida, the only crime for which the death penalty may be imposed is murder in the first degree. *See Rowe v. State*, 417 So. 2d 981, 982 (Fla. 1982). *See also Buford v. State*, 403 So. 2d 943, 951 (Fla. 1981)(holding that the Eighth Amendment prohibits death penalty for rape or sexual battery, even of a child).
[5] A life felony is generally punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a fine not exceeding $15,000. Sections 775.082 and 775.083, F.S.
[6] Section 794.011(2)(a), F.S.
[7] Section 794.011(2)(b), F.S.
[8] Section 794.011(3), F.S.
[9] Section 794.011(8)(c), F.S.

Sexual battery is a first degree felony, punishable by a term of years not exceeding life,[10] when:

- A person 18 years of age or older commits sexual battery on a person 12 years of age or older, but younger than 18 years of age without that person's consent, under specified circumstances.[11]
- A person commits sexual battery on a person 12 years of age or older without that person's consent, under specified circumstances, and that person was previously convicted of specified crimes.[12]
- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age engages in any act, which constitutes sexual battery, with that person while the person is 12 years of age or older but younger than 18 years of age.[13]

[10] A first degree felony may be punishable by a term of years not exceeding life imprisonment when specifically provided by statute and a fine not exceeding $10,000. Sections 775.082 and 775.083 F.S.

[11] Section 794.011(4)(a), F.S. Further, s. 794.011(4)(e)1.-7., F.S., provides the following circumstances apply to certain crimes of sexual battery: the victim is physically helpless to resist; the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat; the offender coerces the victim to submit by threatening to retaliate against the victim or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future; the offender, without prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim; the victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact; the victim is physically incapacitated; the offender is in a specified profession or a person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

[12] Section 794.011(4)(d), F.S. Specified crimes include: s. 787.01(2), F.S., relating to kidnapping, or s. 787.02(2), F.S., relating to false imprisonment, when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3., F.S., relating to kidnapping; s. 787.02(3)(a)2. or 3., F.S., relating to false imprisonment; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person; s. 847.0135(5), F.S., relating to computer pornography; or ch. 794, F.S., relating to sexual battery, except s. 794.011(10), F.S., which criminalizes false allegations against specified persons.

[13] Section 794.011(8)(b), F.S.

Sexual battery is a first degree felony, punishable by a term of imprisonment not exceeding 30 years,[14] when:

- A person 18 years of age or older commits sexual battery on a person 18 years of age or older without that person's consent, under specified circumstances.[15, 16]
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older without that person's consent, under specified circumstances.[17, 18]
- A person 18 years of age or older commits sexual battery on a person 12 years of age or older but younger than 18 years of age, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.[19]
- A person commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury and the person was previously convicted of specified crimes.[20]

Sexual battery is a second degree felony[21] when:

[14] The maximum term of imprisonment for a first degree felony is generally 30 years imprisonment and a fine not exceeding $10,000. Sections 775.082 and 775.083 F.S.

[15]Section 794.011(4)(e)1.-7., F.S., provides the following circumstances apply to certain crimes of sexual battery: the victim is physically helpless to resist; the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat; the offender coerces the victim to submit by threatening to retaliate against the victim or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future; the offender, without prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim; the victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact; the victim is physically incapacitated; the offender is in a specified profession or a person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

[16] Section 794.011(4)(b), F.S.

[17]*See* s. 794.011(4)(e)1.-7., F.S., provides the following circumstances apply to certain crimes of sexual battery: the victim is physically helpless to resist; the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat; the offender coerces the victim to submit by threatening to retaliate against the victim or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future; the offender, without prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim; the victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact; the victim is physically incapacitated; the offender is in a specified profession or a person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

[18] Section 794.011(4)(c), F.S.

[19] Section 794.011(5)(a), F.S.

[20] Section 794.011(5)(d), F.S. Specified crimes include: s. 787.01(2), F.S., relating to kidnapping, or s. 787.02(2), F.S., relating to false imprisonment, when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3. F.S., relating to kidnapping; s. 787.02(3)(a)2. or 3., F.S., relating to false imprisonment; s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; s. 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person; s. 847.0135(5), F.S., relating to computer pornography; or ch. 794, F.S., relating to sexual battery, except s. 794.011(10), F.S., which criminalizes false allegations against specified persons.

[21] The maximum term of imprisonment for a second degree felony is 15 years imprisonment and a fine not exceeding $10,000. Sections 775.082 and 775.083, F.S.

- A person 18 years of age or older commits sexual battery on a person 18 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.[22]
- A person younger than 18 years of age commits sexual battery on a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury.[23]

Sexual battery is a third degree felony[24] when:

- Without regard to the willingness or consent of the victim, a person who is in a position of familial or custodial authority to a person less than 18 years of age solicits that person to engage in any act which constitutes sexual battery.[25]

Obscenity, child pornography, sexual performance by a child

Obscenity

Chapter 847, F.S., governs obscenity, which includes in part, laws relating to: the prohibition of certain acts in connection with obscene, lewd, etc. materials; the regulation of harmful materials and the sale or distribution to minors; and computer pornography, prohibited computer usage, and traveling to meet minors.

For purposes of this chapter the term "obscene," means the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interests;
- Depicts or describes, in a patently offensive way, sexual conduct; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.[26]

Sexual performance by a child

Section 827.071, F.S., provides that it is a second degree felony to employ, authorize, or induce a child younger than 18 years of age to engage in a sexual performance,[27]or for a parent, legal guardian, or custodian of such child to consent to the participation by such child in a sexual performance.[28] It is also a second degree felony for any person to produce, direct, or promote any performance which includes sexual conduct by a child less than 18 years of age.[29]

[22] Section 794.011(5)(b), F.S.
[23] Section 794.011(5)(c), F.S.
[24] The maximum term of imprisonment for a third degree felony is 5 years imprisonment and a fine not exceeding $5,000. Sections 775.082 and 775.083 F.S.
[25] Section 794.011(8)(a), F.S.
[26] Section 847.001(10), F.S. A mother's breastfeeding of her baby is not under any circumstance "obscene."
[27] Section 827.071(1)(i), F.S., defines "sexual performance" to mean any performance or part therefor which includes sexual conduct by a child less than 18 years of age. Additionally, s. 827.071(1)(c), F.S., defines "performance" to mean any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.
[28] Section 827.071(2), F.S.
[29] Section 827.071(3), F.S.

A person may not possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child.[30]

Additionally, it is a third degree felony for a person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child.[31]

Possession or promotion of child pornography

Section 775.0847, F.S., reclassifies violations of s. 827.071, F.S., relating to sexual performance by a child; s. 847.0135, F.S., relating to computer pornography, prohibited computer usage, and traveling to meet a minor; s. 847.0137, F.S., relating to transmission of pornography by electronic device or equipment; and s. 847.0138, F.S., relating to transmission of material harmful to minors to a minor by electronic device or equipment, to the next higher degree if:

- The offender possesses 10 or more images of any form of child pornography[32] regardless of content; and
- The content of at least one image contains one or more of the following:
  - A child who is younger than the age of 5.
  - Sadomasochistic abuse[33] involving a child.
  - Sexual battery involving a child.
  - Sexual bestiality involving a child.
  - Any movie involving a child, regardless of length and whether the movie contains sound.[34]

The following definitions apply to the above-described offenses:

- "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.[35]
- "Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.[36]
- "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person is female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that

[30] Section 827.071(4), F.S.
[31] Section 827.071(5), F.S.
[32] Section 775.0847(1)(b), F.S,, defines "child pornography" to mean any image depicting a minor engaged in sexual conduct.
[33] Section 775.0847(1)(c), F.S., defines "sadomasochistic abuse," to mean flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.
[34] Section 775.0847(2), F.S.
[35] Sections 775.0847(1)(d), 827.071(1)(f), and 847.001(14), F.S.
[36] Sections 775.0847(1)(e), 827.071(1)(g), and 847.001(15), F.S.

sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstances constitute "sexual conduct."[37]

Prohibition of certain obscene telephone calls

A person commits a second degree misdemeanor[38] if he or she makes, or knowingly permits the use of a telephone or telephone facility under his or her control to make any obscene or indecent communication by means of a telephone, in person or through an electronic recording device, in exchange for payment.[39]

For purposes of s. 365.161, F.S., "obscene" means the status of communication which:
- The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interests;
- Describes, in a patently offensive way, deviate sexual intercourse, sadomasochistic abuse, sexual battery, bestiality, sexual conduct, or sexual excitement; and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.

Additionally, s. 365.161, F.S., provides, in part, the following definitions:
- "Sexual battery," means oral, anal, or vaginal penetration by, or union with, the sexual organ of the one and the mouth, anus, or vagina of the other.[40]
- "Sexual bestiality," means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.[41]

Abuse of a dead human body

A person who mutilates, commits sexual abuse upon, or otherwise grossly abuses the dead human body commits a second degree felony. An act done for a bona fide medical purpose or any other lawful purpose does not violate this law.[42]

For purposes of this section, "sexual abuse" means:
- Anal or vaginal penetration of a dead human body by the sexual organ of a person or by any other object;
- Contact or union of the penis, vagina, or anus of a person with the mouth, penis, vagina, or anus of a dead human body; or
- Contact or union of a person's mouth with the penis, vagina, or anus of a dead human body.[43]

[37] Sections 775.0847(1)(f), 827.071(1)(h), and 847.001(16), F.S.
[38] A second degree misdemeanor is punishable by a term of imprisonment up to 60 days and a fine not exceeding $500. Sections 775.082 and 775.083, F.S.
[39] Section 356.161(2), F.S.
[40] Section 365.161(1)(d), F.S.
[41] Section 365.161(1)(e), F.S.
[42] Section 872.06(2), F.S.
[43] Section 872.06(1), F.S.

Sexual abuse of a child in dependency proceedings

Chapter 39, F.S., governs proceedings relating to children who are abused, abandoned, or neglected. The goal is for the dependency court and all parties involved in the child's case to ensure the child remains safe.[44]

The Department of Children and Families (DCF) operates the Florida central abuse hotline (hotline), which accepts reports of known or suspected child abuse,[45] abandonment,[46] or neglect,[47] 24 hours a day, seven days a week.[48] Any person who knows or suspects that a child has been abused, abandoned, or neglected must report such knowledge or suspicion to the hotline.[49] Similarly, any person who knows, or has reasonable cause to suspect that a child is the victim of sexual abuse or juvenile sexual abuse must make a report to the hotline.

A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse, abandonment, or neglect.[50] If, after conducting an investigation in response to receiving a call to the hotline, the child protective investigator determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. The proceeding, known as a shelter

[44] Section 39.001(1)(a), F.S.
[45] Section 39.01(2), F.S., defines "abuse" to mean any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child also includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.
[46] Section 39.01(1), F.S., defines "abandonment," in part, to mean a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. It further defines, "establish or maintain a substantial and positive relationship" to include, but not be limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. The definition specifically provides that marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child.
[47] Section 39.01(50), F.S., defines "neglect" to mean when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. Circumstances are not to be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected. Further, a parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian, unless a court orders the following services to be provided, when the health of the child so requires: medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization. The definition further provides that neglect of a child includes acts or omissions.
[48] Section 39.101(1)(a), F.S.
[49] Section 39.201(1)(a)1., F.S.
[50] Section 39.201(4), F.S.

hearing, results in a court determining if probable cause exists to keep a child in shelter[51] status pending further investigation of the circumstances leading to the detention of a child.[52] When the DCF removes a child from the home, a series of dependency court proceedings must occur before a child may be found to be dependent.[53]

"Sexual abuse of a child," for purposes of finding a child to be dependent means one or more of the following acts:

- Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen;
- Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
- Any intrusion by one person into the genitals or anal opening of another person including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.
- The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child, or any act intended for a valid medical purpose.
- The intentional masturbation of the perpetrator's genitals in the presence of a child.
- The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.
- The sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, or the act of allowing, encouraging, or forcing a child to solicit for or engage in prostitution, engage in sexual performance, or participate in the trade of human trafficking.[54]

Sexual abuse of a child must be reported immediately to the hotline, including any alleged incident involving a child who is in the custody of or under the protective supervision of the DCF.[55] Within 48 hours after the hotline receives a report, the DCF must conduct an assessment, assist the family in receiving appropriate services, and make a written report to the appropriate county sheriff's office.[56]

[51] Section 39.01(78), F.S., defines "shelter" to mean a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.
[52] Section 39.01(79), F.S.
[53] *See* s. 39.01(14), F.S., for the definition of "child who is found to be dependent".
[54] Section 39.01(77), F.S.
[55] Section 39.201(5), F.S.
[56] *Id.*

III. Effect of Proposed Changes:

This bill amends multiple statutes relating to various sexual offenses, to replace the terms "vagina" or "vaginal" with "genital" or "genitals." Additionally, this bill provides that "genitals" include the labia minora, labia majora, vulva, hymen, and vagina.

The bill amends the following sections to create and revise such definitions:

- Section 39.01(77), F.S., which provides the definition of "sexual abuse of a child" for purposes of finding a child to be dependent.
- Section 365.161(1), F.S., which provides definitions relating to the prohibition of certain obscene telephone communications.
- Section 775.0847(1), F.S., which provides definitions relating to the possession or promotion of certain images of child pornography.
- Section 794.011(1), F.S., which provides definitions relating to sexual battery.
- Section 827.071, F.S., which provides definitions relating to sexual performance by a child.
- Section 847.001, F.S., which provides definitions relating to obscenity.
- Section 872.06(1), F.S., which provides definitions relating to abuse of a dead human body.

As a result, the bill remedies the current conflict within the Florida DCAs on the definition of "vagina" by removing the term and replacing it with the term "genital" and provide that "genitals" includes the labia minora, labia majora, vulva, hymen, and vagina.

Additionally, the bill amends ss. 288.1254, 395.0197, 415.102, and 847.0141, F.S., to make conforming cross-reference changes to comply with the act.

This bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The following statutes also use the term "vagina" or "vaginal penetration," in the definitions of terms relating to sexual conduct; however are not amended by the bill:

- Section 491.0112, F.S., Sexual misconduct by a psychotherapist.
- Section 794.05, F.S., Unlawful sexual activity with certain minors.
- Section 796.07, F.S., Prohibiting prostitution and related acts.
- Section 800.04, F.S., Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
- Section 825.1025, F.S., Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person.
- Section 944.35, F.S., Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.
- Section 951.27, F.S., Blood tests of inmates.

Additionally, the term "genitals," as defined throughout the bill, includes only the female genital parts. Current law, specifically, s. 39.01, F.S., relating to sexual abuse of a child, uses the term genitals to refer to male and female genitalia. Defining "genitals," to only relate to the female anatomy may exclude behavior involving the male genitals that is covered under current law.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 288.1254, 365.161, 395.0197, 415.102, 775.0847, 794.011, 827.071, 847.001, 847.0141 and 872.06.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Garcia

37-01001-22 20221436__

A bill to be entitled

An act relating to training on human trafficking; amending s. 16.618, F.S.; deleting an obsolete provision; requiring the Florida Forensic Institute for Research, Security, and Tactics to develop specified training for firesafety inspectors; providing that such training is eligible for continuing education credits; amending s. 409.175, F.S.; requiring foster parents and agency staff to complete preservice and inservice training related to human trafficking; reenacting s. 63.092(3)(e), F.S., relating to reports to the court of intended placement by an adoption entity, to incorporate the amendment made to s. 409.175, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) of section 16.618, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

16.618 Direct-support organization.—

(4)

(b) Recognizing that this state hosts large-scale events, including sporting events, concerts, and cultural events, which generate significant tourism to this state, produce significant economic revenue, and often are conduits for human trafficking, the institute must develop training that is ready for statewide dissemination ~~by not later than October 1, 2019~~.

1. Training must focus on detecting human trafficking, best practices for reporting human trafficking, and the interventions and treatment for survivors of human trafficking.

2. In developing the training, the institute shall consult with law enforcement agencies, survivors of human trafficking, industry representatives, tourism representatives, and other interested parties. The institute also must conduct research to determine the reduction in recidivism attributable to the education of the harms of human trafficking for first-time offenders.

(f) The institute shall develop training for firesafety inspectors in the recognition and reporting of human trafficking. Such training is eligible for continuing education credit under s. 633.216(4).

Section 2. Paragraph (e) is added to subsection (14) of section 409.175, Florida Statutes, to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(14)

(e)1. In addition to any other preservice training required by law, foster parents, as a condition of licensure, and agency staff must successfully complete preservice training related to human trafficking which must be uniform statewide and must include, but need not be limited to:

a. Basic information on human trafficking, such as an understanding of relevant terminology, and the differences between sex trafficking and labor trafficking;

b. Factors and knowledge on identifying children at risk of

human trafficking; and

c. Steps that should be taken to prevent at-risk youths from becoming victims of human trafficking.

2. Foster parents, before licensure renewal, and agency staff, during each full year of employment, must complete inservice training related to human trafficking to satisfy the training requirement under subparagraph (5)(b)7.

Section 3. For the purpose of incorporating the amendment made by this act to section 409.175, Florida Statutes, in a reference thereto, paragraph (e) of subsection (3) of section 63.092, Florida Statutes, is reenacted to read:

63.092 Report to the court of intended placement by an adoption entity; at-risk placement; preliminary study.—

(3) PRELIMINARY HOME STUDY.—Before placing the minor in the intended adoptive home, a preliminary home study must be performed by a licensed child-placing agency, a child-caring agency registered under s. 409.176, a licensed professional, or an agency described in s. 61.20(2), unless the adoptee is an adult or the petitioner is a stepparent or a relative. If the adoptee is an adult or the petitioner is a stepparent or a relative, a preliminary home study may be required by the court for good cause shown. The department is required to perform the preliminary home study only if there is no licensed child-placing agency, child-caring agency registered under s. 409.176, licensed professional, or agency described in s. 61.20(2), in the county where the prospective adoptive parents reside. The preliminary home study must be made to determine the suitability of the intended adoptive parents and may be completed before identification of a prospective adoptive minor. If the

identified prospective adoptive minor is in the custody of the department, a preliminary home study must be completed within 30 days after it is initiated. A favorable preliminary home study is valid for 1 year after the date of its completion. Upon its completion, a signed copy of the home study must be provided to the intended adoptive parents who were the subject of the home study. A minor may not be placed in an intended adoptive home before a favorable preliminary home study is completed unless the adoptive home is also a licensed foster home under s. 409.175. The preliminary home study must include, at a minimum:

(e) Documentation of counseling and education of the intended adoptive parents on adoptive parenting, as determined by the entity conducting the preliminary home study. The training specified in s. 409.175(14) shall only be required for persons who adopt children from the department.

If the preliminary home study is favorable, a minor may be placed in the home pending entry of the judgment of adoption. A minor may not be placed in the home if the preliminary home study is unfavorable. If the preliminary home study is unfavorable, the adoption entity may, within 20 days after receipt of a copy of the written recommendation, petition the court to determine the suitability of the intended adoptive home. A determination as to suitability under this subsection does not act as a presumption of suitability at the final hearing. In determining the suitability of the intended adoptive home, the court must consider the totality of the circumstances in the home. A minor may not be placed in a home in which there resides any person determined by the court to be a sexual

predator as defined in s. 775.21 or to have been convicted of an offense listed in s. 63.089(4)(b)2.

Section 4. This act shall take effect July 1, 2022.

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 Committee on Children, Families, and Elder Affairs

BILL:	SB 1436
INTRODUCER:	Senator Garcia
SUBJECT:	Training on Human Trafficking
DATE:	January 25, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Cox	CF	**Pre-meeting**
2.			AHS	
3.			AP	

I. Summary:

SB 1436 amends s. 16.618, F.S., requiring the Florida Forensic Institute for Research, Security, and Tactics (FIRST), who is contracted with the direct support-organization of the Statewide Council on Human Trafficking (Council), to develop training on the recognition and reporting of human trafficking for firesafety inspectors, which is eligible for continuing education credit under s. 633.216(4), F.S.

The bill also requires foster parents, as a condition of licensure, and agency staff to successfully complete preservice training related to human trafficking which must be uniform statewide and must include, but need not be limited to:

- Basic information on human trafficking;
- Factors and knowledge on identifying children at risk of human trafficking; and
- Steps that should be taken to prevent at-risk youths from becoming victims of human trafficking.

The bill provides that foster parents, before licensure renewal, and agency staff, during each full year of employment, must complete training related to human trafficking to satisfy the inservice training requirement under current law.

Section 63.092, F.S., is reenacted for the purpose of incorporating the amendment made to s. 409.175, F.S., by the act.

The bill may have an indeterminate fiscal impact on the DSO by requiring the development of new training for firesafety inspectors. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploiting that person.[1] A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity,[2] labor, or services:

- By using coercion;[3]
- Of a child younger than 18 years old or an adult believed by the person to be a child younger than 18 years old;[4] or
- With a mentally defective or mentally incapacitated person, if for commercial sexual activity.[5, 6]

According to the United States Department of State, traffickers in the United States compel victims to engage in commercial sex and to work in both legal and illicit industries, including in hospitality, traveling sales crews, agriculture, janitorial services, construction, landscaping, restaurants, factories, care for persons with disabilities, salon services, massage parlors, retail services, fairs and carnivals, peddling and begging, drug smuggling and distribution, religious institutions, child care, and domestic work.[7]

In 2020, the National Human Trafficking Hotline received a total of 51,667 substantive tip reports regarding human trafficking nationwide.[8]

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[1] Section 787.06(2)(d), F.S.
[2] Commercial sexual activity means any prostitution, lewdness, or assignation offense or attempt to commit such an offense, and includes a sexually explicit performance and the production of pornography. Section 787.06(2)(b), F.S.
[3] Section 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S. Section 787.06(2)(a), F.S., defines coercion to include using or threatening to use force against a person; restraining, isolating, or confining a person without lawful authority and against his or her will, or threatening to do so; using lending or other credit methods to establish a debt by a person when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or services is not applied toward the liquidation of the debt; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, other immigration document, or government identification document; causing or threatening to cause financial harm; enticing or luring a person by fraud or deceit; or providing a Schedule I or II controlled substance to a person for the purpose of exploiting that person.
[4] Section 787.06(3)(a)1., (c)1., (e)1., (f)1., and (g), F.S.
[5] Section 787.06(3)(g), F.S., which also specifies that for purposes of this offense, the terms mentally defective and mentally incapacitated person mean the same as defined in s. 794.011(1), F.S.
[6] Section 794.011(1)(a), F.S., defines "mentally defective" to mean a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. Section 794.011(1)(b), F.S., defines "mentally incapacitated" to mean temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.
[7] These reports were made by phone calls, texts, webchats, emails, or online. U.S. Department of State, Federal Response to Human Trafficking, *About Human Trafficking*, https://www.state.gov/humantrafficking-about-human-trafficking/#profile (last visited Jan. 27, 2022).
[8] National Human Trafficking Hotline, *2020 National Hotline Annual Report*, https://humantraffickinghotline.org/resources/2020-national-hotline-annual-report (last visited Jan. 27, 2022).

Statewide Council on Human Trafficking

The Council, established within the Department of Legal Affairs (DLA), is tasked with:

- Developing recommendations for human trafficking victim programs and services, including certification criteria for safe houses and foster homes.
- Making recommendations for apprehending and prosecuting traffickers.
- Annually holding a statewide policy summit.
- Working with the DCF to create and maintain an inventory of human trafficking programs and services in each county.
- Developing policy recommendations that advance the duties of the council and further the efforts to combat human trafficking in Florida.[9]

Membership on the Council includes:

- The Attorney General, or a designee, serving as chair.
- The Secretary of the DCF, or a designee, serving as vice chair.
- The State Surgeon General, or a designee.
- The Secretary of the Agency for Health Care Administration, or a designee.
- The executive director of the Department of Law Enforcement (FDLE), or a designee.
- The Secretary of the Department of Juvenile Justice, or a designee.
- The Commissioner of Education, or a designee.
- One member of the Senate appointed by the President of the Senate.
- One member of the House of Representatives appointed by the Speaker of the House of Representatives.
- An elected sheriff appointed by the Attorney General.
- An elected state attorney appointed by the Attorney General.
- Two members appointed by the Governor, and two members appointed by the Attorney General, who have professional experience to assist the Council in the development of care and treatment options for human trafficking victims.[10]

Direct-Support Organizations

A direct-support organization (DSO) is a non-profit organization authorized by statute to carry out specific tasks in support of a public entity or public cause. The function and purpose of a DSO is detailed in its enacting statute and the contract with the agency the DSO was created to support.[11]

In 2014, the Legislature created s. 20.058, F.S., establishing transparency and reporting requirements for DSOs.[12] Each DSO is required to submit, by August 1 of each year, specified information to the agency it was created to support.[13] A contract between an agency and a DSO

[9] Section 16.617, F.S.
[10] *Id*.
[11] Some examples of other DSOs may be found in ss. 14.29(9)(a), 267.1732, and 258.015(1), F.S. *See also* Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2021), Rule 10.720(1)(b) and (d), available at https://flauditor.gov/pages/pdf_files/10_700.pdf (last visited Jan. 27, 2022).
[12] Chapter 14-96, s. 3, L.O.F.
[13] Section 20.058(1), F.S.

must be contingent upon the DSO submitting the required information to the agency and posting the information on the agency's website. The contract must include a provision for ending operations and returning state-issued funds if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If a DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate its contract with the DSO.[14] By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information submitted by each DSO, along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the DSO.[15] Any law creating or authorizing a DSO must provide that the authorization is repealed on October 1 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.[16]

DSO Supporting the Council – Florida Alliance to End Human Trafficking

In 2019, the Legislature required the DLA to establish a DSO, the Florida Alliance to End Human Trafficking (FAEHT), to provide assistance, funding, and support to the Council, and to assist in the fulfillment of the Council's purposes.[17] The DSO met for the first time in August 2019,[18] and it is statutorily required to be:

- A Florida not for profit corporation, incorporated under ch. 617, F.S., and approved by the Secretary of State;
- Organized and operated exclusively to solicit funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, property and funds; and make expenditures in support of the purposes specified under s. 16.618, F.S.; and
- Certified by the DLA, after review, to be operating in a manner consistent with its purposes and in the best interests of the state.[19]

The FAEHT's board of directors must be thirteen members, including:

- Two members appointed by the executive director of the FDLE, both of whom must have experience and knowledge in the area of human trafficking.
- Three members appointed by the Attorney General:
- One of whom must be a human trafficking survivor.
- One of whom must be a mental health expert.
- Four members appointed by the President of the Senate.
- Four members appointed by the Speaker of the House of Representatives.[20]

The FAEHT is authorized to contract with FIRST to develop required training. The contract with FIRST must provide that the DSO may terminate the contract if FIRST fails to meet its

[14] Section 20.058(4), F.S.
[15] Section 20.058(3), F.S.
[16] Section 20.058(5), F.S.
[17] Ch. 2019-152, L.O.F., codified as s. 16.618, F.S.
[18] Office of the Attorney General, *Statewide Council on Human Trafficking*, available at http://myfloridalegal.com/pages.nsf/main/8aea5858b1253d0d85257d34005afa72 (last visited Jan. 27, 2022).
[19] Section 16.618(1), F.S.
[20] Section 16.618(3), F.S.

obligations under s. 16.618(4), F.S. In addition, if FIRST ceases to exist, or if the contract between the FAEHT and FIRST is terminated, DLA must contract with another organization to develop the required training and information.[21]

FIRST, which is managed by the Pasco County Sheriff's Office, is designed to train public safety leaders.[22] Section 16.618(4), F.S., requires FIRST to develop training focused on detecting human trafficking, best practices for reporting human trafficking, and the interventions and treatment for human trafficking survivors. In developing the training, FIRST must consult with law enforcement agencies, human trafficking survivors, industry representatives, tourism representatives, and other interested parties and conduct research to determine the reduction in recidivism attributable to the education of the harms of human trafficking for first-time offenders.[23] The training has been developed and can currently be accessed online.[24]

Firesafety Inspectors

In Florida, a firesafety inspector is a person who holds a current and valid Fire Safety Inspector Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services (DFS) under s. 633.216, F.S., and who is officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of Florida or any county, municipality, or special district with fire safety responsibilities.[25]

Subject to a person meeting minimum qualifications, the Division of State Fire Marshal, Bureau of Firefighter Standards and Training issues certifications for Firesafety Inspector I and Firesafety Inspector II.[26] A Firesafety Inspector Certificate of Compliance is valid for four years from the date of its issuance, and certification renewal is subject to completing an application for renewal and meeting the requirements for renewal as established or adopted by the DFS rule or under ch. 633, F.S., which must include completion of at least 54 hours of continuing education during the preceding four year period or successfully passing an examination established by the DFS.[27]

Firesafety inspectors are typically responsible for inspections, re-inspections, and change-of-occupancy inspections in both new building construction and existing building construction for a variety of buildings and structures. Other duties may include, but are not limited to, ensuring fire safety equipment is installed and maintained properly and that firefighting, fire protection, and all other fire safety requirements are fulfilled in accordance with the Florida Fire Prevention

[21] Section 16.618(4)(a), F.S.
[22] F1RST, Florida's Forensic Institute for Research, Security, & Tactics, available at https://www.floridafirsttraining.org/#/home (last visited Jan. 18, 2022).
[23] Section 16.618(4)(b), F.S.
[24] Section 16.618(4)(b), F.S. *See also* Florida Alliance to End Human Trafficking, available at https://fateht.vidcert.com/register (last visited Jan. 18, 2022).
[25] Section 633.102(12), F.S.
[26] *See* s. 633.216(2), F.S.; Bureau of Fire Standards and Training, Division of State Fire Marshal, *Firesafety Inspector I Certification* (Jun. 8, 2021), available at https://www.myfloridacfo.com/division/sfm/bfst/Documents/FiresafetyInspectorI.pdf; and Bureau of Fire Standards and Training, Division of State Fire Marshal, *Firesafety Inspector II Certification* (Sept. 26, 2012), available at https://www.myfloridacfo.com/division/sfm/bfst/Documents/FiresafetyInspectorII.pdf (all sites last visited on Jan. 28, 2022).
[27] Section 633.216(4), F.S., and Rules 69A-39.003, 69A-39.005, and 69A-39.009, F.A.C.

Code, Florida Administrative Codes, county ordinances, and other adopted standards.[28] Due to their unique position of regularly inspecting buildings, firesafety inspectors may be able to detect and report human trafficking if properly trained in recognizing common indicators of human trafficking.

Licensed Foster Care

Foster home placements are intended to provide a temporary, safe place to live until a child can be reunited with his or her family, an adoptive family is identified, or other permanency is achieved. Section 409.175(2)(e), F.S., defines a "family foster home" as a private residence in which children who are unattended by a parent or legal guardian are provided 24-hour care. Such homes include emergency shelter family homes and specialized foster homes for children with special needs. A family foster home does not include an adoptive home which has been approved by the DCF or by a licensed child-placing agency for children placed for adoption.[29]

The recruitment, training, and licensing of foster parents is conducted by 18 community-based care agencies that maintain contracts with the DCF.[30] The total number of children placed in a family foster home must be based on the needs of each child in care; the ability of the foster family to meet the individual needs of each child, including any adoptive or biological children or young adults remaining in foster care living in the home; the amount of safe physical plant space; the ratio of active and appropriate adult supervision; and the background, experience, and skill of the family foster parents.[31] Foster parents are responsible for the care and well-being of the child, including maintaining their health, safety, and best interests and encouraging emotional and developmental growth. Following placement, a foster child should be closely monitored by a case worker, who provides support and additional training related to special needs.[32]

In 2019, Florida moved to a system of foster home licensing that consisted of five distinct levels:
- Level I: Child-Specific Foster Home.
- Level II: Non-Child Specific Foster Home.[33]
- Level III: Safe Foster Home for Victims of Human Trafficking.
- Level IV: Therapeutic Foster Home.

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[28] *See* Orange County Government Fire Rescue Department, *Fire Inspector I Fire Inspector Recruit*, available at https://www.orangecountyfl.net/Portals/0/Library/Employment-Volunteerism/docs/Fire%20Inspector%20I-CERT.pdf; *See also* the Villages Fire Rescue Department, *Currently Recruiting for Fire Inspector*, https://www.myfloridacfo.com/campaigns/firecollege/VillagesInsp.pdf (all sites last visited Jan. 28, 2022).

[29] Section 409.175(2)(e), F.S.

[30] The DCF, *Lead Agency Map*, available at https://www.myflfamilies.com/service-programs/community-based-care/lead-agency-map.shtml. The DCF terminated the contract with Eckerd Connects for Circuit 6 and Family Support Services of North Florida took over on January 1, 2022. Eckerd Connects will carry out its contract until it expires June 30, 2022. WFLA, *DCF, Eckerd Connects ending child welfare services contracts in 3 Tampa Bay counties*, available at https://www.wfla.com/news/local-news/dcf-eckerd-connects-end-child-welfare-services-in-3-tampa-bay-counties/; WUSF Public Media, *Family Support Services of North Florida will fully take over on January 1, 2022, Nov. 30, 2021*, available at https://wusfnews.wusf.usf.edu/health-news-florida/2021-11-29/state-selects-replacement-for-eckerd-connects-to-run-foster-care-in-pinellas-pasco| (all sites last visited Jan. 27, 2022).

[31] Section 409.175(3)(a) and (b), F.S., provides that the DCF may grant a capacity waiver in certain instances.

[32] *See* s. 409.1415(2), F.S., for specific roles and responsibilities of foster parents.

[33] Previously "Traditional" foster homes are now Level II.

- Level V: Medical Foster Home.[34]

Level I: Child-Specific Foster Home

A child specific licensed foster home is a new licensure type designed for relatives and nonrelatives who have an existing relationship with the child for whom they are seeking licensure. When a child is not able to safely remain at home with their parents, a family or like-family member who is willing and able to provide care for the child, is the next best alternative.[35]

Level II: Non-Child Specific Foster Home

A non-child specific licensed foster home is identified when placement with a relative or nonrelative caregiver is not possible. This licensure type is available to individuals in the community who may be interested in fostering.[36]

Level III: Safe Foster Home for Victims of Human Trafficking

Safe foster home means a foster home certified by the DCF to care for sexually exploited children.[37] This level of licensure is for individuals interested in providing a safe and stable environment for victims of human trafficking.[38] Florida law defines "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining,[39] purchasing, patronizing, procuring, or obtaining[40] another person for the purpose of exploitation of that person.[41] In Florida, any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking for labor or services, or commercial sexual activity, commits a crime.[42]

In addition to meeting standard licensing requirements, safe foster homes meet certification requirements which include, in summary:

- Use strength-based and trauma-informed approaches to care;
- Serve exclusively one sex;
- Group child victims of commercial sexual exploitation by age or maturity level;
- Care for child victims of commercial sexual exploitation in a matter that separates those children from children with other needs;

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[34] The DCF, *Levels of Foster Care Licensure*, available at https://www.myflfamilies.com/service-programs/foster-care/levels.shtml (hereinafter cited as "Levels of Foster Care Licensure"); Florida FAPA, *Become a Foster Parent*, available at https://floridafapa.org/become-a-foster-parent/ (all sites last visited January 27, 2022).
[35] *Id*.
[36] *Id*.
[37] Section 409.1678(1), F.S.
[38] Levels of Foster Care Licensure.
[39] Section 787.06(2)(f), F.S., provides "maintain" means, in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type service. Section 787.06(2)(h), F.S., defines "services" as any act committed at the behest of, under the supervision of, or for the benefit of another, including forced marriage, servitude, or the removal of organs.
[40] Section 787.06(2)(g), F.S., provides "obtain" means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or secure performance thereof. Section 787.06(2)(e), F.S., provides "labor" means work of economic or financial value.
[41] Section 787.06(2)(d), F.S.
[42] Section 787.06(3), F.S

- Have awake staff on duty 24 hours a day;
- Provide appropriate security though facility design, hardware, technology, staffing, and sitting; and
- Meet other criteria established by DCF rule.

There are currently 18 children who are placed in a safe foster home.

Level IV: Therapeutic Foster Home

This level of licensure is for caregivers who have received specialized training to care for a wide variety of children and adolescents who may have significant emotional, behavioral, or social needs. As a therapeutic foster parent, individualized care is provided in the home by the foster parent to ensure a child receives the appropriate level of care in the least restrictive setting.[43]

Level V: Medical Foster Home

This licensure type is for caregivers who have received specialized training to provide care for children and adolescents with chronic medical conditions. Medical foster parents enable children from birth through age 20 with medically-complex conditions whose parents are unable to care for them in their own homes, to live and receive care in a foster home rather than in hospitals or other facility settings.[44]

Training Requirements for Foster Placement

Under s. 409.175, F.S., in order to provide improved services to children, the DCF is required to provide or cause to be provided preservice training for prospective foster parents and inservice training for foster parents who are licensed and supervised by the DCF.[45]

Except in limited circumstances,[46] as a condition of licensure, foster parents are required to successfully complete preservice training. The preservice training must be uniform statewide and include, but not be limited to, such areas as:

- Orientation regarding agency purpose, objectives, resources, policies, and services;
- Role of the foster parent as a treatment team member;
- Transition of a child into and out of foster care;
- Management of difficult child behavior that can be intensified by placement, by prior abuse or neglect, and by prior placement disruptions;
- Prevention of placement disruptions;
- Care of children at various developmental levels;
- Effects of foster parenting on the family of the foster parent; and
- Information about and contact information for the local mobile response team as a means for addressing a behavioral health crisis or preventing placement disruption.[47]

[43] *Id*.
[44] *Id*.
[45] Section 409.175(14), F.S.
[46] Rule 65C-45.002, F.A.C. provides that, in limited instances, applicants who have completed a DCF approved preservice training curriculum within the last 5 years or who completed training in another state are exempt from completing certain pre-training requirements.
[47] Section 409.175(14)(b), F.S.

Rule 65C-45.002, F.A.C., provides for additional training topics, including:

- The reasonable and prudent parenting standards, pursuant to ss. 39.4091 and 409.145, F.S., and the balance of normalcy for children in care and their safety;
- Legal rights, roles, responsibilities, and expectations of foster parents;
- The social and emotional development of children and youth;
- Agency policies, services, laws, and regulations;
- Development of life skills for teens in care;
- The caregiver's role in supporting and promoting the educational progress of the child;
- Trauma-informed care, including recognizing the signs, symptoms, and triggers of trauma;
- The Multiethnic Placement Act and the Americans with Disabilities Act; and
- The administration of psychotropic Medication.

In addition, foster parents must receive 24 hours of specialized training in commercial sexual exploitation prior to receiving certification to care for sexually exploited children or young adults,[48] which includes, but is not limited to:

- The needs of child victims of commercial sexual exploitation;
- The effects of trauma and sexual exploitation; and
- How to address those needs using strength-based and trauma-informed approaches.[49]

Specifically, the intensive training on commercially exploited children must include:

- Distinctions between sexual abuse, sexual exploitation, and sexual trafficking;
- Language and sensitivity;
- Pathways to entry into sexual exploitation and sexual trafficking;
- Exploiters;
- Tactics of coercion and control;
- Impact of sexual exploitation;
- Stockholm Syndrome and trauma bonding;
- Identifying victims;
- Meeting the needs of victims;
- Trauma triggers;
- Trauma-informed care;
- Vicarious trauma and self-care strategies;
- Behavior management activities; and
- Intersection of labor trafficking and commercial sexual exploitation.[50]

In consultation with foster parents, each region or lead agency is required to develop a plan for making the completion of the required training as convenient as possible for potential foster parents that includes strategies such as providing training in nontraditional locations and at nontraditional times. The plan must be revised at least annually and must be included in the information provided to each person applying to become a foster parent.[51]

[48] Rule 65C-45.004(2), F.A.C.
[49] Section 409.1678(2)(e), F.S.
[50] Rule 65C-45.004(4), F.A.C.
[51] *Id*.

Before licensure renewal, each foster parent must successfully complete inservice training. Periodic time-limited training courses must be made available for selective use by foster parents. Such inservice training must include subjects affecting the daily living experiences of foster parenting as a foster parent. For a foster parent participating in the required inservice training, the DCF is required to reimburse such parent for travel expenditures and, if both parents in a home are attending training or if the absence of the parent would leave the children without departmentally approved adult supervision, the DCF is required to provide for child care or reimburse the foster parents for child care costs incurred by the parents for children in their care.[52]

Agency Staff

The term "agency" means a residential child-caring agency or child placing agency.[53] A "residential child-caring agency" means that any person, corporation, or agency, public or private, other than the child's parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged.[54] A "child-placing agency" means any person, corporation, or agency, public or private, other than the parent or legal guardian of the child or an intermediary acting pursuant to ch. 63, F.S., that receives a child for placement and places or arranges for the placement of a child in a family foster home, residential child-caring agency, or adoptive home.[55]

Training for Agency Staff

Currently, only selected agency staff receives training on human trafficking. Child protective investigators and case managers, and their supervisors, must receive a minimum of six hours of specialized training on human trafficking approved by the DCF prior to accepting cases with children or young adult victims of human trafficking.[56] The specialized training in human trafficking is required to be conducted by a DCF-approved trainer and consist of:

- Three hours of live training pertaining to human trafficking;
- One hour of live training pertaining to Legislative language addressing human trafficking; and
- Two hours of additional live training on specialized topics related to human trafficking of children.

Each year child protective investigators and case managers must receive a minimum of one hour of ongoing training per quarter on human trafficking or related topics in order to continue receiving cases with child or young adult victims of human trafficking.

[52] *Id*.
[53] Section 409.175(2)(a), F.S.
[54] Section 409.175(2)(l), F.S.
[55] Section 409.175(2)(d), F.S.
[56] Rule 65C-43.005, F.A.C.

Any professional administering the Human Trafficking Screening Tool (HTST) must meet the training requirements set forth in Rule 65C-43.005, F.A.C., and must have completed the DCF approved training for the HTST prior to administering the tool.[57]

Similar to foster parents of safe foster homes, staff of safe houses must also complete intensive training.[58]

III. Effect of Proposed Changes:

The bill requires the FIRST to develop training specifically for firesafety inspectors related to recognizing and reporting human trafficking, and allows for such training to be eligible for the continuing education credits required under s. 633.216(4), F.S., for a firesafety inspector to renew his or her certification.

The bill also amends s. 16.618, F.S., to remove obsolete language which requires FIRST to develop human trafficking training for statewide dissemination no later than October 1, 2019 as such training has been developed and is currently available online. Under the bill, FIRST is still required to make such training available for statewide dissemination.

The bill also amends s. 409.175, F.S., to require foster parents and all agency staff to complete preservice and inservice training related to recognizing, preventing, and reporting human trafficking. The preservice training must cover the following topics, at a minimum:

- Basic information on human trafficking, such as understanding relevant terminology and different types of human trafficking;
- Information on children who are at risk of human trafficking; and
- Actions that may be taken to prevent children from becoming victims of domestic violence.

The bill requires the above-described inservice training to be completed by foster parents before licensure renewal and by agency staff during each full year of employment. The DCF will be required to develop the relevant training materials or outsource to an agency approved trainer.

Section 63.092, F.S., is reenacted for the purpose of incorporating the amendment made to s. 409.175, F.S., by the act.

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[57] Rule 65C-45.001, F.A.C.
[58] Section 409.1678(2)(e), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on the DSO by requiring it to develop new training specifically for firesafety inspectors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 16.618 and 409.175 of the Florida Statutes.

This bill reenacts section 63.092 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

940686

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Children, Families, and Elder Affairs (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 19 - 40
and insert:
Section 1. Paragraphs (b), (c), (d), and (e) of subsection (4) of section 16.617, Florida Statutes, are redesignated as paragraphs (c), (d), (e), and (f), respectively, and paragraph (b) is added to that subsection, to read:
16.617 Statewide Council on Human Trafficking; creation; membership; duties.—

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(4) DUTIES.—The council shall:

(b) Assess the frequency and extent to which social media platforms are used to assist, facilitate, or support human trafficking within the state, establish a process to detect such use on a consistent basis, and make recommendations on how to stop, reduce, or prevent social media platforms from being used for such purposes. To the extent these objectives can be achieved under existing laws, the Council must implement a system to do so without undue delay.

Section 2. Paragraph (b) of subsection (4) of section 16.618, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

16.618 Direct-support organization.—

(4)

(b) Recognizing that this state hosts large-scale events, including sporting events, concerts, and cultural events, which generate significant tourism to this state, produce significant economic revenue, and often are conduits for human trafficking, the institute must develop training that is available ~~ready~~ for statewide dissemination ~~by not later than October 1, 2019~~.

1. Training must focus on detecting human trafficking, best practices for reporting human trafficking, and the interventions and treatment for survivors of human trafficking.

2. In developing the training, the institute shall consult with law enforcement agencies, survivors of human trafficking, industry representatives, tourism representatives, and other interested parties. The institute also must conduct research to determine the reduction in recidivism attributable to the education of the harms of human trafficking for first-time

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offenders.

(f) The direct-support organization shall develop training for firesafety

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

And the title is amended as follows:

Delete lines 2 - 6

and insert:

An act relating to human trafficking; amending s. 16.617; providing the Statewide Council on Human Trafficking with an additional duty; amending s. 16.618, F.S.; deleting an obsolete provision; requiring the direct support organization of the Statewide Council on Human Trafficking to develop certain training for firesafety inspectors;

By Senator Bradley

5-01583-22 20221600__

A bill to be entitled

An act relating to treatment of defendants adjudicated incompetent to stand trial; amending s. 916.13, F.S.; providing that a forensic client who is being held in a jail awaiting admission to a Department of Children and Families facility and who is likely to regain competence to proceed may receive treatment at any facility designated by the department; providing an effective date.

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

Section 1. Subsection (2) of section 916.13, Florida Statutes, is amended to read:

916.13 Involuntary commitment of defendant adjudicated incompetent.—

(2) A defendant who has been charged with a felony and who has been adjudicated incompetent to proceed due to mental illness, and who meets the criteria for involuntary commitment under this chapter, may be committed to the department, and the department shall retain and treat the defendant. For a forensic client who is held in a jail awaiting admission to a facility of the department, and who is likely to regain competence to proceed in the foreseeable future, restoration treatment may be provided at any facility deemed appropriate by the department secretary.

(a) Immediately after receipt of a completed copy of the court commitment order containing all documentation required by the applicable Florida Rules of Criminal Procedure, the

department shall request all medical information relating to the defendant from the jail. The jail shall provide the department with all medical information relating to the defendant within 3 business days after receipt of the department's request or at the time the defendant enters the physical custody of the department, whichever is earlier.

(b) Within 6 months after the date of admission and at the end of any period of extended commitment, or at any time the administrator or his or her designee determines that the defendant has regained competency to proceed or no longer meets the criteria for continued commitment, the administrator or designee shall file a report with the court pursuant to the applicable Florida Rules of Criminal Procedure.

(c) A competency hearing must be held within 30 days after the court receives notification that the defendant is competent to proceed or no longer meets the criteria for continued commitment. The defendant must be transported to the committing court's jurisdiction for the hearing. If the defendant is receiving psychotropic medication at a mental health facility at the time he or she is discharged and transferred to the jail, the administering of such medication must continue unless the jail physician documents the need to change or discontinue it. The jail and department physicians shall collaborate to ensure that medication changes do not adversely affect the defendant's mental health status or his or her ability to continue with court proceedings; however, the final authority regarding the administering of medication to an inmate in jail rests with the jail physician.

Section 2. This act shall take effect July 1, 2022.

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 Committee on Children, Families, and Elder Affairs

BILL:	SB 1600
INTRODUCER:	Senator Bradley
SUBJECT:	Treatment of Defendants Adjudicated Incompetent to Stand Trial
DATE:	January 31, 2022 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Pre-meeting**
2.			AHS	
3.			AP	

I. Summary:

SB 1600 provides the Secretary of the Department of Children and Families (the DCF) with the ability to designate facilities where the DCF may provide competency restoration treatment to criminal defendants who:

- Have been charged with a felony;
- Have been deemed incompetent to stand trial;
- Are being held in a jail awaiting admission to a DCF-run facility; and
- Are likely to regain competence to proceed in the foreseeable future.

Facilities designated by the Secretary under the bill will be in addition to existing state-run treatment facilities.

The bill is unlikely to have an impact on the DCF and may have a positive fiscal impact on private sector entities. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Competency Restoration Treatment and Forensic Facilities

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues, an intellectual disability, or autism and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed[1] and offenders who are adjudicated not guilty by

[1] "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." Section 916.12(1), F.S.

reason of insanity may be involuntarily committed to state civil and forensic treatment facilities by the circuit court,[2] or in lieu of such commitment, may be released on conditional release[3] by the circuit court if the person is not serving a prison sentence.[4] Conditional release is release into the community accompanied by outpatient care and treatment. The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.[5]

A civil facility is, in part, a mental health facility established within the DCF or by contract with the DCF to serve individuals committed pursuant to ch. 394, F.S., and defendants pursuant to ch. 916, F.S., who do not require the security provided in a forensic facility.[6]

A forensic facility is a separate and secure facility established within the DCF or the APD to service forensic clients committed pursuant to ch. 916, F.S..[7]

State Forensic System – Mental Health Treatment for Criminal Defendants

If a defendant is suspected of being incompetent, the court, counsel for the defendant, or the state may file a motion for examination to have the defendant's cognitive state assessed.[8] If the motion is well-founded, the court will appoint experts to evaluate the defendant's cognitive state. The defendant's competency is then determined by the judge in a subsequent hearing.[9] If the defendant is found to be competent, the criminal proceeding resumes.[10] If the defendant is found to be incompetent to proceed, the proceeding may not resume unless competency is restored.[11]

Sections 916.13 and 916.15, F.S., set forth the criteria under which a court may involuntarily commit a defendant charged with a felony who has been adjudicated incompetent to proceed, or who has been found not guilty by reason of insanity. If a person is committed pursuant to either statute, the administrator at the commitment facility must submit a report to the court:

- No later than 6 months after a defendant's admission date and at the end of any period of extended commitment; or
- At any time the administrator has determined that the defendant has regained competency or no longer meets the criteria for involuntary commitment.[12]

State Treatment Facilities

State treatment facilities are the most restrictive settings for forensic services. The forensic facilities provide assessment, evaluation, and treatment to the individuals who have mental

[2] Sections 916.13, 916.15, and 916.302, F.S.
[3] Conditional release is release into the community accompanied by outpatient care and treatment. Section 916.17, F.S.
[4] Section 916.17(1), F.S.
[5] Section 916.16(1), F.S.
[6] Section 916.106(4), F.S.
[7] Section 916.106(10), F.S. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from non-forensic residents.
[8] Rule 3.210, Fla.R.Crim.P.
[9] *Id.*
[10] Rule 3.212, Fla.R.Crim.P.
[11] *Id.*
[12] Section 916.13(2)-(3), F.S.

health issues and who are involved with the criminal justice system.[13] In addition to general psychiatric treatment approaches and environment, specialized services include:

- Psychosocial rehabilitation;
- Education;
- Treatment modules such as competency, anger management, mental health awareness, medication, and relapse prevention;
- Sexually transmitted disease education and prevention;
- Substance abuse awareness and prevention;
- Vocational training;
- Occupational therapies; and
- Full range of medical and dental services.[14]

Mental Health Treatment Facilities

The DCF runs three mental health treatment facilities: the Florida State Hospital (FSH), the Northeast Florida State Hospital (NEFSH), and the North Florida Evaluation and Treatment Center (NFETC).[15] The DCF also contracts with a private provider to operate three additional facilities that provide competency restoration training. The facilities are the South Florida Evaluation and Treatment Center, South Florida State Hospital, and Treasure Coast Treatment Facility which are operated by Wellpath Recovery Solutions (Wellpath).[16]

The FSH, located in Chattahoochee, Florida, is a state psychiatric hospital that provides civil and forensic services.[17] The hospital's civil services are comprised of the following three units with a total of 490 beds:

- Civil Admissions evaluates and provides psychiatric services primarily for newly admitted acutely ill male and female civil residents between the ages of 18 and 64;
- Civil Transition Program serves civil residents and individuals previously in a forensic setting who no longer need that level of security and with court approval, may reside in a less restrictive civil environment; and
- Specialty Care Program serves a diverse population of individuals requiring mental health treatment and services, including civil and forensic step downs.[18]

The hospital's forensic services section evaluates and treats persons with felony charges who have been adjudicated incompetent to stand trial or not guilty by reason of insanity. Forensic services is comprised of the following two units;

- Forensic Admission is a maximum security facility that assesses new admissions, provides short-term treatment and competency restoration for defendants found incompetent to stand trial, and behavior stabilization for persons committed as not guilty by reason of insanity; and

[13] The DCF, *About Adult Forensic Mental Health (AFMH)*, available at https://www.myflfamilies.com/service-programs/samh/adult-forensic-mental-health/forensic-facilities.shtml (last visited January 28, 2022).
[14] Id.
[15] The DCF, *State Mental Health Treatment Facilities*, available at https://www.myflfamilies.com/service-programs/mental-health/state-mental-health-treatment-facilities.shtml (last visited January 28, 2022).
[16] *Id*.
[17] The DCF, *Florida State Hospital Services and Programs*, available at https://www.myflfamilies.com/service-programs/mental-health/fsh/services-programs.shtml (last visited January 28, 2022).
[18] *Id*.

- Forensic Central provides longer-term treatment and serves a seriously and persistently mentally ill population who are incompetent to proceed or not guilty by reason of insanity.[19]

The NEFSH, located in Macclenny, Florida, is a state psychiatric hospital that provides civil services.[20] The facility operates 633 beds and is the largest state-owned provider of psychiatric care and treatment to civilly committed individuals in Florida. Referrals are based upon community and regional priorities for admission.[21]

The NFETC, located in Gainesville, Florida, is an evaluation and treatment center for people with mental illnesses who are involved in the criminal justice system.[22] The center has 193 beds open for the evaluation and treatment of residents who have major mental disorders. These residents are either incompetent to proceed to trial or have been judged to be not guilty by reason of insanity.[23]

As of January 13, 2022, there are a total of 548 individuals on the waitlist for forensic beds at the state's mental health facilities.[24] Of these, 492 individuals have been on the waitlist for more than 15 days.[25] Individuals spend 59 days on the waitlist on average.[26]

Jail-Based Forensic Diversion

In addition to state-run forensic facilities, some other states currently operate jail-based treatment programs for individuals deemed incompetent to proceed.

In 2011, the state of Georgia contracted with a university forensic program to develop a 16-bed, jail-based diversion pilot program.[27] The program was developed as a means of addressing a waitlist for admission to a state hospital forensic unit which had grown to more than 60 days.[28] The program opened in October 2011, and 16 defendants were admitted to the unit, immediately shortening the wait time for inpatient hospitalization to less than 20 days.[29] Because almost all competency evaluations were performed by the university forensic service, once an evaluator deemed a defendant incompetent to proceed, that defendant could be transferred to the unit and restoration services initiated before the court made a formal finding of incompetence.[30] As a

[19] *Id*.
[20] The DCF, *State Mental Health Treatment Facilities North Florida Evaluation and Treatment Center, About the Center*, available at http://www.myflfamilies.com/service-programs/mental-health/nefsh/about.shtml (last visited January 28, 2022).
[21] *Id*.
[22] *See* the DCF, *State Mental Health Treatment Facilities North Florida Evaluation and Treatment Center (NFETC)*, available at https://www.myflfamilies.com/service-programs/mental-health/nfetc/about.shtml (last visited January 28, 2022).
[23] *Id*.
[24] January 29, 2022 E-mail from John Paul Fiore, Legislative Affairs Director, the DCF. (on file with the Senate Committee on Children, Families, and Elder Affairs).
[25] *Id*.
[26] *Id*.
[27] The Journal of the American Academy of Psychiatry and the Law, *A Jail-Based Competency Restoration Unit as a Component of a Continuum of Restoration Services*, November 2019, available at http://jaapl.org/content/early/2019/11/21/JAAPL.003893-20#sec-1 (last visited January 29, 2022).
[28] *Id*.
[29] *Id*.
[30] *Id*.

result, restoration could often be accomplished without the court ever making a formal finding of incompetence.[31]

Since 2013, Colorado's Office of Behavioral Health[32] has contracted with Wellpath to operate a jail-based diversion program, known as the RISE Program, in addition to mental health treatment facilities.[33] Wellpath was awarded the initial contract through a competitive procurement process in 2013 and subsequent contract expansions in 2015 and 2018.[34] The program is divided between a county detention facility and a jail and currently provides 114 total patient beds.[35]

Wellpath also operates the Kern County Admission, Evaluation, and Stabilization Center (AES) in Bakersfield, California.[36] The Kern County AES is a 60-bed jail-based competency evaluation and restoration program established through a collaboration between the Kern County Sheriff's Office, California Department of State Hospitals (DSH), and Wellpath.[37] Wellpath was awarded the contract through a competitive procurement process in 2018.[38]

III. Effect of Proposed Changes:

The bill amends s. 916.13, F.S., permitting a forensic client who has been deemed incompetent to proceed and who is being held in a jail awaiting admission to a facility of the DCF to obtain competency restoration treatment at any facility the DCF Secretary deems appropriate. The bill limits treatment at such facilities to defendants who are likely to regain competence in the foreseeable future.

The bill will alleviate the waitlist for forensic beds at existing DCF-run facilities by designating new facilities which the DCF can use to place individuals deemed incompetent to stand trial.

The DCF states that because "facility" is not specifically defined as a "forensic" or "civil" facility under the bill, this will provide flexibility for potential placement options, which will allow timely access to services and appropriate care.[39] The DCF anticipates that the proposed language would also provide flexibility in identifying and securing community-based or jail-based competency restoration treatment, for individuals who can be served in a less restrictive environment.[40]

The bill is effective July 1, 2022.

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[31] *Id*.
[32] The Office of Behavioral Health is Colorado's state agency handling behavioral health matters.
[33] The Colorado Department of Human Services, *Request for Applications: Jail-Based Program for Individuals Court Ordered to Forensic Evaluation and Treatment*, p. 3-5 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter, "The Colorado RFP).
[34] Wellpath Recovery Solutions, *RISE Program at Arapahoe County Detention Center*, available at https://wellpathcare.com/rise-program-at-arapahoe-county-detention-center/ (last visited January 28, 2022).
[35] The Colorado RFP at p. 4.
[36] Wellpath Recovery Solutions, *Kern County AES Center*, available at https://wellpathcare.com/kern-county-aes-center/ (last visited January 28, 2022).
[37] *Id*.
[38] *Id*.
[39] The DCF, *Agency Analysis of SB 1600*, p. 2, January 8, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).
[40] *Id*.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive fiscal impact on private entities with whom the DCF contracts to operate jail-based treatment programs under the bill.

C. Government Sector Impact:

The DCF anticipates the bill will have no fiscal impact to state government.[41]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 916.13 of the Florida Statutes.

[41] *Id*. at p. 4.

IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Children, Families, and Elder Affairs (Bradley) recommended the following:

Senate Amendment (with title amendment)

Before line 13
insert:
Section 1. Subsection (10) of section 916.106, Florida Statutes, is amended to read:
916.106 Definitions.—For the purposes of this chapter, the term:
(10) "Forensic facility" means a separate and secure facility established within the department or agency to serve

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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 who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to this chapter from nonforensic residents. The term includes a mental health facility operated by a community mental health provider which may be colocated in a county jail and which is deemed appropriate by the department.

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

And the title is amended as follows:

Delete line 3

and insert:

incompetent to stand trial; amending s. 916.106, F.S.; revising the definition of the term "forensic facility"; amending s. 916.13, F.S.;

By Senator Garcia

37-01000B-22 20221708__

A bill to be entitled

An act relating to child welfare; amending s. 382.0255, F.S.; requiring the Department of Health to waive fees for certified copies of birth certificates issued to certain unaccompanied homeless youth and young adults; amending s. 409.1452, F.S.; revising requirements for required collaboration among the Board of Governors, the Florida College System, and the Department of Education in working with the Department of Children and Families to assist specified children and young adults; amending s. 409.1454, F.S.; revising legislative findings; revising eligibility and requirements for a certain driver education, licensure, and insurance program to include certain unaccompanied homeless youth; revising program operation and administration requirements; amending s. 743.067, F.S.; revising the definition of the term "unaccompanied homeless youth"; specifying certification criteria for unaccompanied homeless youth; authorizing certain unaccompanied homeless youth to use a specified form to receive birth certificates; authorizing health care providers to accept such form for certain purposes; authorizing certain unaccompanied homeless youth to consent to specified medical and other care; amending s. 1001.42, F.S.; requiring district school boards to provide cards that contain specified information to certain unaccompanied homeless youth; specifying requirements for the card; amending s. 1003.01, F.S.; revising the

definition of the term "children and youths who are experiencing homelessness"; defining the term "certified unaccompanied homeless youth"; requiring the Office of Program Policy Analysis and Government Accountability to conduct a specified study; specifying the scope of the study; requiring the study to include specified recommendations; requiring the office to consult with specified entities; requiring the office to submit a report on the study to the Legislature by a specified date; providing an effective date.

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

Section 1. Subsection (3) of section 382.0255, Florida Statutes, is amended to read:

382.0255 Fees.—

(3) Fees must ~~shall~~ be established by rule. However, until rules are adopted, the fees assessed pursuant to this section must ~~shall~~ be the minimum fees cited. The fees established by rule must be sufficient to meet the cost of providing the service. All fees must ~~shall~~ be paid by the person requesting the record, are due and payable at the time services are requested, and are nonrefundable, except that, when a search is conducted and no vital record is found, any fees paid for additional certified copies shall be refunded. The department may waive all or part of the fees required under this section for any government entity. The department shall waive all fees required under this section for a certified copy of a birth

certificate issued for an unaccompanied homeless youth certified under s. 743.067; for a young adult who is, or was at the time he or she reached 18 years of age, in the custody of the Department of Children and Families; for purposes of an inmate acquiring a state identification card before release pursuant to s. 944.605(7); and for a juvenile offender ~~who is~~ in the custody or under the supervision of the Department of Juvenile Justice and receiving services under s. 985.461.

Section 2. Section 409.1452, Florida Statutes, is amended to read:

409.1452 Collaboration with Board of Governors, Florida College System, and Department of Education to assist children and young adults who have been or are in foster care or are experiencing homelessness. ~~Effective July 1, 2013,~~ The Department of Children and Families shall work in collaboration with the Board of Governors, the Florida College System, and the Department of Education to help address the need for a focused and consistent campus-based ~~comprehensive~~ support structure ~~in the academic arena~~ to assist children and young adults who have been or continue to remain in the foster care system or who are experiencing homelessness to succeed in postsecondary education ~~in making the transition from a structured care system into an independent living setting~~. The State University System of Florida and the Florida College System shall provide postsecondary educational campus liaison ~~coaching~~ positions that will be integrated into Florida College System institutions' and university institutions' general support services structure to provide ~~current and former foster care~~ children and young adults who have been or continue to remain in the foster care system or

who are experiencing homelessness with dedicated, on-campus support. ~~The Department of Children and Families has the sole discretion to determine which state college or university will offer a campus coaching position, based on departmental demographic data indicating greatest need.~~ These campus liaison ~~coaching~~ positions must ~~shall~~ be employees of the selected educational institutions, and focused on supporting children and young adults who have been or continue to remain in the foster care system or who are experiencing homelessness. The Chancellors of the Florida College System and the Board of Governors shall report annually to the Department of Children and Families specific data, subject to privacy laws, about the children and young adults served by the campus liaisons ~~coaches~~, including academic progress, retention rates for students enrolled in the program, financial aid requested and received, and information required by the National Youth in Transition Database.

Section 3. Section 409.1454, Florida Statutes, is amended to read:

409.1454 Motor vehicle insurance and driver licenses for children in care and certified unaccompanied homeless youth.—

(1) The Legislature finds that the costs of driver education, licensure and costs incidental to licensure, and motor vehicle insurance for a child in out-of-home care or certain unaccompanied homeless youth certified under s. 743.067 after such child obtains a driver license create an additional barrier to engaging in normal age-appropriate activities and gaining independence and may limit opportunities for obtaining employment and completing educational goals. The Legislature

also finds that the completion of an approved driver education course is necessary to develop safe driving skills.

(2) To the extent that funding is available, the department shall establish a program to pay the cost of driver education, licensure and other costs incidental to licensure, and motor vehicle insurance for a child who has completed a driver education program and who is: ~~children~~

(a) In out-of-home care; or

(b) Certified under s. 743.067 as an unaccompanied homeless youth and who is a citizen of the United States or legal resident of this state ~~who have successfully completed a driver education program~~.

(3) If a caregiver, or an individual or not-for-profit entity approved by the caregiver, adds a child to his or her existing insurance policy, the amount paid to the caregiver or approved purchaser may not exceed the increase in cost attributable to the addition of the child to the policy.

(4) Payment must ~~shall~~ be made to eligible recipients in the order of eligibility until available funds are exhausted. If a child determined to be eligible reaches permanency status or turns 18 years of age, the program may pay for that child to complete a driver education program and obtain a driver license for up to 6 months after the date the child reaches permanency status or 6 months after the date the child turns 18 years of age. A child may be eligible to have the costs of and incidental to licensure paid if he or she demonstrates that such costs are creating barriers to obtaining employment or completing educational goals, if the child meets any of the following criteria:

(a) Is continuing in care under s. 39.6251;~~, or who~~

(b) Was in licensed care when the child reached 18 years of age and is currently receiving postsecondary education services and support under s. 409.1451(2); or

(c) Is an unaccompanied homeless youth certified under s. 743.067 who is a citizen of the United States or legal resident of this state and is:

1. Completing secondary education;

2. Employed at least part time;

3. Attending any postsecondary education program at least part time; or

4. Has a disability that precludes full-time work or education~~, may be eligible to have the costs of licensure and costs incidental to licensure paid if the child demonstrates that such costs are creating barriers for obtaining employment or completing educational goals~~.

(5) The department shall contract with a not-for-profit entity whose mission is to support youth aging out of foster care to develop procedures for operating and administering the program, including, but not limited to:

(a) Determining eligibility, including responsibilities for the child and caregivers.

(b) Developing application and payment forms.

(c) Notifying eligible children, caregivers, group homes, ~~and~~ residential programs, local educational agency liaisons for homeless children and youth, and governmental or nonprofit agencies that provide services to homeless children or youth of the program.

(d) Providing technical assistance to lead agencies,

providers, group homes, and residential programs to support removing obstacles that prevent children in foster care from driving.

(e) Publicizing the program, engaging in outreach, and providing incentives to youth participating in the program to encourage the greatest number of eligible children to obtain driver licenses.

Section 4. Section 743.067, Florida Statutes, is amended to read:

743.067 Certified unaccompanied homeless youths.—

(1) DEFINITION.—For purposes of this section, an "unaccompanied homeless youth" is an individual who is 16 years of age or older and is not in the physical custody of a parent or guardian, including a youth who has run away from home, who has been forced to leave his or her home, or whose parents have left the area and left the youth behind.

(2) CERTIFICATION.—An unaccompanied homeless youth may become certified if he or she is:

(a) Found by a school district's liaison for homeless children and youths to be an unaccompanied homeless youth eligible for services pursuant to the McKinney-Vento Homeless Assistance Act, 42 U.S.C. ss. 11431-11435; or

(b) Believed to qualify as an unaccompanied homeless youth, as that term is defined in the McKinney-Vento Homeless Assistance Act, by:

1. The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director's designee;

2. The director of a runaway or homeless youth basic center

or transitional living program funded by the United States Department of Health and Human Services, or the director's designee; or

3. A continuum of care lead agency, or its designee.

(3) ~~(2)~~ PROOF OF CERTIFICATION.—

(a) The State Office on Homelessness within the Department of Children and Families shall develop a standardized form that must be used by the entities specified in subsection (2) ~~(1)~~ to certify qualifying unaccompanied homeless youth. The front of the form must include the circumstances that qualify the youth; the date the youth was certified; and the name, title, and signature of the certifying individual. This section must be reproduced in its entirety on the back of the form.

(b) A certified unaccompanied homeless youth may use the completed form to:

1. Apply at no charge for an identification card issued by the Department of Highway Safety and Motor Vehicles pursuant to s. 322.051(9).

2. Receive a certified copy of his or her birth certificate at no charge under s. 382.0255.

(c) A health care provider may accept the completed form or the card issued under s. 1001.42 ~~written certificate~~ as proof of the minor's status as a certified unaccompanied homeless youth and may keep a copy of the form or card ~~certificate~~ in the youth's medical file.

(4) ~~(3)~~ REMOVAL OF DISABILITIES OF NONAGE.—A certified unaccompanied homeless youth may~~:~~

~~(a)~~ petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a

person not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.

(5) ~~(b)~~ MEDICAL AND OTHER CARE.—Notwithstanding s. 394.4625(1), a certified unaccompanied homeless youth may consent to medical care; ~~,~~ dental care; ~~,~~ behavioral health care services, including psychological counseling and treatment, psychiatric treatment, and substance abuse prevention and treatment services; ~~,~~ and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397 and any forensic medical examination for the purpose of investigating any felony offense under chapter 784, chapter 787, chapter 794, chapter 800, or chapter 827, for:

(a) ~~1.~~ Himself or herself; or

(b) ~~2.~~ His or her child, if the certified unaccompanied homeless youth is unmarried, is the parent of the child, and has actual custody of the child.

(6) ~~(4)~~ CONSTRUCTION.—This section does not affect the requirements of s. 390.01114.

Section 5. Present subsection (28) of section 1001.42, Florida Statutes, is redesignated as subsection (29), and a new subsection (28) is added to that section, to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(28) UNACCOMPANIED HOMELESS YOUTH.—Provide to each student who is an unaccompanied homeless youth certified under s. 743.067 a card that includes information on the rights and benefits for such youth, as well as the contact information for

the school district's liaison for homeless children and youths. The card must be similar in size to the student identification card issued to students in the district and include all of the following information:

(a) On the front of the card, the following information from the standardized form developed by the Department of Children and Families under s. 743.067(3):

1. The circumstances that qualify the youth.

2. The date the youth was certified.

3. The name, title, and signature of the certifying individual.

(b) On the back of the card, the following statement:

Section 743.067, Florida Statutes, provides that this certified youth may consent to medical care; dental care; behavioral health care services, including psychological counseling and treatment, psychiatric treatment, and substance abuse prevention and treatment services; and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397 and any forensic medical examination for the purpose of investigating any felony offense under chapter 784, chapter 787, chapter 794, chapter 800, or chapter 827, for himself or herself or his or her child, if the certified youth is unmarried, is the parent of the child, and has actual custody of the child.

Section 6. Subsection (12) of section 1003.01, Florida Statutes, is amended, and subsection (17) is added to that section, to read:

1003.01 Definitions.—As used in this chapter, the term:

(12) "Children and youths who are experiencing homelessness," for programs authorized under subtitle B, Education for Homeless Children and Youths, of Title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. ss. 11431 et seq., means children and youths who lack a fixed, regular, and adequate nighttime residence, and includes:

(a) Children and youths ~~who are~~ sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, travel trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals~~; or are awaiting foster care placement~~.

(b) Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(c) Children and youths ~~who are~~ living in cars, parks, public spaces, abandoned buildings, bus or train stations, or similar settings.

(d) Migratory children ~~who are~~ living in circumstances described in paragraphs (a)-(c).

(17) "Certified unaccompanied homeless youth" means a youth certified as an unaccompanied homeless youth pursuant to s. 743.067.

Section 7. (1) The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall conduct a study to evaluate the effectiveness of campus liaisons provided pursuant to s. 409.1452, Florida Statutes, and of local school districts' delivery of benefits and services required under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. ss. 11431-11435. The study's scope must include, but need not be limited to:

(a) Current use of liaisons by all colleges and universities, the number of children and young adults served by such liaisons, the type and prevalence of the services requested by such children and young adults, and the experiences of the students served by the liaisons.

(b) Local school districts' delivery of benefits and services to unaccompanied homeless youth eligible for services under s. 743.067, Florida Statutes, and the McKinney-Vento Homeless Assistance Act and school districts' adherence to provisions of the act, such as the:

1. Ability for an unaccompanied homeless youth to remain in his or her school of origin for the duration of the period the youth is experiencing homelessness and until the end of an academic year in which the youth obtains permanent housing, if remaining in the school of origin is determined to be in the youth's best interest.

2. Extent to which school district liaisons make best interest determinations by considering specific student-centered factors when determining the best school for an unaccompanied homeless youth.

3. Ability of unaccompanied homeless youth to receive transportation to the school of origin from the applicable

school district.

4. Prompt enrollment of an unaccompanied homeless youth in a school or classes while the school of origin arranges for the transfer of school and immunization records and other required enrollment documents to ensure compliance with s. 1003.21(1)(f), Florida Statutes.

5. Ability of an unaccompanied homeless youth to participate in all available education programs and extracurricular activities and receive any school services for which the youth meets all relevant eligibility criteria.

(2) The study must include recommendations for any changes needed to:

(a) Ensure all eligible children and young adults who seek such support receive services.

(b) Improve the outcomes of children and young adults who receive services and benefits from campus liaisons or under the McKinney-Vento Homeless Assistance Act.

(c) Ensure campus liaisons in local school districts and postsecondary institutions are qualified to provide adequate information and support and are knowledgeable about the relevant programs and benefits that may be accessed by the children and young adults they serve.

(3) In conducting the study, OPPAGA shall consult with the Department of Children and Families, the Board of Governors of the State University System, the Florida College System, the Department of Education, local school districts, and any other relevant stakeholders, including, but not limited to, students eligible for the assistance of a liaison.

(4) OPPAGA shall submit a report on its findings to the

President of the Senate and the Speaker of the House of Representatives by December 1, 2022.

Section 8. This act shall take effect July 1, 2022.

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 Committee on Children, Families, and Elder Affairs

BILL:	SB 1708
INTRODUCER:	Senator Garcia
SUBJECT:	Child Welfare
DATE:	January 31, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Cox	CF	**Pre-meeting**
2.			AP	

I. Summary:

SB 1708 makes a number of changes to the law related to current and former foster children and young adults, certain children and young adults who are experiencing homelessness, including:

- Requiring the Department of Health to waive all fees for a certified copy of a birth certificate for certified unaccompanied homeless youth and young adults who were in foster care when reaching 18 years of age;
- Expanding the use of postsecondary education campus liaisons to include students who are experiencing homelessness in addition to serving current or former foster children and young adults to assist such students with achieving success in postsecondary education;
- Removing the provision that the DCF has the sole discretion to determine which state colleges and universities offer campus liaison positions;
- Including certified unaccompanied homeless youth who meet specified requirements in the Keys to Independence Program;
- Clarifying provisions related to unaccompanied homeless youth certified under s. 743.067, F.S., including updating the applicable definition, including such definition in the Florida Education Code, and clarifying the specific medical care and other care that such youth can consent to upon certification; and
- Requiring the district school boards to provide certified unaccompanied homeless youth with a card that contains specified information on the rights and benefits for these youth.

The bill also requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a study to evaluate the effectiveness of campus liaisons provided under s. 409.1452, F.S. and of the local school districts' delivery of benefits and services required under the federal McKinney-Vento Homeless Assistance Act. The bill provides for the scope of the study and requires a report to be provided to the President of the Senate and the Speaker of the House of Representatives by December 1, 2022.

The bill will have a fiscal impact on the Department of Children and Families. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2022.

II. Present Situation:

Homeless Children and Youth

Although the causes for homelessness among children vary, the underlying themes among these causes reveal a strong link between homelessness and broader social issues including family conflict and breakdown and other contributing factors including economic circumstances such as poverty and housing insecurity, racial disparities, and mental health and substance use disorders. Additionally, young people who have had involvement with the child welfare and juvenile justice systems are more likely to become homeless.[1]

Familial conflict, abuse, and disruption, play a large role in children becoming homeless. Children typically enter a state of homelessness as a result of:

- Running away from home;
- Being locked out or abandoned by their parents or guardians; or
- Running from or being emancipated or discharged from institutional or other state care.[2]

Although family conflict also plays a part in adult homelessness, the nexus is more critical for youth since they are, by virtue of their developmental stage in life, still largely financially, emotionally, and, depending on their age, legally dependent upon their families.[3] Rational decision-making, inhibition, planning, and reasoning are still developing in youth and young adults, increasing the likelihood that young people may engage in high-risk behaviors, such as unsafe sexual activity and substance use. Without safe and permanent homes and caring adults, runaway and homeless youth are at even greater risk of engaging in high-risk behaviors or putting themselves in unsafe or risky situations.[4]

The consequences faced by youth experiencing homelessness are enormous and require coordination across the education, child welfare, juvenile justice, and health and human services systems. Runaway and homeless youth are vulnerable to, in part, not having their basic food and shelter needs met, untreated mental health disorders, substance use, sexually transmitted diseases and HIV infection, sexual exploitation and human trafficking, physical victimization, and suicide.[5] According to the National Sexual Violence Resource Center, one in three teens on the street will be lured into prostitution within 48 hours of leaving home.[6] Further, the American Academy of Pediatrics finds youth experiencing homelessness are twice as likely to attempt

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[1] National Network for Youth, *Youth Homelessness*, available at https://nn4youth.org/learn/youth-homelessness/ (last visited January 28, 2022)(hereinafter cited as "National Network for Youth").
[2] *Id*.
[3] National Conference of State Legislatures (NCSL), *Youth Homelessness Overview, Causes and Consequences of Youth Homelessness*, available at https://www.ncsl.org/research/human-services/homeless-and-runaway-youth.aspx (last visited January 28, 2022).
[4] *Id*.
[5] *Id*.
[6] The National Sexual Violence Resource Center, *Homeless Youth and Sexual Violence*, available at https://www.nsvrc.org/sites/default/files/publications/2019-02/HomelessYouth_Final%20508.pdf (last visited January 28, 2022).

suicide as their peers who are not homeless.[7] Also, youth who are homeless often experience a significant disruption in their education due to the transient nature of homelessness. Students experiencing homelessness in Florida have reportedly had increased rates of absenteeism and school discipline and are less likely to demonstrate proficiency in academic subjects.[8]

The Voices of Youth Count from Chapin Hall at the University of Chicago found, in part, that:

- One in 10 young adults ages 18-25, and at least one in 30 adolescents ages 13-17, experience some form of homelessness unaccompanied by a parent or guardian over the course of a year.
- 29% of homeless youth report having substance abuse problems.
- 69% of homeless youth report mental health problems.
- 33% of homeless youth report having once been a part of the foster care system.
- 50% of homeless youth have been in the juvenile justice system, in jail, or detention.
- Black youth face an 83% increased risk, and Hispanic youth 33% increased risk, than their white peers.
- LGBTQ youth were more than twice as likely to have experienced homelessness.
- The lack of a high school diploma or General Equivalency Diploma is the number one correlate for elevated risk of youth homelessness.[9]

As of January 2020, Florida had an estimated 27,487 experiencing homelessness on any given day, as reported by Continuums of Care to the U.S. Department of Housing and Urban Development (HUD). Of that total, 2,294 were family households, 2,436 were Veterans, 1,331 were unaccompanied young adults,[10] and 5,182 were individuals experiencing chronic homelessness.[11]

Public school data reported to the U.S. Department of Education during the 2019-2020 school year shows that an estimated 79,781 public school students experienced homelessness over the course of the year. Of that total, 6,926 students were unaccompanied homeless students.[12]

Definition of Homeless Children and Youth

Federal law provides a definition for the term "homeless children and youths", which means individuals who lack a fixed, regular, and adequate nighttime residence and includes children and youths who are:

- Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

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[7] *See* American Academy of Pediatrics, *Studies: Homelessness, self-harm risk factors for suicide*, available at https://publications.aap.org/aapnews/news/13664 (last visited January 28, 2022).
[8] *See* Shimberg Center for Housing Student, University of Florida and Miami Homes for All, *Homelessness and Education in Florida: Impact on Children and Youth*, pp. 2 and 5, available at http://www.shimberg.ufl.edu/publications/homeless_education_fla171205RGB.pdf (last visited January 28, 2022).
[9] *Id*. *See also* National Network for Youth.
[10] This includes ages 18-24 years old.
[11] United States Interagency Council on Homelessness, *Florida Homelessness Statistics*, available at https://www.usich.gov/homelessness-statistics/fl (last visited January 28, 2022).
[12] The Florida Department of Education (FDOE), *District Homeless Record Counts*, Final Data as of 11/18/2020, p. 2, available at https://www.fldoe.org/core/fileparse.php/19996/urlt/2019-2020-Homeless-Student-Counts-ADA-COMPLIANT.pdf (last visited January 28, 2022).

- Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
- Living in emergency or transitional shelters or are abandoned in hospitals;
- Utilizing for a primary nighttime residence a place that is a public or private but not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children living in circumstances described above.[13]

The term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian.[14]

Florida law defines the term "children and youths who are experiencing homelessness" to have the same meaning as "homeless children and youths" under federal law and described above.[15]

McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act (Act) was the first significant federal legislative response to homelessness, and was passed and signed into law by President Ronald Reagan in 1987.[16] The Act originally consisted of 15 programs providing a range of services to the homeless, including emergency shelter, transitional housing, job training, primary health care, education, and some permanent housing. The Act contains nine titles and Title VII authorizes four programs, including, in part, the Adult Education for the Homeless and the Education of Homeless Children and Youth Programs administered by the U.S. Department of Education.[17]

The Education of Homeless Children and Youth Program is designed to address the problems that homeless children and youth have faced in enrolling, attending, and succeeding in school. Under this program, state educational agencies must ensure that each homeless child and youth has equal access to the same free, appropriate public K-12 education as other children and youth. In addition, homeless students may not be separated from the mainstream school environment.[18]

Under the Act, children have the right to:

- Continue to attend the school they last attended before they lost their housing (school of origin), if that is the parent or guardian's choice and is in the child's best interest, or the school which is zoned for their temporary residence.

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[13] 42 U.S.C. s. 11434a. *See also* NCSL, *Homeless Youth Policy Scan*, November 21, 2019, available at https://www.ncsl.org/research/human-services/homeless-youth-policy-scan.aspx (last visited January 28, 2022).
[14] *Id*.
[15] Section 1003.01(12), F.S.
[16] Pub. L. 100-77, Jul. 22, 1987, 101 Stat. 482; 42 U.S.C. s. 11301 et seq. *See also* U.S. Department of Education, *Supporting the Success of Homeless Children and Youths*, available at https://www2.ed.gov/policy/elsec/leg/essa/160315ehcyfactsheet072716.pdf; National Center for Homeless Education, *The McKinney-Vento Homeless Assistance Act*, available at https://nche.ed.gov/legislation/mckinney-vento/ (all sites last visited January 28, 2022).
[17] *Id*.
[18] *See* Florida Department of Education (DOE), *Title IX, Part A: Florida McKinney-Vento Program*, available at https://www.fldoe.org/policy/federal-edu-programs/title-x-homeless-edu-program-hep.stml (last visited January 28, 2022),

- Enroll and attend classes immediately while the school arranges for the transfer of school and immunization records and other required enrollment documents.
- If necessary, enroll and attend classes in the school of origin or zoned school selected by the parent or guardian, while the school and the parent or guardian seek to resolve a dispute over which school is in the best interest of the child.[19]
- Receive transportation to the school of origin, if requested.
- Participate in any school programs and receive any school services for which the student qualifies.[20]

School District Homeless Liaison

The reauthorization of the Act requires school districts to designate a liaison for homeless children and youth. The Florida Department of Education (DOE) has established at least one school district homeless liaison for each of the 67 counties.[21] The liaison must ensure:

- Homeless children and youth, including unaccompanied youth, are identified by school personnel and through coordinated activities with other entities and agencies;
- Homeless children and youth enroll in, and have a full and equal opportunity to succeed in, schools of that local education agency (LEA);
- Homeless families, children, and youth receive educational services for which such families, children, and youth are eligible, including Head Start, Even Start, and other preschool programs administered by the LEA, and referrals to health care services, dental services, mental health services, and other appropriate services;
- The parents or guardians of homeless students are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- Public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive services under this Act, such as schools, family shelters, and soup kitchens;
- Enrollment disputes are mediated;
- The parents or guardians of homeless students, or any unaccompanied youth, are fully informed of all transportation services, including transportation to the school of origin, and are assisted in accessing transportation to the school of origin or the school which serves the location where the students currently reside.[22]

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[19] This does not mean any school in the district, only the school of origin or zoned school. *See* St. Johns County School District, Homeless Students Policy, Dispute Process, available at https://www.stjohns.k12.fl.us/homeless/ (last visited January 28, 2022).

[20] Schoolhouse Connection, *The McKinney-Vento Act Quick Reference*, available at https://schoolhouseconnection.org/wp-content/uploads/2020/09/The-McKinney-Vento-Act-Quick-Reference.pdf (last visited January 8, 2022).

[21] The FDOE, *District Liaison List*, available at https://www.fldoe.org/core/fileparse.php/19996/urlt/Title-IX-District-Contact-List-11-05-21-ADA-COMPLIANT.pdf (last visited January 29, 2022)

[22] *See* the FDOE, *Florida State Plan for Funding under the American Rescue Plan Act Education for Homeless Children and Youth (ARP-HCY)*, pp. 9 and 11; available at https://oese.ed.gov/files/2021/12/Florida-ARP-HCY-State-Plan-Final.pdf; *see also* the FDOE, *Technical Assistance Paper 2007-2008 Title X, Part C Education for Homeless Children and Youth*, available at https://info.fldoe.org/docushare/dsweb/Get/Document-4702/TAP-2007-150.pdf (all sites last visited January 29, 2022).

The local homeless liaison is also required to coordinate and collaborate with the state Homeless Education Coordinator and community and school personnel responsible for providing education and related services to homeless students.

Certified Unaccompanied Homeless Youth

Certification

Section 743.067, F.S., provides that a youth who is an unaccompanied homeless youth may become certified as such if he or she is an individual who is 16 years of age or older and is:

- Found by a school district's liaison for homeless children and youths to be an unaccompanied homeless youth eligible for services pursuant to the McKinney-Vento Homeless Assistance Act; or
- Believed to qualify as an unaccompanied homeless youth, as that term is defined in the McKinney-Vento Homeless Assistance Act, by:
  - The director of an emergency shelter program funded by the U.S. Department of Housing and Urban Development;
  - The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services; or
  - A continuum of care lead agency.[23]

The State Office on Homelessness in the DCF has developed a standardized form that must be used by these entities to certify qualifying unaccompanied homeless youth. The front of the form includes the circumstances that qualify the youth; the date the youth was certified; and the name, title, and signature of the certifying individual. The contents of s. 743.067, F.S., is required to be reproduced in its entirety on the back of the form.[24]

Benefits Upon Certification

A certified unaccompanied homeless youth may use the certification to access various benefits, including to:

- Apply at no charge for an identification card issued by the Department of Highway Safety and Motor Vehicles under s. 322.051, F.S.;[25]
- Consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under ch. 394, F.S., ch. 395, F.S., or ch. 397, F.S.,[26] and certain forensic medical examination,[27] for:
  - Himself or herself; or

[23] Section 743.067(1), F.S. The certification can be conducted by each of these entities designee.
[24] Section 743.067(2)(a), F.S.
[25] Section 743.067(2)(b), F.S.
[26] Chapter 394, F.S., governs the provision of substance abuse and mental health services; ch. 395, F.S., provides for the licensing and regulation of hospitals; and ch. 397, F.S., provides specifically for substance abuse services.
[27] This provision is applicable to the purpose of investigating any felony offense under ch. 784, F.S. (relating to assault, battery, culpable negligence), ch. 787, F.S.(relating to kidnapping, custody offenses, human trafficking, and smuggling) ch 794, F.S., (relating to sexual battery), ch. 800, F.S.,(relating to lewdness and indecent exposure) or ch. 827, F.S., (relating to child abuse).

  - His or her child, if the certified unaccompanied homeless youth is unmarried, is the parent of the child, and has actual custody of the child;[28] and
- Petition the court to have the disabilities of nonage removed and become an emancipated minor who has the legal capacity to act as an adult, be in control of his or her affairs, and be free of the legal control and custody of his or her parents.[29]

A health care provider may accept a copy of the written certificate as proof of the minor's status as a certified unaccompanied homeless youth and may keep a copy of the certificate in the youth's medical file to assist with medical treatment.[30]

Birth Certificates

The Florida Department of Health (DOH), Office of Vital Statistics, maintains all vital records for Florida. Under current law, homeless children are not specifically given the ability to obtain their birth certificates. Florida law provides that certified copies of the original birth certificate or a new or amended certificate, or affidavits thereof, are confidential and exempt from the provisions of s. 119.07(1), F.S.,[31] and, upon receipt of a request and payment of the fee prescribed in s. 382.0255, F.S., shall be issued only as authorized by the DOH and in the form prescribed by the DOH, and only, in relevant part, to the registrant, if of legal age, is a certified homeless youth, or is a minor who has had the disabilities of nonage removed under s. 743.01, F.S., or s. 743.015, F.S..[32]

The Florida DOH is entitled to fees for providing copies of certain vital records. The fees assessed must be the minimum fees cited. The fees established by rule must be sufficient to meet the cost of providing the service. All fees are required to be paid by the person requesting the record, are due and payable at the time services are requested, and are nonrefundable, except that, when a search is conducted and no vital record is found, any fees paid for additional certified copies shall be refunded.

The DOH is authorized to waive all or part of the fees required for any government entity. Further, the DOH is required to waive all fees for a certified copy of a birth certificate issued for purposes of an inmate acquiring a state identification card before release pursuant to s. 944.605(7), F.S., and for a juvenile offender who is in the custody or under the supervision of the Department of Juvenile Justice and receiving services under s. 985.461, F.S.[33]

[28] Section 743.067(3)b), F.S. However, this provision is notwithstanding s. 394.4625(1), F.S., relating to voluntary admissions under the Baker Act.
[29] Section 743.067(3)(a), F.S. A certified unaccompanied homeless youth that petitions the circuit court to have the disabilities of nonage removed is not required to prepay costs and fees as provided in s. 57.081, F.S., and the court must advance the cause on the calendar. *See* ch. 743, F.S., for when a minor may petition a court to have the disabilities of nonage removed.
[30] Section 743.067(2)(c), F.S.
[31] Section 382.025(1), F.S.
[32] Section 382.025, F.S.
[33] Section 382.0255(3), F.S.

Keys to Independence Program

In 2014, the Legislature required the Department of Children and Families (DCF) to establish a program to pay the cost of driver education, licensure and other costs incidental to licensure, and motor vehicle insurance for children in out-of-home care who have successfully completed a driver education program.[34] The program is now known at the Keys to Independence Program.

This program was established in direct response to recognizing the barriers that are created for a child in out-of-home care as a result of not obtaining a driver license and the cost prohibition that many such children faced to obtain motor vehicle insurance and licensure.

In 2021, the Legislature expanded the Keys to Independence program to include children who were in licensed care when reaching 18 years of age and are currently receiving postsecondary education services and support under s. 409.1451(2), F.S.[35]

As of December 31, 2021 for the life of the program there have been:
- 6,845 enrolled applicants;
- 1902 learner's permits issued; and
- 1020 driver's licenses issued.[36]

III. Effect of Proposed Changes:

The bill makes a number of changes to the laws related to current and former foster children and young adults, children and young adults who are experiencing homelessness, and certified unaccompanied homeless youth.

Birth Certificate Fees

The bill amends s. 382.055, F.S., expanding the persons who must have the fees for a certified copy of a birth certificate waived by the DOH to include unaccompanied homeless youth certified under s. 743.067, F.S., and young adults who are, or were at the time of turning 18 years of age, in the custody of the DCF.

Unaccompanied Homeless Youth

The bill amends s. 743.067, F.S., clarifying provisions related to the term "unaccompanied homeless youth". The bill updates the definition to specify that the youth is not in the physical custody of a parent or guardian, which includes a youth who has run away from home, who has been forced to leave his or her home, or whose parents have left the area and left the youth behind.

The bill provides that a certified unaccompanied homeless youth may receive a certified copy of his or her birth certificate at no charge under s. 382.055, F.S., and clarifies that the medical

[34] Section 409.1454, F.S. Chapter 2014-166, L.O.F.
[35] Chapter 2021-169, L.O.F.
[36] Maria Solon, *Keys to Independence Program Monthly Report*, All Youth Life of Program Tab, December 2021 (on file with the Senate Committee on Children, Families and Elder Affairs).

provider may accept the written certificate or the below described school district issued card as proof of the youth's ability to consent to his or her medical care.

The bill also clarifies the specific categories of medical and other care for which the youth may consent to include behavioral health care services that include both psychological counseling and treatment, psychiatric treatment, and substance abuse prevention and treatment services. In addition, the bill amends s. 1003.01, F.S., creating a definition of the term "unaccompanied homeless youth" in the Florida Education Code to provide consistency for the school liaisons that certify such youth.

Keys to Independence Program

The bill amends s. 409.1454, F.S., expanding the eligibility for the Keys to Independence program to include an unaccompanied homeless youth certified under s. 743.067, F.S., who is a citizen of the United States or legal resident of Florida and who is:

- Completing secondary education;
- Employed at least part time;
- Attending a postsecondary education program at least part time; or
- Precluded from full-time work or education due to a disability.

District School Board Issued Card

The bill amends s. 1001.42, F.S., requiring the district school boards to provide unaccompanied homeless youth certified pursuant to s. 743.067, F.S., a card that is similar in size to the student identification card issued to students in the district that contains specified information on the rights and benefits for these youth. Specifically,

- The front of the card must include the circumstances that qualify the youth, the date the youth was certified and the name, title and signature of the certifying individual. This information is obtained from the standardized form developed by the DCF.
- The back of the card must include the provisions of s. 743.067, F.S., that provide authority to the certified unaccompanied homeless youth to consent to medical and other care for himself or herself or for his or her child if the certified youth is unmarried, is the parent of the child, and has custody of the child.

Postsecondary Education Liaisons

The bill amends s. 409.1452, F.S., expanding the use of postsecondary education campus liaisons to include students who are experiencing homelessness in addition to serving current or former foster children and young adults to assist such students with achieving success in postsecondary education. The bill also revises the term for the position from "campus coaches" to "campus liaisons" and removes a provision that the DCF has the sole discretion to determine which state colleges and universities offer campus liaison positions.

OPPAGA Study

The bill also requires the OPPAGA to conduct a study to evaluate the effectiveness of campus liaisons provided under s. 409.1452, F.S., and of the local school districts' delivery of benefits and services required under the McKinney-Vento Homeless Assistance Act.

Specifically, the study must include:

- Current use of liaisons by all colleges and universities, the number of children and young adults served by such liaisons, the type and prevalence of the services requested by such children and young adults, and the experiences of the students served by the liaisons.
- Local school districts' delivery of benefits and services to unaccompanied homeless youth eligible for services under s. 743.067, F.S., and the Act and school districts' adherence to provisions of the Act, such as the:
  - Ability for an unaccompanied homeless youth to remain in his or her school of origin for the duration of the period the youth is experiencing homelessness and until the end of an academic year in which the youth obtains permanent housing, if remaining in the school of origin is determined to be in the youth's best interest.
  - Extent to which school district liaisons make best interest determinations by considering specific student-centered factors when determining the best school for an unaccompanied homeless youth.
  - Ability of unaccompanied homeless youth to receive transportation to the school of origin from the applicable school district.
  - Prompt enrollment of an unaccompanied homeless youth in a school or classes while the school of origin arranges for the transfer of school and immunization records and other required enrollment documents to ensure compliance with s. 1003.21(1)(f), F.S.
  - Ability of an unaccompanied homeless youth to participate in all available education programs and extracurricular activities and receive any school services for which the youth meets all relevant eligibility criteria.

Further, the study must include recommendations for any changes needed to ensure all eligible children and young adults who seek such support receive services, improve the outcomes of children and young adults who receive services and benefits from campus liaisons or under the Act and ensure campus liaisons in local school districts and postsecondary institutions are qualified to provide adequate information and support and are knowledgeable about the relevant programs and benefits that may be accessed by the children and young adults they serve.

The bill requires the OPPAGA to consult with the DCF, the Board of Governors of the State University System, the Florida College System, the FDOE, local school districts, and any other relevant stakeholders including, but not limited to, students eligible for the assistance of a liaison in conducting the study. The bill requires a report to be provided to the President of the Senate and the Speaker of the House of Representatives by December 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII,

Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DCF reported that according to the Keys to Independence staff, the total cost for each individual is $3,500.88 per youth in care. According to Economic Self-Sufficiency, as of January 12, 2022, there were 678 unaccompanied homeless youth in Florida and therefore the DCF estimates that $2,373,596.64 is needed for this expansion.[37].

However, Embrace Families, who operates the Keys to Independence program, estimates that the yearly cost to operate the expansion of the program under the bill to be $437,545 per year. This calculation is based on data Keys to Independence obtained from an organization serving unaccompanied homeless youth in Miami that states approximately 2.5 percent of the total population of eligible youth ages 15-23 actually access services. Therefore, the Keys to Independence program estimates that the bill will result in approximately 2,500 referrals per year (2.5 percent of a total of approximately 100,000 total youth considered to be homeless in Florida). The Keys to Independence program currently serves 2,878 youth and spends $800,000.[38]

[37] The DCF, *SB 1708 Agency Bill Analysis*, p. 4-5, January 20, 2022 (on file with the Senate Committee on Children, Families and Elder Affairs).
[38] Electronic mail from Sarah Nemes, Director of Public Policy, Embrace Families, *Child Welfare SB 1708, Fiscal for Keys to Independence*, January 26, 2022 (on file with Senate Committee on Children, Families, and Elder Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill amends ss. 382.0255, 409.1452, 409.1454, 743.067, 1001.42, and 1003.01 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Bean

4-01130B-22 20221844__

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 394.455, F.S.; conforming a provision to changes made by the act; amending s. 394.459, F.S.; revising review requirements for specified restrictions relating to a patient's right to communicate or to receive visitors; requiring facilities to inform patients with a serious mental illness of the essential elements of recovery and provide them assistance in accessing a continuum of care regimen; authorizing the Department of Children and Families to adopt certain rules; amending s. 394.461, F.S.; authorizing the state to establish that a transfer evaluation was performed by providing the court with a copy of the evaluation before the close of the state's case in chief; prohibiting the court from considering substantive information in the transfer evaluation unless the evaluator testifies at the hearing; amending s. 394.462, F.S.; conforming provisions to changes made by the act; amending s. 394.463, F.S.; revising the requirements for when a person may be taken to a receiving facility for involuntary examination; requiring law enforcement officers transporting individuals for involuntary treatment to take certain actions; revising requirements for annual reports relating to involuntary treatment; requiring that certain reports be sent to the Governor; revising when a patient may be released by a receiving facility; requiring a

facility to inform the department of certain persons who have been examined or committed under certain circumstances; amending s. 394.4655, F.S.; conforming a provision to changes made by the act; amending s. 394.467, F.S.; revising the requirements for when a person may be ordered for involuntary inpatient placement; revising requirements for continuances of hearings; revising the conditions under which a court may waive the requirement for a patient to be present at an involuntary inpatient placement hearing; authorizing the court to permit all witnesses to attend and testify remotely at the hearing through certain means; requiring facilities to make certain clinical records available to a state attorney within a specified timeframe; specifying that such records remain confidential and may not be used for certain purposes; revising when the court may appoint a magistrate; requiring the court to allow certain testimony from individuals; revising the amount of time a court may require a patient to receive services; requiring facilities to discharge patients after they no longer meet the criteria for involuntary inpatient treatment; prohibiting courts from ordering that individuals with developmental disabilities be involuntarily placed in a state treatment facility; requiring such individuals to be referred to certain agencies for evaluation and services; authorizing facilities to hold specified individuals under certain circumstances; conforming provisions to changes made

by the act; amending ss. 394.495 and 394.496, F.S.; conforming provisions to changes made by the act; amending s. 394.499, F.S.; making a technical change; conforming a provision to changes made by the act; amending s. 397.305, F.S.; revising the purpose of ch. 397, F.S.; amending s. 397.311, F.S.; revising definitions; creating s. 397.341, F.S.; requiring law enforcement officers transporting individuals for treatment to take certain actions; amending s. 397.501, F.S.; requiring that respondents with serious substance use disorders be informed of the essential elements of recovery and provided with assistance accessing a continuum of care regimen; authorizing the department to adopt certain rules; amending s. 397.675, F.S.; revising the criteria for involuntary admissions; amending s. 397.6751, F.S.; revising the responsibilities of a service provider; amending s. 397.681, F.S.; revising where involuntary treatment petitions for substance abuse impaired persons may be filed; revising what part of such proceedings a general or special magistrate may preside over; requiring that the state attorney represent the state as the real party of interest in an involuntary proceeding, subject to legislative appropriation; providing that the petitioner has the right to be heard; specifying that certain records obtained by a state attorney must remain confidential and may not be used for certain purposes; conforming provisions to changes made by the act; repealing s. 397.6811, F.S.,

relating to involuntary assessment and stabilization; repealing s. 397.6814, F.S., relating to petitions for involuntary assessment and stabilization; repealing s. 397.6815, F.S., relating to involuntary assessment and stabilization procedures; repealing s. 397.6818, F.S., relating to court determinations for petitions for involuntary assessment and stabilization; repealing s. 397.6819, F.S., relating to the responsibilities of licensed service providers with regard to involuntary assessment and stabilization; repealing s. 397.6821, F.S., relating to extensions of time for completion of involuntary assessment and stabilization; repealing s. 397.6822, F.S., relating to the disposition of individuals after involuntary assessment; amending s. 397.693, F.S.; revising the circumstances under which a person is eligible for court-ordered involuntary treatment; amending s. 397.695, F.S.; authorizing the court or clerk of the court to waive or prohibit any service of process fees for an indigent petitioner; amending s. 397.6951, F.S.; revising the requirements for the contents of a petition for involuntary treatment services; authorizing a petitioner to include with the petition a certificate or report of a qualified professional; requiring the certificate or report to contain certain information; requiring that certain additional information be included if an emergency exists; amending s. 397.6955, F.S.; requiring the clerk of the court to notify the state attorney's office upon the receipt of a petition filed

for involuntary treatment services; revising when the office of criminal conflict and civil regional counsel represents a person; revising when a hearing must be held on the petition; requiring law enforcement agencies to effect service for initial treatment hearings unless certain requirements are met; providing requirements for when a petitioner asserts that emergency circumstances exist or the court determines that an emergency exists; conforming provisions to changes made by the act; amending s. 397.6957, F.S.; expanding the exemption from the requirement that a respondent be present at a hearing on a petition for involuntary treatment services; authorizing the court to order drug tests and permit all witnesses to remotely attend and testify at the hearing through certain means; deleting a provision requiring the court to appoint a guardian advocate under certain circumstances; prohibiting a respondent from being involuntarily ordered into treatment unless certain requirements are met; providing requirements relating to involuntary assessment and stabilization orders; providing requirements relating to involuntary treatment hearings; requiring that the assessment of a respondent occur before a specified time unless certain requirements are met; requiring a qualified professional to provide copies of his or her report to the court and all relevant parties and counsel; providing requirements for the report; authorizing a court to order certain persons to take a respondent

into custody and transport him or her to or from certain service providers and the court; revising the petitioner's burden of proof in the hearing; authorizing the court to initiate involuntary proceedings under certain circumstances; requiring that, if a treatment order is issued, it must include certain findings; amending s. 397.697, F.S.; making technical changes; requiring that an individual meet certain requirements to qualify for involuntary outpatient treatment; specifying that certain hearings may be set by the motion of a party or under the court's own authority; specifying that a service provider's authority is separate and distinct from the court's jurisdiction; requiring the department to receive and maintain copies of certain documents and to use information from the documents to prepare annual reports; requiring the department to provide copies of the reports to the Governor and the Legislature; amending s. 397.6971, F.S.; revising when an individual receiving involuntary treatment services may be determined eligible for discharge; conforming provisions to changes made by the act; amending s. 397.6975, F.S.; authorizing certain entities to file a petition for renewal of involuntary treatment services; revising the timeframe during which the court is required to schedule a hearing; conforming provisions to changes made by the act; amending s. 397.6977, F.S.; conforming provisions to changes made by the act; repealing s. 397.6978, F.S., relating to

the appointment of guardian advocates; providing an effective date.

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

Section 1. Subsection (23) of section 394.455, Florida Statutes, is amended to read:

394.455 Definitions.—As used in this part, the term:

(23) "Involuntary examination" means an examination performed under s. 394.463, s. 397.6772, s. 397.679, s. 397.6798, or s. 397.6957 ~~s. 397.6811~~ to determine whether a person qualifies for involuntary services.

Section 2. Paragraph (c) of subsection (5) of section 394.459, Florida Statutes, is amended, and subsection (13) is added to that section, to read:

394.459 Rights of patients.—

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

(c) Each facility must permit immediate access to any patient, subject to the patient's right to deny or withdraw consent at any time, by the patient's family members, guardian, guardian advocate, representative, Florida statewide or local advocacy council, or attorney, unless such access would be detrimental to the patient. If a patient's right to communicate or to receive visitors is restricted by the facility, written notice of such restriction and the reasons for the restriction shall be served on the patient, the patient's attorney, and the patient's guardian, guardian advocate, or representative; and such restriction shall be recorded on the patient's clinical record with the reasons therefor. The restriction of a patient's

right to communicate or to receive visitors shall be reviewed at least every 72 hours, or no later than the next working day if such period ends on a weekend or holiday ~~7 days~~. The right to communicate or receive visitors shall not be restricted as a means of punishment. Nothing in this paragraph shall be construed to limit the provisions of paragraph (d).

(13) POST-DISCHARGE CONTINUUM OF CARE.—Upon discharge, the facility must inform a patient with a serious mental illness of the essential elements of recovery and provide assistance with accessing a continuum of care regimen. The department may adopt rules specifying the services that may be provided to such patients.

Section 3. Subsection (2) of section 394.461, Florida Statutes, is amended to read:

394.461 Designation of receiving and treatment facilities and receiving systems.—The department is authorized to designate and monitor receiving facilities, treatment facilities, and receiving systems and may suspend or withdraw such designation for failure to comply with this part and rules adopted under this part. Unless designated by the department, facilities are not permitted to hold or treat involuntary patients under this part.

(2) TREATMENT FACILITY.—The department may designate any state-owned, state-operated, or state-supported facility as a state treatment facility. A civil patient may ~~shall~~ not be admitted to a state treatment facility without previously undergoing a transfer evaluation. Before the close of the state's case in chief in a ~~court~~ hearing for involuntary placement ~~in a state treatment facility~~, the state may establish

that the transfer evaluation was performed and the document was properly executed by providing the court with a copy of the transfer evaluation. The court may not ~~court shall receive and~~ consider the substantive information ~~documented~~ in the transfer evaluation unless the evaluator testifies at the hearing. Any other facility, including a private facility or a federal facility, may be designated as a treatment facility by the department, provided that such designation is agreed to by the appropriate governing body or authority of the facility.

Section 4. Section 394.462, Florida Statutes, is amended to read:

394.462 Transportation.—A transportation plan shall be developed and implemented by each county in collaboration with the managing entity in accordance with this section. A county may enter into a memorandum of understanding with the governing boards of nearby counties to establish a shared transportation plan. When multiple counties enter into a memorandum of understanding for this purpose, the counties shall notify the managing entity and provide it with a copy of the agreement. The transportation plan shall describe methods of transport to a facility within the designated receiving system for individuals subject to involuntary examination under s. 394.463 or involuntary admission under s. 397.6772, s. 397.679, s. 397.6798, or s. 397.6957 ~~s. 397.6811,~~ and may identify responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan may rely on emergency medical transport services or private transport companies, as appropriate. The plan shall comply with the transportation provisions of this section and ss. 397.6772,

397.6795, ~~397.6822,~~ and 397.697.

(1) TRANSPORTATION TO A RECEIVING FACILITY.—

(a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take a person into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that person to the appropriate facility within the designated receiving system pursuant to a transportation plan.

(b)1. The designated law enforcement agency may decline to transport the person to a receiving facility only if:

a. The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and

b. The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.

2. The entity providing transportation may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From a private or public third-party payor, if the person receiving the transportation has applicable coverage.

b. From the person receiving the transportation.

c. From a financial settlement for medical care, treatment,

hospitalization, or transportation payable or accruing to the injured party.

(c) A company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transport of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport of patients.

(d) Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of patients.

(e) When a law enforcement officer takes custody of a person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.

(f) When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 or s. 397.675 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(g) When any law enforcement officer has custody of a person based on either noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination pursuant to s. 394.463, the law enforcement officer shall transport the person to the appropriate facility within the

designated receiving system pursuant to a transportation plan. Persons who meet the statutory guidelines for involuntary admission pursuant to s. 397.675 may also be transported by law enforcement officers to the extent resources are available and as otherwise provided by law. Such persons shall be transported to an appropriate facility within the designated receiving system pursuant to a transportation plan.

(h) When any law enforcement officer has arrested a person for a felony and it appears that the person meets the statutory guidelines for involuntary examination or placement under this part, such person must first be processed in the same manner as any other criminal suspect. The law enforcement agency shall thereafter immediately notify the appropriate facility within the designated receiving system pursuant to a transportation plan. The receiving facility shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security, but shall provide examination and treatment to the person where he or she is held.

(i) If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

(j) The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in

s. 901.35.

(k) The appropriate facility within the designated receiving system pursuant to a transportation plan must accept persons brought by law enforcement officers, or an emergency medical transport service or a private transport company authorized by the county, for involuntary examination pursuant to s. 394.463.

(l) The appropriate facility within the designated receiving system pursuant to a transportation plan must provide persons brought by law enforcement officers, or an emergency medical transport service or a private transport company authorized by the county, pursuant to s. 397.675, a basic screening or triage sufficient to refer the person to the appropriate services.

(m) Each law enforcement agency designated pursuant to paragraph (a) shall establish a policy that reflects a single set of protocols for the safe and secure transportation and transfer of custody of the person. Each law enforcement agency shall provide a copy of the protocols to the managing entity.

(n) When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport company for transportation of persons to facilities within the designated receiving system, such service or company shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

(o) This section may not be construed to limit emergency

examination and treatment of incapacitated persons provided in accordance with s. 401.445.

(2) TRANSPORTATION TO A TREATMENT FACILITY.—

(a) If neither the patient nor any person legally obligated or responsible for the patient is able to pay for the expense of transporting a voluntary or involuntary patient to a treatment facility, the transportation plan established by the governing board of the county or counties must specify how the hospitalized patient will be transported to, from, and between facilities in a safe and dignified manner.

(b) A company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transport of patients.

(c) A company that contracts with one or more counties to transport patients in accordance with this section shall comply with the applicable rules of the department to ensure the safety and dignity of patients.

(d) County or municipal law enforcement and correctional personnel and equipment may not be used to transport patients adjudicated incapacitated or found by the court to meet the criteria for involuntary placement pursuant to s. 394.467, except in small rural counties where there are no cost-efficient alternatives.

(3) TRANSFER OF CUSTODY.—Custody of a person who is transported pursuant to this part, along with related documentation, shall be relinquished to a responsible individual

at the appropriate receiving or treatment facility.

Section 5. Subsection (1) and paragraphs (a), (e), (f), and (g) of subsection (2) of section 394.463, Florida Statutes, are amended to read:

394.463 Involuntary examination.—

(1) CRITERIA.—A person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

(a)1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. The person is unable to determine for himself or herself whether examination is necessary; and

(b)1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services; or

2. There is a substantial likelihood that in the near future and without care or treatment, the person will inflict serious ~~cause serious bodily~~ harm to self ~~himself or herself~~ or others ~~in the near future~~, as evidenced by recent acts, omissions, or behavior causing, attempting, or threatening such harm.

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one

of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer <u>may</u> ~~shall~~ take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. <u>A law enforcement officer transporting a person pursuant to this</u>

subparagraph shall consider the person's mental and behavioral state and restrain him or her in the least restrictive manner necessary under the circumstances, especially if the person is a minor. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under s. 464.0123, a mental health counselor, a marriage and family therapist, or a clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data

systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

(e) The department shall receive and maintain ~~the~~ copies of ex parte orders, involuntary outpatient services orders issued pursuant to s. 394.4655, involuntary inpatient placement orders issued pursuant to s. 394.467, professional certificates, and law enforcement officers' reports. These documents shall be considered part of the clinical record, governed by the provisions of s. 394.4615. These documents shall be used to prepare annual reports analyzing the data obtained from these documents, without information identifying patients, and the department shall provide copies of the reports to the Governor ~~department~~, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(f) A patient shall be examined by a physician or a clinical psychologist, or by a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a facility without unnecessary delay to determine if the criteria for involuntary services are met. Emergency treatment may be provided upon the order of a physician if the physician determines that such treatment is necessary for the safety of the patient or others. The patient may not be released by the receiving facility or its contractor

without the documented approval of a psychiatrist, ~~or~~ a clinical psychologist, ~~or, if the receiving facility is owned or operated by a hospital or health system, the release may also be approved by~~ a psychiatric nurse performing within the framework of an established protocol with a psychiatrist, or an attending emergency department physician with experience in the diagnosis and treatment of mental illness after completion of an involuntary examination pursuant to this subsection. A psychiatric nurse may not approve the release of a patient if the involuntary examination was initiated by a psychiatrist unless the release is approved by the initiating psychiatrist.

(g) The examination period must be for up to 72 hours and begins when a patient arrives at the receiving facility. For a minor, the examination shall be initiated within 12 hours after the patient's arrival at the facility. The facility must inform the department of any person who has been examined or committed three or more times under this chapter within a 12-month period. Within the examination period or, if the examination period ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

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

2. The patient shall be released, subject to subparagraph 1., for voluntary outpatient treatment;

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

patient shall be admitted as a voluntary patient; or

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

Section 6. Paragraph (c) of subsection (7) of section 394.4655, Florida Statutes, is amended to read:

394.4655 Involuntary outpatient services.—

(7) HEARING ON INVOLUNTARY OUTPATIENT SERVICES.—

(c) If, at any time before the conclusion of the initial hearing on involuntary outpatient services, it appears to the court that the person does not meet the criteria for involuntary outpatient services under this section but, instead, meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination under s. 394.463. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, the court may order the person to be admitted for involuntary assessment for a period of 5 days ~~pursuant to s. 397.6811~~. Thereafter, all proceedings are governed by chapter 397.

Section 7. Subsections (1) and (5), paragraphs (a), (b), and (c) of subsection (6), and paragraph (d) of subsection (7)

of section 394.467, Florida Statutes, are amended to read:

394.467 Involuntary inpatient placement.—

(1) CRITERIA.—A person may be ordered for involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

(a) He or she has a mental illness and because of his or her mental illness:

1.a. He or she has refused voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of inpatient placement for treatment; or

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

2.a. He or she is incapable of surviving alone or with the help of willing, able, and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or

b. There is substantial likelihood that in the near future and without services, he or she will inflict serious ~~bodily~~ harm to ~~on~~ self or others, as evidenced by recent acts, omissions, or behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive treatment alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

(5) CONTINUANCE OF HEARING.—The patient and the state are independently entitled ~~is entitled, with the concurrence of the~~

~~patient's counsel,~~ to at least one continuance of the hearing. The patient's continuance may be for a period of ~~for~~ up to 4 weeks and requires the concurrence of his or her counsel. The state's continuance may be for a period of up to 5 court working days and requires a showing of good cause and due diligence by the state before requesting the continuance. The state's failure to timely review any readily available document or failure to attempt to contact a known witness does not warrant a continuance.

(6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

(a)1. The court shall hold the hearing on involuntary inpatient placement within 5 court working days, unless a continuance is granted.

2. Except for good cause documented in the court file, the hearing must be held in the county or the facility, as appropriate, where the patient is located, must be as convenient to the patient as is consistent with orderly procedure, and shall be conducted in physical settings not likely to be injurious to the patient's condition. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of, or is likely to be injurious to, the patient, or the patient knowingly, intelligently, and voluntarily waives his or her right to be present, and the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. Absent a showing of good cause, such as specific symptoms of the patient's condition, the court may permit all witnesses, including, but not limited to, any medical professionals or personnel who are or have been involved with the patient's

treatment, to remotely attend and testify at the hearing under oath through audio-video teleconference. Any witness intending to remotely attend and testify at the hearing must provide the parties with all relevant documents by the close of business on the day before the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding. The facility shall make the respondent's clinical records available to the state attorney within 24 hours after the involuntary placement petition's filing so that the state can evaluate and prepare its case before the hearing. However, these records shall remain confidential, and the state attorney may not use any record obtained under this part for criminal investigation or prosecution purposes or for any purpose other than the patient's civil commitment under this chapter.

3. The court may appoint a magistrate to preside at the hearing on the petition and any ancillary proceedings thereto, which include, but are not limited to, writs of habeas corpus issued pursuant to s. 394.459(8). One of the professionals who executed the petition for involuntary inpatient placement certificate shall be a witness. The court shall allow testimony deemed relevant by the court under state law from individuals, including family members, regarding the person's prior history and how that history relates to the person's current condition. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise

provided for by law. The independent expert's report is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

(b) If the court concludes that the patient meets the criteria for involuntary inpatient placement, it may order that the patient be transferred to a treatment facility or, if the patient is at a treatment facility, that the patient be retained there or be treated at any other appropriate facility, or that the patient receive services, on an involuntary basis, for up to ~~90 days. However, any order for involuntary mental health services in a treatment facility may be for up to~~ 6 months. The order shall specify the nature and extent of the patient's mental illness, and, unless the patient has transferred to a voluntary status, the facility must discharge the patient at any time he or she no longer meets the criteria for involuntary inpatient treatment. The court may not order an individual with a developmental disability as defined in s. 393.063, traumatic brain injury, or dementia who lacks a co-occurring mental illness to be involuntarily placed in a state treatment facility. These individuals must be referred to the Agency for Persons with Disabilities or the Department of Elderly Affairs for further evaluation and the provision of appropriate services for their individual needs ~~The facility shall discharge a patient any time the patient no longer meets the criteria for involuntary inpatient placement, unless the patient has transferred to voluntary status~~.

(c) If at any time before the conclusion of the involuntary placement hearing ~~on involuntary inpatient placement~~ it appears to the court that the person does not meet the criteria of ~~for involuntary inpatient placement under~~ this section, but instead meets the criteria for involuntary outpatient services, the court may order the person evaluated for involuntary outpatient services pursuant to s. 394.4655. The petition and hearing procedures set forth in s. 394.4655 shall apply. If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission or treatment pursuant to s. 397.675, ~~then~~ the court may order the person to be admitted for involuntary assessment ~~for a period of 5 days~~ pursuant to s. 397.6957 ~~s. 397.6811~~. Thereafter, all proceedings are governed by chapter 397.

(7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT PLACEMENT.—

(d) If at a hearing it is shown that the patient continues to meet the criteria for involuntary inpatient placement, the administrative law judge shall sign the order for continued involuntary inpatient placement for up to ~~90 days. However, any order for involuntary mental health services in a treatment facility may be for up to~~ 6 months. The same procedure shall be repeated before the expiration of each additional period the patient is retained.

The procedure required in this subsection must be followed before the expiration of each additional period the patient is involuntarily receiving services.

Section 8. Subsection (3) of section 394.495, Florida

Statutes, is amended to read:

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

(3) Assessments must be performed by:

(a) A clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455 ~~professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~;

(b) A professional licensed under chapter 491; or

(c) A person who is under the direct supervision of a clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455, ~~qualified professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~ or a professional licensed under chapter 491.

Section 9. Subsection (5) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(5) A clinical psychologist, clinical social worker, physician, psychiatric nurse, or psychiatrist, as those terms are defined in s. 394.455, ~~professional as defined in s. 394.455(5), (7), (33), (36), or (37)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 10. Paragraph (a) of subsection (2) of section 394.499, Florida Statutes, is amended to read:

394.499 Integrated children's crisis stabilization unit/juvenile addictions receiving facility services.—

(2) Children eligible to receive integrated children's

crisis stabilization unit/juvenile addictions receiving facility services include:

(a) A person under 18 years of age for whom voluntary application is made by his or her parent or legal guardian, if such person is found to show evidence of mental illness and to be suitable for treatment pursuant to s. 394.4625. A person under 18 years of age may be admitted for integrated facility services only after a hearing to verify that the consent to admission is voluntary is conducted pursuant to s. 394.4625.

Section 11. Subsection (3) of section 397.305, Florida Statutes, is amended to read:

397.305 Legislative findings, intent, and purpose.—

(3) It is the purpose of this chapter to provide for a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery support services in the most appropriate and least restrictive environment which promotes long-term recovery while protecting and respecting the rights of individuals, primarily through community-based private not-for-profit providers working with local governmental programs involving a wide range of agencies from both the public and private sectors.

Section 12. Subsections (19) and (23) of section 397.311, Florida Statutes, are amended to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(19) "Impaired" or "substance abuse impaired" means having a substance use disorder or a condition involving the use of alcoholic beverages, illicit or prescription drugs, or any psychoactive or mood-altering substance in such a manner as to

induce mental, emotional, or physical problems or ~~and~~ cause socially dysfunctional behavior.

(23) "Involuntary treatment services" means an array of behavioral health services that may be ordered by the court for persons with substance abuse impairment or co-occurring substance abuse impairment and mental health disorders.

Section 13. Section 397.341, Florida Statutes, is created to read:

397.341 Transportation of individuals by law enforcement officers.—A law enforcement officer transporting an individual pursuant to this chapter shall consider the person's mental and behavioral state and restrain him or her in the least restrictive manner necessary under the circumstances, especially if the individual is a minor.

Section 14. Subsection (11) is added to section 397.501, Florida Statutes, to read:

397.501 Rights of individuals.—Individuals receiving substance abuse services from any service provider are guaranteed protection of the rights specified in this section, unless otherwise expressly provided, and service providers must ensure the protection of such rights.

(11) POST-DISCHARGE CONTINUUM OF CARE.—Upon discharge, the facility must inform an individual with a serious substance use disorder of the essential elements of recovery and provide assistance with accessing a continuum of care regimen. The department may adopt rules specifying the services that may be provided to such respondents.

Section 15. Section 397.675, Florida Statutes, is amended to read:

397.675 Criteria for involuntary admissions, including protective custody, emergency admission, and other involuntary assessment, involuntary treatment, and alternative involuntary assessment for minors, for purposes of assessment and stabilization, and for involuntary treatment.—A person meets the criteria for involuntary admission if there is good faith reason to believe that the person is substance abuse impaired or has a substance use disorder and a co-occurring mental health disorder and, because of such impairment or disorder:

(1) Has lost the power of self-control with respect to substance abuse, or has a history of noncompliance with substance abuse treatment with continued substance use; ~~and~~

(2)~~(a)~~ Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is refusing voluntary care after a sufficient and conscientious explanation and disclosure of the purpose for such services, or is incapable of appreciating his or her need for such services and of making a rational decision in that regard, although mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services; and ~~or~~

(3)(a)~~(b)~~ Without care or treatment, is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services;~~,~~ or

(b) There is substantial likelihood that in the near future

and without services, the person will inflict serious harm to self or others, as evidenced by recent acts, omissions, or behavior causing, attempting, or threatening such harm ~~has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another~~.

Section 16. Subsection (1) of section 397.6751, Florida Statutes, is amended to read:

397.6751 Service provider responsibilities regarding involuntary admissions.—

(1) It is the responsibility of the service provider to:

(a) Ensure that a person who is admitted to a licensed service component meets the admission criteria specified in s. 397.675;

(b) Ascertain whether the medical and behavioral conditions of the person, as presented, are beyond the safe management capabilities of the service provider;

(c) Provide for the admission of the person to the service component that represents the most appropriate and least restrictive available setting that is responsive to the person's treatment needs;

(d) Verify that the admission of the person to the service component does not result in a census in excess of its licensed service capacity;

(e) Determine whether the cost of services is within the financial means of the person or those who are financially responsible for the person's care; and

(f) Take all necessary measures to ensure that each individual in treatment is provided with a safe environment, and

to ensure that each individual whose medical condition or behavioral problem becomes such that he or she cannot be safely managed by the service component is discharged and referred to a more appropriate setting for care.

Section 17. Section 397.681, Florida Statutes, is amended to read:

397.681 Involuntary petitions; general provisions; court jurisdiction and right to counsel.—

(1) JURISDICTION.—The courts have jurisdiction of ~~involuntary assessment and stabilization petitions and~~ involuntary treatment petitions for substance abuse impaired persons, and such petitions must be filed with the clerk of the court in the county where the person is located or resides. The clerk of the court may not charge a fee for the filing of a petition under this section. The chief judge may appoint a general or special magistrate to preside over all or part of the proceedings related to the petition or any ancillary matters thereto, which include, but are not limited to, writs of habeas corpus issued pursuant to s. 397.501(9). The alleged impaired person is named as the respondent.

(2) RIGHT TO COUNSEL.—A respondent has the right to counsel at every stage of a proceeding relating to a petition for his or her ~~involuntary assessment and a petition for his or her~~ involuntary treatment for substance abuse impairment. A respondent who desires counsel and is unable to afford private counsel has the right to court-appointed counsel and to the benefits of s. 57.081. If the court believes that the respondent needs the assistance of counsel, the court shall appoint such counsel for the respondent without regard to the respondent's

wishes. If the respondent is a minor not otherwise represented in the proceeding, the court shall immediately appoint a guardian ad litem to act on the minor's behalf.

(3) STATE REPRESENTATIVE.—Subject to legislative appropriation, for all court-involved involuntary proceedings under this chapter in which the petitioner has not retained private counsel, the state attorney for the circuit in which the respondent is located shall represent the state rather than the petitioner as the real party of interest in the proceeding, but the petitioner has the right to be heard. Furthermore, the state attorney may not use any record obtained under this part for criminal investigation or prosecution purposes or for any purpose other than the respondent's civil commitment under this chapter. Any record obtained under this subsection must remain confidential.

Section 18. Section 397.6811, Florida Statutes, is repealed.

Section 19. Section 397.6814, Florida Statutes, is repealed.

Section 20. Section 397.6815, Florida Statutes, is repealed.

Section 21. Section 397.6818, Florida Statutes, is repealed.

Section 22. Section 397.6819, Florida Statutes, is repealed.

Section 23. Section 397.6821, Florida Statutes, is repealed.

Section 24. Section 397.6822, Florida Statutes, is repealed.

Section 25. Section 397.693, Florida Statutes, is amended to read:

397.693 Involuntary treatment.—A person may be the subject of a petition for court-ordered involuntary treatment pursuant to this part~~,~~ if that person:

(1) Reasonably appears to meet ~~meets~~ the criteria for involuntary admission provided in s. 397.675; ~~and:~~

(2)~~(1)~~ Has been placed under protective custody pursuant to s. 397.677 within the previous 10 days;

(3)~~(2)~~ Has been subject to an emergency admission pursuant to s. 397.679 within the previous 10 days; or

(4)~~(3)~~ Has been assessed by a qualified professional within 30 ~~5~~ days~~;~~

~~(4) Has been subject to involuntary assessment and stabilization pursuant to s. 397.6818 within the previous 12 days; or~~

~~(5) Has been subject to alternative involuntary admission pursuant to s. 397.6822 within the previous 12 days~~.

Section 26. Section 397.695, Florida Statutes, is amended to read:

397.695 Involuntary treatment services; persons who may petition.—

(1) If the respondent is an adult, a petition for involuntary treatment services may be filed by the respondent's spouse or legal guardian, any relative, a service provider, or an adult who has direct personal knowledge of the respondent's substance abuse impairment and his or her prior course of assessment and treatment.

(2) If the respondent is a minor, a petition for

involuntary treatment may be filed by a parent, legal guardian, or service provider.

(3) The court or the clerk of the court may waive or prohibit any service of process fees if a petitioner is determined to be indigent under s. 57.082.

Section 27. Section 397.6951, Florida Statutes, is amended to read:

397.6951 Contents of petition for involuntary treatment services.—

(1) A petition for involuntary treatment services must contain the name of the respondent; the name of the petitioner ~~or petitioners~~; the relationship between the respondent and the petitioner; the name of the respondent's attorney, if known; ~~the findings and recommendations of the assessment performed by the qualified professional;~~ and the factual allegations presented by the petitioner establishing the need for involuntary ~~outpatient~~ services for substance abuse impairment. The factual allegations must demonstrate the reason for the petitioner's belief that the respondent:

~~(1) The reason for the petitioner's belief that the respondent is substance abuse impaired;~~

(a)~~(2) The reason for the petitioner's belief that because of such impairment the respondent~~ Has lost the power of self-control with respect to substance abuse, or has a history of noncompliance with substance abuse treatment with continued substance use; ~~and~~

(b) Needs substance abuse services, but his or her judgment is so impaired by substance abuse that he or she either is refusing voluntary care after a sufficient and conscientious

explanation and disclosure of the purpose of such services, or is incapable of appreciating his or her need for such services and of making a rational decision in that regard; and

(c)1. Without services, is likely to suffer from neglect or refuse to care for himself or herself; that the neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that the harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services; or

2. There is a substantial likelihood that in the near future and without services, the respondent will inflict serious harm to self or others, as evidenced by recent acts, omissions, or behavior causing, attempting, or threatening such harm.

(2) The petition may be accompanied by a certificate or report of a qualified professional or a licensed physician who examined the respondent within 30 days before the petition was filed. This certificate or report must include the qualified professional's or physician's findings relating to his or her assessment of the patient and his or her treatment recommendations. If the respondent was not assessed before the filing of a treatment petition or refused to submit to an evaluation, the lack of assessment or refusal must be noted in the petition.

(3) If there is an emergency, the petition must also describe the respondent's exigent circumstances and include a request for an ex parte assessment and stabilization order that must be executed pursuant to s. 397.6955(4)

~~(3)(a) The reason the petitioner believes that the~~

~~respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless the court orders the involuntary services; or~~

~~(b) The reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care~~.

Section 28. Section 397.6955, Florida Statutes, is amended to read:

397.6955 Duties of court upon filing of petition for involuntary treatment services.—

(1) Upon the filing of a petition for involuntary treatment services for a substance abuse impaired person with the clerk of the court which does not indicate that the petitioner has retained private counsel, the clerk must notify the state attorney's office. In addition, the court shall immediately determine whether the respondent is represented by an attorney or whether the appointment of counsel for the respondent is appropriate. If, based on the contents of the petition, the court appoints counsel for the person, the clerk of the court shall immediately notify the office of criminal conflict and civil regional counsel, created pursuant to s. 27.511, of the appointment. The office of criminal conflict and civil regional counsel shall represent the person until the petition is dismissed, the court order expires, ~~or~~ the person is discharged from involuntary treatment services, or the office is otherwise discharged by the court. An attorney that represents the person named in the petition shall have access to the person,

witnesses, and records relevant to the presentation of the person's case and shall represent the interests of the person, regardless of the source of payment to the attorney.

(2) The court shall schedule a hearing to be held on the petition within 10 court working ~~5~~ days unless a continuance is granted. ~~The court may appoint a magistrate to preside at the hearing.~~

(3) A copy of the petition and notice of the hearing must be provided to the respondent; the respondent's parent, guardian, or legal custodian, in the case of a minor; the respondent's attorney, if known; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct. If the respondent is a minor, a copy of the petition and notice of the hearing must be personally delivered to the respondent. The clerk ~~court~~ shall also issue a summons to the person whose admission is sought, and unless a circuit court's chief judge authorizes disinterested private process servers to serve parties under this chapter, a law enforcement agency must effect service for the initial treatment hearing.

(4)(a) When the petitioner asserts that emergency circumstances exist, or when upon review of the petition the court determines that an emergency exists, the court may rely solely on the contents of the petition and, without the appointment of an attorney, enter an ex parte order for the respondent's involuntary assessment and stabilization which must be executed during the period when the hearing on the petition for treatment is pending. The court may further order a law enforcement officer or other designated agent of the court to:

1. Take the respondent into custody and deliver him or her to either the nearest appropriate licensed service provider or a licensed service provider designated by the court to be evaluated; and

2. Serve the respondent with the notice of hearing and a copy of the petition.

(b) The service provider must promptly inform the court and parties of the respondent's arrival and may not hold the respondent for longer than 72 hours of observation thereafter, unless:

1. The service provider seeks additional time under s. 397.6957(1)(c) and the court, after a hearing, grants that motion;

2. The respondent shows signs of withdrawal, or a need to be either detoxified or treated for a medical condition, which shall extend the amount of time the respondent may be held for observation until the issue is resolved; or

3. The original or extended observation period ends on a weekend or holiday, in which case the provider may hold the respondent until the next court working day.

(c) If the ex parte order was not executed by the initial hearing date, it shall be deemed void. However, if the respondent does not appear at the hearing for any reason, including lack of service, and upon reviewing the petition, testimony, and evidence presented, the court reasonably believes the respondent meets this chapter's commitment criteria and that a substance abuse emergency exists, the court may issue or reissue an ex parte assessment and stabilization order that is valid for 90 days. If the respondent's location is known at the

time of the hearing, the court:

1. Shall continue the case for no more than 10 court working days; and

2. May order a law enforcement officer or other designated agent of the court to:

a. Take the respondent into custody and deliver him or her to be evaluated either by the nearest appropriate licensed service provider or by a licensed service provider designated by the court; and

b. If a hearing date is set, serve the respondent with notice of the rescheduled hearing and a copy of the involuntary treatment petition if the respondent has not already been served.

Otherwise, the petitioner and the service provider must promptly inform the court that the respondent has been assessed so that the court may schedule a hearing as soon as practicable. The service provider must serve the respondent, before his or her discharge, with the notice of hearing and a copy of the petition. However, if the respondent has not been assessed within 90 days of the ex parte assessment and stabilization order, the court must dismiss the case.

Section 29. Section 397.6957, Florida Statutes, is amended to read:

397.6957 Hearing on petition for involuntary treatment services.—

(1)(a) The respondent must be present at a hearing on a petition for involuntary treatment services unless he or she knowingly, intelligently, and voluntarily waives his or her

right to be present or, upon receiving proof of service and evaluating the circumstances of the case, the court finds that his or her presence is inconsistent with his or her best interests or is likely to be injurious to himself or herself or others.~~,~~ The court shall hear and review all relevant evidence, including testimony from individuals such as family members familiar with the respondent's prior history and how it relates to his or her current condition, and the ~~review of~~ results of the assessment completed by the qualified professional in connection with this chapter. The court may also order drug tests. Absent a showing of good cause, such as specific symptoms of the respondent's condition, the court may permit all witnesses, such as any medical professionals or personnel who are or have been involved with the respondent's treatment, to remotely attend and testify at the hearing under oath through audio-video teleconference. Any witness intending to remotely attend and testify at the hearing must provide the parties with all relevant documents by the close of business on the day before the hearing ~~the respondent's protective custody, emergency admission, involuntary assessment, or alternative involuntary admission. The respondent must be present unless the court finds that his or her presence is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian advocate to act in behalf of the respondent throughout the proceedings~~.

(b) A respondent cannot be involuntarily ordered into treatment under this chapter without a clinical assessment being performed, unless he or she is present in court and expressly waives the assessment. In nonemergency situations, if the

respondent was not, or had previously refused to be, assessed by a qualified professional and, based on the petition, testimony, and evidence presented, it reasonably appears that the respondent qualifies for involuntary treatment services, the court shall issue an involuntary assessment and stabilization order to determine the appropriate level of treatment the respondent requires. Additionally, in cases where an assessment was attached to the petition, the respondent may request, or the court on its own motion may order, an independent assessment by a court-appointed physician or an otherwise agreed-upon physician. If an assessment order is issued, it is valid for 90 days, and if the respondent is present or there is either proof of service or his or her location is known, the involuntary treatment hearing shall be continued for no more than 10 court working days. Otherwise, the petitioner and the service provider must promptly inform the court that the respondent has been assessed so that the court may schedule a hearing as soon as practicable. The service provider shall then serve the respondent, before his or her discharge, with the notice of hearing and a copy of the petition. The assessment must occur before the new hearing date, and if there is evidence indicating that the respondent will not voluntarily appear at the forthcoming hearing, or is a danger to self or others, the court may enter a preliminary order committing the respondent to an appropriate treatment facility for further evaluation until the date of the rescheduled hearing. However, if after 90 days the respondent remains unassessed, the court shall dismiss the case.

(c)1. The respondent's assessment by a qualified professional must occur within 72 hours after his or her arrival

at a licensed service provider unless he or she shows signs of withdrawal or a need to be either detoxified or treated for a medical condition, which shall extend the amount of time the respondent may be held for observation until that issue is resolved. If the person conducting the assessment is not a licensed physician, the assessment must be reviewed by a licensed physician within the 72-hour period. If the respondent is a minor, such assessment must be initiated within the first 12 hours after the minor's admission to the facility. The service provider may also move to extend the 72 hours of observation by petitioning the court in writing for additional time. The service provider must furnish copies of such motion to all parties in accordance with applicable confidentiality requirements, and, after a hearing, the court may grant additional time or expedite the respondent's involuntary treatment hearing. The involuntary treatment hearing, however, may be expedited only by agreement of the parties on the hearing date or if there is notice and proof of service as provided in s. 397.6955(1) and (3). If the court grants the service provider's petition, the service provider may hold the respondent until its extended assessment period expires or until the expedited hearing date. However, if the original or extended observation period ends on a weekend or holiday, the provider may hold the respondent until the next court working day.

2. Upon the completion of his or her report, the qualified professional, in accordance with applicable confidentiality requirements, shall provide copies to the court and all relevant parties and counsel. This report must contain a recommendation on the level, if any, of substance abuse and, if applicable, co-

occurring mental health treatment the respondent requires. The qualified professional's failure to include a treatment recommendation, much like a recommendation of no treatment, shall result in the petition's dismissal.

(d) The court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and transport him or her to or from the treating or assessing service provider and the court for his or her hearing.

(2) The petitioner has the burden of proving by clear and convincing evidence that:

(a) The respondent is substance abuse impaired, has lost the power of self-control with respect to substance abuse, or ~~and~~ has a history of lack of compliance with treatment for substance abuse with continued substance use; ~~and~~

(b) Because of such impairment, the respondent is unlikely to voluntarily participate in the recommended services after sufficient and conscientious explanation and disclosure of their purpose, or is unable to determine for himself or herself whether services are necessary and make a rational decision in that regard; and~~:~~

(c)1. Without services, the respondent is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing, able, and responsible family members or friends or the provision of other services; or

2. There is a substantial likelihood that in the near future and without services, the respondent will inflict serious

harm to self or others, as evidenced by recent acts, omissions, or behavior causing, attempting, or threatening such harm ~~cause serious bodily harm to himself, herself, or another in the near future, as evidenced by recent behavior; or~~

~~2. The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care~~.

(3) ~~One of the qualified professionals who executed the involuntary services certificate must be a witness. The court shall allow testimony from individuals, including family members, deemed by the court to be relevant under state law, regarding the respondent's prior history and how that prior history relates to the person's current condition. The~~ Testimony in the hearing must be taken under oath, and the proceedings must be recorded. The respondent ~~patient~~ may refuse to testify at the hearing.

(4) If at any point during the hearing the court has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, is likely to neglect or injure himself, herself, or another if allowed to remain at liberty, or otherwise meets the involuntary commitment provisions of part I of chapter 394, the court may initiate involuntary examination proceedings under such provisions.

(5) At the conclusion of the hearing, the court shall either dismiss the petition or order the respondent to receive involuntary treatment services from his or her chosen licensed service provider if possible and appropriate. Any treatment

order must include findings regarding the respondent's need for treatment and the appropriateness of other less restrictive alternatives.

Section 30. Section 397.697, Florida Statutes, is amended to read:

397.697 Court determination; effect of court order for involuntary treatment services.—

(1)(a) When the court finds that the conditions for involuntary treatment services have been proved by clear and convincing evidence, it may order the respondent to receive involuntary treatment services from a publicly funded licensed service provider for a period not to exceed 90 days. The court may also order a respondent to undergo treatment through a privately funded licensed service provider if the respondent has the ability to pay for the treatment, or if any person on the respondent's behalf voluntarily demonstrates a willingness and an ability to pay for the treatment. If the court finds it necessary, it may direct the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court order, or to the nearest appropriate licensed service provider, for involuntary treatment services. When the conditions justifying involuntary treatment services no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary treatment services are expected to exist after 90 days of treatment services, a renewal of the involuntary treatment services order may be requested pursuant to s. 397.6975 before the end of the 90-day period.

(b) To qualify for involuntary outpatient treatment, an

individual must be supported by a social worker or case manager of a licensed service provider or a willing, able, and responsible individual appointed by the court who shall inform the court and parties if the respondent fails to comply with his or her outpatient program. In addition, unless the respondent has been involuntarily ordered into inpatient treatment under this chapter at least twice during the last 36 months, or demonstrates the ability to substantially comply with the outpatient treatment while waiting for residential placement to become available, he or she must receive an assessment from a qualified professional or licensed physician expressly recommending outpatient services, such services must be available in the county in which the respondent is located, and it must appear likely that the respondent will follow a prescribed outpatient care plan.

(2) In all cases resulting in an order for involuntary treatment services, the court shall retain jurisdiction over the case and the parties for the entry of such further orders as the circumstances may require, including, but not limited to, monitoring compliance with treatment, changing the treatment modality, or initiating contempt of court proceedings for violating any valid order issued pursuant to this chapter. Hearings under this section may be set by motion of the parties or under the court's own authority, and the motion and notice of hearing for these ancillary proceedings, which include, but are not limited to, civil contempt, must be served in accordance with relevant court procedural rules. The court's requirements for notification of proposed release must be included in the original order.

(3) An involuntary treatment services order also authorizes the licensed service provider to require the individual to receive treatment services that will benefit him or her, including treatment services at any licensable service component of a licensed service provider. While subject to the court's oversight, the service provider's authority under this section is separate and distinct from the court's broad continuing jurisdiction under subsection (2). Such oversight includes, but is not limited to, submitting reports regarding the respondent's progress or compliance with treatment as required by the court.

(4) If the court orders involuntary treatment services, a copy of the order must be sent to the managing entity within 1 working day after it is received from the court. Documents may be submitted electronically through ~~though~~ existing data systems, if applicable. The department shall also receive and maintain copies of involuntary assessment and treatment orders issued pursuant to ss. 397.6955 and 397.6957, professional certificates, and law enforcement officers' protective custody reports. These documents shall be used to prepare annual reports analyzing the data obtained from these documents, without information identifying patients, and the department shall provide copies of these reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

Section 31. Section 397.6971, Florida Statutes, is amended to read:

397.6971 Early release from involuntary treatment services.—

(1) At any time before the end of the 90-day involuntary treatment services period, or before the end of any extension granted pursuant to s. 397.6975, an individual receiving involuntary treatment services may be determined eligible for discharge to the most appropriate referral or disposition for the individual when any of the following apply:

(a) The individual no longer meets the criteria for involuntary admission and has given his or her informed consent to be transferred to voluntary treatment status.

(b) If the individual was admitted on the grounds of likelihood of self-neglect or the infliction of ~~physical~~ harm upon himself or herself or others, such likelihood no longer exists.

(c) If the individual was admitted on the grounds of need for assessment and stabilization or treatment, accompanied by inability to make a determination respecting such need:

1. Such inability no longer exists; or

2. It is evident that further treatment will not bring about further significant improvements in the individual's condition.

(d) The individual ~~is~~ no longer needs treatment ~~in need of~~ services.

(e) The director of the service provider determines that the individual is beyond the safe management capabilities of the provider.

(2) Whenever a qualified professional determines that an individual admitted for involuntary treatment services qualifies for early release under subsection (1), the service provider shall immediately discharge the individual and must notify all

persons specified by the court in the original treatment order.

Section 32. Section 397.6975, Florida Statutes, is amended to read:

397.6975 Extension of involuntary treatment services period.—

(1) Whenever a service provider believes that an individual who is nearing the scheduled date of his or her release from involuntary treatment services continues to meet the criteria for involuntary treatment services in s. 397.693 or s. 397.6957, a petition for renewal of the involuntary treatment services order must ~~may~~ be filed with the court ~~at least 10 days~~ before the expiration of the court-ordered services period. The petition may be filed by the service provider or by the person who filed the petition for the initial treatment order if the petition is accompanied by supporting documentation from the service provider. The court shall ~~immediately~~ schedule a hearing within 10 court working ~~to be held not more than 15~~ days after filing of the petition and~~. The court shall~~ provide the copy of the petition for renewal and the notice of the hearing to all parties and counsel to the proceeding. The hearing is conducted pursuant to ss. 397.6957 and 397.697 and must be before the circuit court unless referred to a magistrate ~~s. 397.6957~~.

(2) If the court finds that the petition for renewal of ~~the~~ involuntary treatment services ~~order~~ should be granted, it may order the respondent to receive involuntary treatment services for a period not to exceed an additional 90 days. When the conditions justifying involuntary treatment services no longer exist, the individual must be released as provided in s. 397.6971. When the conditions justifying involuntary treatment

services continue to exist after an additional 90 days of treatment service, a new petition requesting renewal of the involuntary treatment services order may be filed pursuant to this section.

~~(3) Within 1 court working day after the filing of a petition for continued involuntary services, the court shall appoint the office of criminal conflict and civil regional counsel to represent the respondent, unless the respondent is otherwise represented by counsel. The clerk of the court shall immediately notify the office of criminal conflict and civil regional counsel of such appointment. The office of criminal conflict and civil regional counsel shall represent the respondent until the petition is dismissed or the court order expires or the respondent is discharged from involuntary services. Any attorney representing the respondent shall have access to the respondent, witnesses, and records relevant to the presentation of the respondent's case and shall represent the interests of the respondent, regardless of the source of payment to the attorney.~~

~~(4) Hearings on petitions for continued involuntary services shall be before the circuit court. The court may appoint a magistrate to preside at the hearing. The procedures for obtaining an order pursuant to this section shall be in accordance with s. 397.697.~~

~~(5) Notice of hearing shall be provided to the respondent or his or her counsel. The respondent and the respondent's counsel may agree to a period of continued involuntary services without a court hearing.~~

~~(6) The same procedure shall be repeated before the~~

~~expiration of each additional period of involuntary services.~~

~~(7) If the respondent has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the respondent's competence.~~

Section 33. Section 397.6977, Florida Statutes, is amended to read:

397.6977 Disposition of individual upon completion of involuntary treatment services.—At the conclusion of the 90-day period of court-ordered involuntary treatment services, the respondent is automatically discharged unless a motion for renewal of the involuntary treatment services order has been filed with the court pursuant to s. 397.6975.

Section 34. Section 397.6978, Florida Statutes, is repealed.

Section 35. This act shall take effect July 1, 2022.

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 Committee on Children, Families, and Elder Affairs

BILL:	SB 1844
INTRODUCER:	Senator Bean
SUBJECT:	Mental Health and Substance Abuse
DATE:	January 31, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Pre-meeting**
2.			JU	
3.			AP	

I. Summary:

SB 1844 modifies the Baker Act and makes significant changes to the Marchman Act, the statutory processes for mental health and substance abuse examinations and treatment, respectively. The bill makes all of the following substantive changes:

- Requires facilities to inform persons with a serious mental illness or a serious substance use disorder, under both the Baker and Marchman Acts, of "the essential elements of recovery" and provide assistance in accessing a post-discharge continuum of care regimen.
- Allows individuals to be admitted as a civil patient in a state treatment facility without a transfer evaluation.
- Clarifies that the 72-hour involuntary examination period under the Baker Act begins when a patient arrives at a receiving facility;
- Provides law enforcement officers with discretion in deciding whether or not to detain someone and transfer them to a receiving facility under both the Baker and Marchman Acts;
- Makes the state attorney the "real party of interest" in Marchman Act cases before the courts.
- Prohibits courts from ordering an individual with a developmental disability, as defined in s. 393.063, F.S, who lacks a co-occurring mental illness to a state mental health treatment facility for involuntary inpatient placement and requiring that such individuals instead be referred to specified agencies for further evaluation and the provision of appropriate services.
- Repeals several sections of the Marchman Act, specifically those relating to involuntary assessment and stabilization, and relocates and amends such language into the provisions for involuntary treatment.
- Allows the court to order six months of involuntary outpatient treatment in lieu of inpatient treatment by a court as part of involuntary inpatient proceedings under s. 394.467, F.S., if the person had been twice ordered into inpatient treatment during the last 36 months and meets the criteria for involuntary placement.
- Changes the term "involuntary treatment" to "involuntary treatment services" in every instance where the term appears in ch. 397, F.S.

- Prohibits a court, in a hearing for placement in a treatment facility, from considering substantive information in the transfer evaluation unless the evaluator testifies at the hearing.
- Repeals all provisions for court-ordered involuntary assessments and stabilization (ss. 397.6811 to 397.6822, F.S.), and combines these procedures into a consolidated involuntary treatment process.
- Requires the court to hold a hearing within ten court working days.
- Amends s. 394.467(7), F.S., removing a 90-day cap in this section (implemented in 2016) as it is irrelevant on this provision given that long-term treatment has always been for up to six months.
- Ensures consistency to other changes made by the act which remove the 90-day cap on the amount of time an individual can be held at a receiving facility.
- Requires the Department of Children and Families (the DCF) to collect and analyze data related to Marchman Act cases and generate annual reports on data collected.

The DCF states that the bill is anticipated to have an indeterminate, negative fiscal impact on the agency, as well as on private sector substance use disorder treatment providers. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2021.

II. Present Situation:

The Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.[1] The Baker Act deals with Florida's mental health commitment laws, and includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations.[2] The Baker Act also protects the rights of all individuals examined or treated for mental illness in Florida.[3]

Involuntary Examination

Individuals suffering from an acute mental health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.[4] An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; and
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

[1] Chapter 71-131, L.O.F..; The Baker Act is contained in ch. 394, F.S.
[2] Sections 394.451-394.47891, F.S.
[3] Section 394.459, F.S.
[4] Sections 394.4625 and 394.463, F.S.

- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.[5]

The involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;[6]
- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination;[7] or
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.[8]

Involuntary patients must be taken to either a public or private facility which has been designated by the DCF as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold, or refer, as appropriate, involuntary patients under emergency conditions for psychiatric evaluation and to provide short-term treatment or transportation to the appropriate service provider.[9] The patient must be examined by the receiving facility within 72 hours of the initiation of the involuntary examination and specified actions must be taken within that time frame to address the individual needs of the patient.[10]

Involuntary Outpatient Placement

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

- The person is 18 years of age or older;
- The person has a mental illness;
- The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
- The person has a history of lack of compliance with treatment for mental illness;
- The person has, within the immediately preceding 36 months:
  - Been involuntarily admitted to a receiving or treatment facility, or has received mental health services in a forensic or correctional facility, at least twice; or
  - Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others;
- The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and either he or she has refused voluntary placement for

[5] Section 394.463(1), F.S.
[6] Section 394.463(2)(a)1., F.S. Additionally, the order of the court must be made a part of the patient's clinical record.
[7] Section 394.463(2)(a)2., F.S. The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.
[8] Section 394.463(2)(a)3., F.S. The report and certificate shall be made a part of the patient's clinical record
[9] Section 394.455(40), F.S.
[10] Section 394.463(2)(g), F.S.

treatment or he or she is unable to determine for himself or herself whether placement is necessary;
- The person is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being;[11]
- It is likely that the person will benefit from involuntary outpatient placement; and
- All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.[12]

A petition for involuntary outpatient placement may be filed by the administrator of either a receiving facility or a treatment facility.[13] The petition must allege and sustain each of the criterion for involuntary outpatient placement and be accompanied by a certificate recommending involuntary outpatient placement by a qualified professional and a proposed treatment plan.[14]

The petition for involuntary outpatient placement must be filed in the county where the patient is located. However, if the patient is being placed from a state treatment facility, the petition must be filed in the county where the patient will reside.[15] When the petition has been filed, the clerk of the court must provide copies of the petition and the proposed treatment plan to the DCF, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel.[16]

Once a petition for involuntary outpatient placement has been filed with the court, the court must hold a hearing within five business days, unless a continuance is granted.[17] The state attorney for the circuit in which the patient is located is required to represent the state, rather than the petitioner, as the real party in interest in the proceeding.[18] The court must appoint the public defender to represent the person who is the subject of the petition, unless that person is otherwise represented by counsel.[19]

At the hearing on involuntary outpatient placement, the court is required to consider testimony and evidence regarding the patient's competence to consent to treatment; if the court finds that the patient is incompetent to consent to treatment, it must appoint a guardian advocate[20] If the court concludes that the patient meets the criteria for involuntary outpatient placement it must issue an order for involuntary outpatient services.[21] The order must specify the duration of involuntary outpatient services, up to 90 days, and the nature and extent of the patient's mental

[11] This factor is evaluated based on the person's treatment history and current behavior.
[12] Section 394.4655(2), F.S.
[13] Section 394.4655(4)(a), F.S.
[14] Section 394.4655(4)(b), F.S.
[15] Section 394.4655(4)(c), F.S.
[16] *Id*.
[17] Section 394.4655(7)(a)1., F.S.
[18] *Id*.
[19] Section 394.4655(5), F.S. This must be done within one court working day of filing of the petition.
[20] Section 394.4655(7)(d), F.S.
[21] Section 394.4655(7)(b)1., F.S.

illness.[22] The order of the court and the treatment plan must be made part of the patient's clinical record.[23]

If, at any time before the conclusion of the initial hearing on involuntary outpatient placement, the court may order the person admitted for involuntary inpatient examination if it appears to the court that the person meets the criteria for involuntary inpatient placement and not the criteria for involuntary outpatient services.[24]

Involuntary Inpatient Placement

A person may be placed in involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

- He or she is mentally ill and because of his or her mental illness:
  - He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement or is unable to determine for himself or herself whether placement is necessary; and
  - He or she is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services; and
  - Without treatment, is likely to suffer from neglect or refuse to care for himself or herself; and
  - Such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or
  - There is a substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and
- All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.[25]

The administrator of the receiving or treatment facility that is retaining a patient for involuntary inpatient treatment must file a petition for involuntary inpatient placement in the court in the county where the patient is located.[26] Upon filing, the clerk of the court must provide copies to the DCF, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located.[27]

The court proceedings for involuntary inpatient placement closely mirror those for involuntary outpatient services.[28] However, unlike an order for involuntary outpatient services, the laws governing involuntary inpatient placement are silent regarding the court's order becoming part of the patient's clinical record.

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[22] *Id*.
[23] *Id*.
[24] Section 394.4655(7)(c), F.S. Additionally, if the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to the Marchman Act, the court may order the person to be admitted for involuntary assessment pursuant to the statutory requirements of the Marchman Act.
[25] Section 394.467(1), F.S.
[26] Section 394.467(2) and (3), F.S.
[27] Section 394.467(3), F.S.
[28] *See* s. 394.467(6) and (7), F.S.

The Marchman Act

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[29] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.[30] Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.[31] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.[32] In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[33]

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[34] However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.[35] As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.[36]

Involuntary Admissions

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization and treatment can be obtained on an involuntary basis. There are five involuntary admission procedures that can be broken down into two categories depending upon whether the court is involved.[37] Three of the procedures do not involve the court, while two require direct petitions to the circuit court. The same criteria for involuntary admission apply regardless of the admission process used.[38]

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[29] The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).
[30] *Id*.
[31] *Id*.
[32] *Id*.
[33] Chapter 93-39, s. 2, L.O.F., which codified current ch. 397, F.S.
[34] *See* s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.
[35] Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited January 31, 2022)(hereinafter cited as "Fundamentals of the Marchman Act").
[36] *Id*.
[37] *Id*.
[38] *Id*.

An individual meets the criteria for an involuntary admission under the Marchman Act when there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment, has lost the power of self-control with respect to substance use, and either:

- Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard;[39] or
- Without care or treatment:
  - The person is likely to suffer from neglect or refuse to care for himself or herself;
  - Such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and
  - It is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
  - There is substantial likelihood that the person:
    - Has inflicted, or threatened to or attempted to inflict physical harm on himself, herself, or another; or
    - Is likely to inflict, physical harm on himself, herself, or another unless he or she is admitted.[40]

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act include protective custody, emergency admission, and the alternative involuntary assessment for minors.

Law enforcement officers use the protective custody procedure when an individual is substance-impaired or intoxicated in public and such impairment is brought to the attention of the officer.[41] The purpose of this procedure is to allow the person to be taken to a safe environment for observation and assessment to determine the need for treatment. A law enforcement officer may take the individual to their residence, to a hospital, a detoxification center, or an addiction receiving facility, whichever the officer determines is most appropriate.[42]

If the individual in these circumstances does not consent to protective custody, the officer may do so against the person's will, without using unreasonable force. Additionally, the officer has the option of taking an individual to a jail or detention facility for his or her own protection. Such detention cannot be considered an arrest for any purpose and no record can be made to indicate that the person has been detained or charged with any crime.[43] However, if the individual is a minor, the law enforcement officer must notify the nearest relative of a minor in protective custody without consent.[44]

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[39] Section 394.675(2)(a), F.S. However, mere refusal to receive services does not constitute evidence of lack of judgment with respect to the person's need for such services.
[40] Section 397.675(2)(b), F.S.
[41] Section 397.677, F.S. The individual can be a minor or adult under this process.
[42] Section 397.6771, F.S. Further, s. 397.6773, F.S., provides that a person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody.
[43] Section 397.6772(1), F.S.
[44] Section 397.6772(2), F.S.

The second process, emergency admission, authorizes an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility, or a detoxification facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only.[45] Individuals admitted for involuntary assessment and stabilization under this provision must have a certificate from a specified health professional[46] demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.[47]

Lastly, the alternative involuntary assessment for minors provides a way for a parent, legal guardian, or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.[48]

Court Involved Involuntary Admissions

The two court involved Marchman Act procedures are involuntary assessment and stabilization, which provides for short-term court-ordered substance abuse services,[49] and involuntary services, which provides for long-term court-ordered substance abuse services.[50] Both are initiated through the filing of a petition.[51]

Involuntary Assessment and Stabilization

An individual's spouse, legal guardian, any relative, a private practitioner, the director of a licensed service provider or the director's designee, or any adult who has direct personal knowledge of the individual's substance abuse impairment may file a petition for involuntary assessment and stabilization on behalf of the individual.[52] If the individual is a minor, only a parent, legal guardian, legal custodian, or licensed service provider may file such a petition.[53]

The petition for involuntary assessment and stabilization must contain:

- The name of the applicant or applicants (the individual(s) filing the petition with the court);
- The name of the respondent (the individual whom the applicant is seeking to have involuntarily assessed and stabilized);
- The relationship between the respondent and the applicant;
- The name of the respondent's attorney, if known; and

[45] Section 397.679, F.S.

[46] Section 397.6793(1), F.S., provides a list of professionals that include a physician, a clinical psychologist, a physician assistant working under the scope of practice of the supervising physician, a psychiatric nurse, an advanced practice registered nurse, a mental health counselor, a marriage and family therapist, a master's-level-certified addictions professional for substance abuse services, or a clinical social worker

[47] Section 397.6793, F.S. The certificate can be from a physician, advanced practice registered nurse, a psychiatric nurse, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, or a physician assistant working under the scope of a practice of the supervising physician, or a master's-level-certified addictions professional for substance abuse services.

[48] Section 397.6798, F.S.

[49] *See* ss. 397.6811 through 397.6822, F.S.

[50] *See* ss. 397.693 through 397.6978, F.S.

[51] Section 397.681, F.S. The court may not charge a filing fee for these petitions.

[52] Section 397.6811(1), F.S.

[53] Section 397.6811(2), F.S.

- Facts to support the need for involuntary assessment and stabilization, including the reason for the applicant's belief that:
  - The respondent is substance abuse impaired;
  - Because of such impairment, the respondent has lost the power of self-control with respect to substance abuse; and
  - The respondent:
    - Has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or
    - Will refuse, or has refused voluntary care and based on his or her judgement being so impaired from the substance abuse, he or she is incapable of appreciating his or her need for care and of making a rational decision regarding the need for care. [54]

Once the petition is filed with the court, the court issues a summons to a respondent and must schedule a hearing to take place within ten days. Alternatively, the court can issue an ex parte order immediately.[55] Under the ex parte order, the court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him or her to the nearest appropriate licensed service provider.[56]

A court must conduct the hearing in accordance with s. 397.6811(1), F.S., and hear all relevant testimony. If the court determines that a respondent meets the criteria for involuntary assessment and stabilization, it must immediately enter an order that authorizes the involuntary assessment and stabilization of the respondent or, in the alternative, enter an order dismissing the petition if a respondent does not meet the criteria.[57]

If the court determines a respondent meets the criteria for involuntary assessment and stabilization, it may order him or her to be admitted for a period of five days[58] to a hospital, licensed detoxification facility, or addictions receiving facility for involuntary assessment and stabilization.[59] During that time, an assessment is completed on the individual.[60] Under certain circumstances, this order may be extended to complete the assessment.[61]

Based on the involuntary assessment at a hospital, detoxification facility, addictions receiving facility, or less restrictive component, the qualified professional must either:
- Release the individual and, if appropriate, refer the individual to another treatment facility or service provider, or to community services;
- Allow the individual to remain voluntarily at the licensed provider; or

[54] Section 397.6814, F.S. Further, if the person has refused to submit to an assessment, that fact must be included in the petition.
[55] Section 397.6815, F.S.
[56] Section 397.6815(2), F.S.
[57] Section 397.6818(1), F.S. This section also provides for the written findings that must be included in the order.
[58] Section 397.6819, F.S.
[59] Section 397.6811, F.S. The individual may also be ordered to a less restrictive component of a licensed service provider for assessment only upon entry of a court order or upon receipt by the licensed service provider of a petition.
[60] Section 397.6819, F.S. The licensed service provider must assess the individual without unnecessary delay using a qualified professional. If an assessment is performed by a qualified professional who is not a physician, the assessment must be reviewed by a physician before the end of the assessment period.
[61] *See* s. 397.6819, F.S., for exceptions.

- Hold the individual if a petition for involuntary treatment has been initiated.[62]

Involuntary Services

A person may be court-ordered for involuntary treatment if he or she meets the eligibility criteria for involuntary admission and has been involved in one of the following Marchman Act processes within certain timeframes:

- Protective custody or emergency admission within the previous ten days.
- Assessment by a qualified professional within five days.
- Involuntary assessment and stabilization or alternative involuntary admission pursuant to s. 397.6822, F.S.,[63] within the previous 12 days.[64]

An individual's spouse, legal guardian, any relative, or service provider, or any adult who has direct personal knowledge of the individual's substance abuse impairment or prior course of assessment and treatment may file a petition for involuntary services on behalf of the individual.[65] If the individual is a minor, only a parent, legal guardian, or service provider may file such a petition.[66]

Similar to a petition for involuntary assessment and stabilization, a petition for involuntary services must contain the same identifying information for all parties and attorneys and facts to support the same eligibility criteria as described above.[67] Upon filing of a petition, the court must schedule a hearing to be held within five days, and must provide a copy of the petition and notice of hearing to all parties and anyone else the court determines. The court also issues a summons to the person whose admission is sought.[68]

In a hearing for involuntary services, the petitioner must prove by clear and convincing evidence that:

- The individual is substance abuse impaired and has a history of lack of compliance with treatment for substance abuse;
- Because of such impairment the person is unlikely to voluntarily participate in the recommended services or is unable to determine for himself or herself whether services are necessary; and
- The respondent meets either of the following:
  - Without services the individual:
    - Is likely to suffer from neglect or refuse to care for himself or herself and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and

[62] Section 397.6822, F.S. The timely filing of a petition for involuntary services authorizes the service provider to retain physical custody of the individual pending further order of the court.
[63] Section 397.6822, F.S., refers to disposition of an individual after involuntary assessment, including release or referral to another treatment facility or service provider, or to community services; voluntary retention of the individual; or retention of an individual pending a petition for involuntary services.
[64] Section 397.693, F.S.
[65] Section 397.695(1), F.S.
[66] Section 397.695(2), F.S.
[67] Section 397.6951, F.S.
[68] Section 397.6955(1) through (3), F.S.

- That there is a substantial likelihood that without services the individual will cause serious bodily harm to himself, herself, or another in the near future, as evidenced by recent behavior; or
- The individual's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.[69]

At the hearing, the court must hear and review all relevant evidence, including the results of the involuntary assessment by a qualified professional, and either dismiss the petition or order the individual to receive involuntary choices from his or her chosen licensed service provider, if possible and appropriate. The respondent must be present unless the court finds that his or her presence is likely to be injurious to himself or herself or others. If such finding is made, a guardian advocate must be appointed to act on behalf of the respondent.[70]

If the court finds that the conditions for involuntary services have been proven, it may order the respondent to receive involuntary services with a publicly funded licensed service provider for up to 90 days.[71] Alternatively, if the individual or a person on the individual's behalf is able and willing to pay for services, the court may also order the individual to receive services at a privately funded licensed service provider.[72] If an individual continues to need involuntary services, the licensed service provider can petition the court for continuances for up to 90 days.[73] Unless an extension is requested, the individual is released after 90 days.[74]

Transportation to a Facility

Baker Act

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. A law enforcement officer is required to take a person into custody if the individual appears to meet the criteria for an involuntary examination under the Baker Act.[75] If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.[76] Law enforcement must then relinquish the person, along with corresponding documentation, to a responsible individual at the facility.[77]

[69] Section 397.6957(2), F.S.
[70] Sections 397.6957(1), F.S.
[71] Section 397.697(1), F.S
[72] *Id*.
[73] The licensed service provider must file its petition at least 10 days before the 90-day period expires. A hearing must be held within 15 days. Section 397.6975, F.S.
[74] Section 397.6977, F.S.
[75] Section 394.463(2)(a)2., F.S.
[76] Section 394.462(1)(f)-(g), F.S.
[77] Section 394.462(3), F.S.

Marchman Act

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.[78]

If a person in circumstances which justify protective custody[79] fails or refuses to consent to assistance and a law enforcement officer has determined that a hospital or a licensed detoxification or addictions receiving facility is the most appropriate place for the person, the officer may, after giving due consideration to the expressed wishes of the person:

- Take the person to a hospital or to a licensed detoxification or addictions receiving facility against the person's will but without using unreasonable force; or
- In the case of an adult, detain the person for his or her own protection in any municipal or county jail or other appropriate detention facility.[80]

The officer must use a standard form developed by the DCF to execute a written report detailing the circumstances under which the person was taken into custody, and the written report shall be included in the patient's clinical record.

Individual Bill of Rights

Both the Marchman Act and the Baker Act provide an individual bill of rights.[81] Rights in common include the right to:

- Dignity;
- Quality of treatment;
- Not be refused treatment at a state-funded facility due to an inability to pay;
- Communicate with others;
- Care and custody of personal effects; and
- Petition the court on a writ of habeas corpus.[82]

The individual bill of rights also imposes liability for damages on persons who violate individual rights.[83] The Marchman Act ensures the right to habeas corpus, which means that a petition for release may be filed with the court by an individual involuntarily retained or his or her parent or representative.[84] In addition to the petitioners authorized in the Marchman Act, the Baker Act permits the DCF to file a writ for habeas corpus on behalf of the individual.[85]

[78] Section 397.6795, F.S.
[79] Section 397.677, F.S., states that a law enforcement officer may implement protective custody measures when a minor or an adult who appears to meet the involuntary admission criteria in s. 397.675, F.S., is brought to the attention of law enforcement or in a public space.
[80] Section 397.6772(1)(a)-(b), F.S.
[81] Section 394.459, F.S., provides "Rights of Individuals" for individuals served through the Baker Act; section 397.501, F.S., provides "Rights of Individuals" for individuals served through the Marchman Act.
[82] *Id*.
[83] Sections 394.459(10) and 397.501(10)(a), F.S.
[84] Section 397.501(9), F.S.
[85] Section 394.459(8)(a), F.S.

Right to Outside Communication and Visitation

All patients held at a receiving facility have the explicit right to communicate freely and privately with others outside the facility unless it is determined that communication will likely harm the patient or others.[86] Similar conditions apply to the right of patients to send, receive, and mail correspondence, and to access outside visitors.[87] Facilities must review restrictions on a patient's right to communicate, send or receive sealed, unopened correspondence, or receive visitors at least once every 7 days.[88]

Remote Hearings

In response to the COVID-19 pandemic, on May 21, 2020, the Chief Justice of the Florida Supreme Court issued Supreme Court of Florida Administrative Order AOSC20-23, Amendment 2, authorizing courts to conduct hearings remotely.[89] However, on January 8, 2022, Supreme Court of Florida Administrative Order AOSC21-17 was issued, requiring in-person hearings unless the facility where the individual is located is closed to hearing participants due to the facility's COVID-19 protocols or the individual waives the right to physical presence at the hearing.[90]

The Florida Bar's Special Committee on Mental Health

In 2017, the Florida Bar developed a special committee on mental health and substance use issues (Committee).[91] One of the primary directives of the Committee was reviewing the state's behavioral health laws and recommending changes as it saw fit.[92] The Committee recommended a number of changes, including, in part:

- Making the State Attorney the "real party in interest" in Marchman Act cases, having the Clerk of Court notify the State Attorney when cares are filed, and having access to all relevant persons and records in each case;[93]
- Increasing and standardizing the length of time for courts to hold both Baker and Marchman Act hearings following the filing of a petition from five to days to ten days;[94]
- Allowing witnesses to appear telephonically at both Baker and Marchman Act hearings absent good cause being shown to require their physical presence, and standardizing scenarios which allow the respondent to be excused from attending the hearing;[95]

[86] Section 394.459(5)(a), F.S.
[87] Section 394.459(5)(b)-(c), F.S.
[88] Section 394.459(5)(c), F.S.
[89] The Supreme Court of Florida, Administrative Order AOSC20-23, Amendment 2, May 21, 2020, available at https://www.floridasupremecourt.org/content/download/633282/file/AOSC20-23.pdf (last visited January 29, 2022).
[90] The Supreme Court of Florida, Administrative Order AOSC20-23, Amendment 3, January 8, 2022, available at https://www.15thcircuit.com/sites/default/files/supreme-court-ao/AOSC21-17-Amendment-3.pdf (last visited January 29, 2022).
[91] The Florida Bar, *The Florida Bar's Special Committee on Mental Health 2018 Interim Report*, April 25, 2018, p. 1, available at https://www-media.floridabar.org/uploads/2018/05/2018-Interim-Report-Special-Committee-on-Mental-Health.pdf. (last visited January 29, 2022)(hereinafter cited as "The Florida Bar").
[92] *Id*.
[93] *Id*. at p. 4.
[94] *Id*. at p. 5.
[95] *Id*. at p. 5-7

- Standardizing the amount of time Baker Act patients can be held at both local and state-owned treatment facilities to a six-month maximum in both instances;[96]
- Requiring individuals who are initially subject to a Baker Act with traumatic brain injury or dementia to be referred to the Agency for Persons with Disabilities (the APD) or the Department of Elder Affairs (the DOEA);[97]
- Granting the State Attorney the right to a seven-day working continuance in Baker Act cases if good cause is shown, and express access to all relevant records;[98]
- Expressly defining "neglect or refusal to care for one's self" and "real and present threat of substantial harm";[99]
- Standardizing the admission criteria, petition contents, and court's treatment finding for Baker Act and Marchman Act cases;[100]
- Granting the public defender and regional counsel access the right to access their respective clients that are hospitalized or in a treatment facility;[101]
- Replacing the word 'services' with the word 'treatment' in both the Baker and Marchman Acts, as this is the term commonly used by litigants;[102] and
- Waiving the $80 service of process fee for litigants in Marchman Act proceedings.[103]

The Committee originally crafted this series of legislative proposals for the 2019 Legislative Session.[104] Several of the proposed recommendations were contained in SB 818 (2019)[105] and SB 870 (2020).[106]

Mental Health Data Reporting and Analysis

The DCF collects and maintains copies of ex parte orders, involuntary outpatient services orders, involuntary inpatient placement orders, and professional certificates initiating Baker Act examinations.[107] Such documents are considered part of a patient's clinical record and are used to prepare annual reports analyzing the de-identified data contained therein.[108] The DCF contracts with the Louis de la Parte Florida Mental Health Institute at the University of South Florida (the Institute) to perform the data analysis and prepare the reports.[109] The Institute also analyzes other information relating to mental health and acts as a provider of crisis services to certain patients.[110] The reports are provided to the DCF, the President of the Senate, the Speaker

[96] The Florida Bar, p. 7.
[97] *Id*. at p. 7-8.
[98] *Id*. at p. 8.
[99] *Id*.
[100] *Id*. at p. 10.
[101] The Florida Bar, p. 12.
[102] *Id*.
[103] *Id*.
[104] *Id* at p. 1.
[105] *See* SB 818 (2019 Reg. Session).
[106] *See* SB 870 (2020 Reg. Session).
[107] Section 394.463(2)(e), F.S.
[108] *Id*.
[109] The University of South Florida, Baker Act Reporting Center, *About Us*, available at https://www.usf.edu/cbcs/baker-act/about/index.aspx (last visited January 29, 2022).
[110] *See* The University of South Florida, Baker Act Reporting Center, *What We Do*, available at https://www.usf.edu/cbcs/baker-act/about/whatwedo.aspx; and The University of South Florida, Louis de la Parte Florida

of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.[111]

The Institute does not currently collect any data related to Marchman Acts.

III. Effect of Proposed Changes:

Baker Act – Definitions, Criteria, Rights of Individuals

The bill amends s. 394.459, F.S., requiring that a patient with a serious mental illness who has been released after being Baker Acted must be provided with information regarding the essential elements of recovery and provided with assistance in accessing a continuum of care regimen. The DCF is provided with rulemaking authority to determine what services may be available in such regimens. Current law requires the state to provide involuntary treatment at a state hospital, but does not require Baker Act patients to be provided with information about the essential elements of recovery or assistance in accessing a continuum of care regimen.

The bill also reduces the number of days within which a receiving facility must review restrictions on a patient's right to communicate or receive visitors from 7 days to every 3 days. If the review period ends on a weekend or holiday, the bill allows the facility to review the restriction no later than the next working day.

The bill amends s. 394.461, F.S., authorizing civil patients to be admitted to designated receiving facilities under the Baker Act without undergoing a transfer evaluation. The bill also provides that, before the close of the state's case in a Baker Act hearing for involuntary placement, the state may establish that a transfer evaluation was performed and that the document was properly executed by providing the court with a copy of the transfer evaluation. The bill also prohibits the court from considering the substantive information in the transfer evaluation unless the evaluator testifies at the hearing.

The bill amends s. 394.462, F.S., updating cross references to changes made by the act.

Baker Act – Involuntary Admissions, Involuntary Outpatient Services, Criminal Penalties

Involuntary Examination

The bill amends s. 394.463, F.S., providing that a person is subject to an involuntary examination if there is a substantial likelihood that in the near future, without care or treatment, the person will inflict serious harm to themselves or others in the near future, as evidenced by his or her recent behavior, actions, omissions, or behavior causing, attempting, or threatening such harm. This provision of the bill provides more specificity than current criteria, which only references certain harmful actions as evidenced by recent behavior.

Mental Health Institute, *About the Institute*, available at https://www.usf.edu/cbcs/fmhi/about/ (all sites last visited January 29, 2022).

[111] *Id*.

The bill authorizes, rather than requires as in current law, law enforcement to transport those who appear to meet Baker Act criteria to receiving facilities. Further, the bill requires law enforcement transporting Baker Act patients to do so in the least restrictive manner possible, especially if the patient is a minor.

The bill adds the Governor to the list of individuals receiving copies of the annual Baker Act report generated from forms documenting the circumstances surrounding initiation of a Baker Act. The bill specified that the DCF must provide copies of these reports, although the DCF is already providing such reports to all parties listed in statute (the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of both chambers).

The bill permits psychiatric APRNs to conduct discharge exams of Baker Act patients at any receiving facility when working under the established protocols of a psychiatrist. Current law only permits psychiatric nurses to do so when working at a hospital or health system.

The bill specifies that Baker Act examination periods begin when a patient arrives at a receiving facility, and it requires receiving facilities to inform the DCF of any person who has been Baker Acted three or more times within a 12-month period. The bill clarifies that petitions for involuntary services must be filed in circuit court, and removes the qualification that this is only the case when inpatient treatment is deemed necessary.

Involuntary Inpatient Placement

The bill amends s. 394.467, F.S., mirroring the changes made to involuntary examination criteria in involuntary inpatient placement criteria. Specifically, the bill adds that if a person has a mental illness and is incapable of surviving alone or with the help of willing, able, and responsible family or friends, and without treatment is likely to suffer neglect or refuses to care for one's self such that is poses a real and present threat of substantial harm, they may be eligible for involuntary inpatient services. Current law only specifies that family or friends must be willing and responsible. The bill also adds that if there is a substantial likelihood that in the near future and without services an individual will inflict serious harm to self or others, as evidenced by recent acts, omissions, or behavior related to such harm, the patient may be eligible for involuntary inpatient services. Current law does not include acts or omission, and does not include the phrase 'without services.'

The bill provides that with respect to a hearing on involuntary inpatient placement, both the patient and the state are independently entitled to at least one continuance of the hearing. The patient's continuance may be for a period of up to 4 weeks and requires concurrence of the patient's counsel. The state's continuance may be for a period of up to 5 court working days and requires a showing of good cause and due diligence by the state before it can be requested. The state's failure to timely review any readily available document or failure to attempt to contact a known witness does not merit a continuance.

The bill allows for all witnesses to a hearing to appear through audio-video teleconference, absent a showing of good cause. The bill requires any witness appearing telephonically to provide all parties with all relevant documents by the close of business the day prior to the hearing. The bill requires the court to allow testimony deemed relevant by the court under state

law from individuals, including family members, regarding the person's prior history and how that history relates to the person's current condition.

The bill allows the court to appoint a magistrate to preside at the hearing on the petition or any ancillary matters, including but not limited to, writs of habeas corpus issued under the Baker Act, rather than just over the proceedings as is authorized in current law.

Additionally, the bill mandates that the court allow testimony which it deems relevant from individuals, including family members, regarding the person's history and how that history related to the current condition of the individual.

The bill also requires the facility to make available to the state attorney to access the patient, any witnesses, and any clinical records needed to prepare its case within 24 hours of the involuntary placement petition being filed. Such records must remain confidential and may not be used for criminal investigation or prosecution purposes, or any purpose other than those related to the patient's civil commitment.

If the court finds that a patient meets the criteria for involuntary inpatient placement and the court seeks to order the patient to be transferred to a treatment facility or retained in the patient's current or another treatment facility, the bill requires the facility holding the patient to discharge the patient at any time he or she no longer meets the involuntary inpatient treatment criteria unless the patient has transferred to voluntary status.

The bill prohibits the court from ordering an individual with a developmental disability as defined under s. 393.063, F.S., who lacks a co-occurring mental illness, into a state treatment facility. Such individuals must be referred to the APD or the DOEA for further evaluation and the provision of appropriate services for their individual needs. This expands current law which prohibits such orders and requires similar referrals for persons with traumatic brain injury or dementia.

The bill also amends s. 394.467(6)(c) and 394.467(7), F.S., changing the maximum amount of time an individual may be held under the Baker Act at a receiving facility or a state-operated treatment facility[112] from 90 days to six months. The change to s. 394.467(7), F.S., is technical in nature, as involuntary admission at a treatment facility is currently capped at six months.

Marchman Act – Definitions, Criteria, and Transportation

The bill amends s. 397.305, F.S., revising legislative intent related to the Marchman Act to include that patients be placed in the most appropriate and least restrictive environment conducive to long-term recovery while protecting individual rights.

The bill amends s. 397.311, F.S., relating to definitions under the Marchman Act, defining "impaired" or "substance abuse impaired" to mean having a substance use disorder or a

[112] "Treatment facility" is defined in s. 394.455(48), F.S., to mean "a state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness, including facilities of the United States Government, and any private facility designated by the department."

condition involving the use of alcoholic beverages, illicit or prescription drugs, or any psychoactive or mood-altering substance in such a manner as to induce mental, emotional, or physical problems or cause socially dysfunctional behavior. The bill also changes the term being defined in s. 397.311(23), F.S. from "involuntary services" to "involuntary treatment services."

The bill creates s. 397.341, making the same changes to restriction requirements for law enforcement officers when a law enforcement officer is transferring an individual under the Marchman Act as those made by the bill under the Baker Act in s. 394.463, F.S.

The bill amends s. 397.501, F.S., requiring that a patient with a serious substance abuse addiction be provided with information on the elements of a coordinated system of care upon release from an addiction receiving facility. The DCF is provided with rulemaking authority to determine what services may be provided to patients.

The bill amends s. 397.675, F.S., adding and clarifying criteria for involuntary admission under the Marchman Act. The criteria is amended in the following manner:

- Expanding the application of the criteria to a person who has a history of noncompliance with treatment, in addition to person who have lost the power of self-control with respect to substance use;
- Requiring that the person is refusing voluntary care after a sufficient and conscientious explanation and disclosure of the purpose for treatment, rather than be so impaired in judgment that he or she is incapable of appreciating the need for services;
- Clarifying the provision related to the lack of family or friends to care for the person to indicate that the willing family or friend must also be able and responsible;
- Providing that the substantial harm to the person must be in the near future if services are not provided and that the person will inflict serious harm to self or others, as evidenced by recent acts, omissions, or behavior causing, attempting, or threatening such harm.

The bill amends s. 397.6751, F.S., relating to service provider responsibilities regarding involuntary admissions, requiring that all patients admitted under the Marchman Act be placed in the most appropriate and least restrictive environment conducive to the patient's treatment needs.

Marchman Act – Court-Related Provisions

The bill amends s. 397.681, F.S., revising language to specify that courts have jurisdiction of involuntary treatment petitions, rather than involuntary assessment and stabilization petitions. The bill also specifies that petitions may be filed with the clerk of court in the county where the subject of the petition resides, in addition to where he or she is located as in current law. The bill allows the chief judge in Marchman Act cases to appoint a general or special magistrate to preside over all, or part, of the proceedings related to the petition or any ancillary matters, including but not limited to, writs of habeas corpus issued under the Marchman Act, rather than just over the proceedings as is authorized in current law.

The bill provides that subject to appropriation, the state attorney must represent Florida, rather than the petitioner, as the real party of interest in all Marchman Act proceedings where the respondent has not obtained private counsel. The bill prohibits the state attorney from using

records obtained pursuant to Marchman Act cases for any purpose other than those relating to the respondent's civil commitment under the Act and requires the records to remain confidential.

The bill amends s. 397.693, F.S., relating to involuntary treatment, amending the criteria for when a person may be the subject of court-ordered involuntary treatment petition under the Marchman Act to if the person:

- *Reasonably appears to meet*, rather than meets, the criteria enumerated in s. 397.675, F.S.;
- Has been placed under protective custody pursuant to s. 397.677, F.S., within the previous 10 days;
- Has been subject to an emergency admission under section 397.679, F.S., within the previous 10 days; or
- Has been assessed by a qualified professional within the past 30 days, rather than the previous five days.

The bill amends s. 397.695, F.S., relating to involuntary treatment, changing instances of 'treatment' to 'treatment services' throughout the section and allowing the court to waive or prohibit service of process fees for respondents deemed indigent under s. 57.082, F.S.[113]

The bill amends 397.6951, F.S., relating to the required contents for a petition for involuntary treatment, changing instances of 'treatment' to 'treatment services' throughout the section and removing the requirement that a petition for involuntary treatment contain findings and recommendations of an assessment by a qualified professional.

The bill modifies the criteria for a petition for involuntary treatment under the Marchman Act in the substantively similar manner as the bill modifies the criteria for involuntary admission under the Baker Act as discussed above. The bill also provides that a petition may be accompanied by a certificate or report of a qualified professional or licensed physician who has examined the respondent within the 30 days preceding the filing of the petition. The certificate must contain the professional's findings and if the respondent refuses to submit to an examination must document the refusal. The bill provides that in the event of an emergency requiring an expedited hearing, the petition must contain documented reasons for expediting the hearing.

The bill amends s. 397.6955, F.S., requiring the clerk of court to notify the state attorney upon the filing of a petition for involuntary treatment services under the Marchman Act if the petition does not indicate that the petitioner has retained private counsel; or, in the alternative, notify the respondent's counsel if any has been retained. The bill also amends the time period in which the court is required to schedule a hearing on the petition to within ten court working days, rather than five, unless a continuance is granted.

In the case of an emergency, or when upon review of the petition the court determines that an emergency exists, the court may rely exclusively upon the contents of the petition and, without an attorney being appointed, enter an ex parte order for the respondent's involuntary assessment and stabilization which must be executed during the period when the hearing on the petition for treatment is pending. The court may further order a law enforcement officer or other designated agent of the court to:

[113] Section 57.082, F.S., provides processes and criteria for the determination of civil indigent status.

- Take the respondent into custody and deliver him or her to either the nearest appropriate licensed service provider or a licensed service provider designated by the court to be evaluated; and
- Serve the respondent with the notice of hearing and a copy of the petition.

In such instances, the bill requires a service provider to promptly inform the court and parties of the respondent's arrival and refrain from holding the respondent for longer than 72 hours of observation thereafter, unless:

- The service provider seeks additional time under s. 397.6957(1)(c), F.S., and the court, after a hearing, grants that motion;
- The respondent shows signs of withdrawal, or a need to be either detoxified or treated for a medical condition, which will serve to extend the amount of time the respondent may be held for observation until the issue is resolved; or
- The original or extended observation period ends on a weekend or holiday, in which case the provider may hold the respondent until the next court working day.

Under the bill, if the ex parte order was not executed by the initial hearing date, it is deemed void. If the respondent does not appear at the hearing for any reason, including lack of service, and upon reviewing the petition, testimony, and evidence presented, the court reasonably believes the respondent meets the Marchman Act commitment criteria and that a substance abuse emergency exists, the bill allows the court to issue or reissue an ex parte assessment and stabilization order that is valid for 90 days. If the respondent's location is known at the time of the hearing, the court:

- Must continue the case for no more than ten court working days; and
- May order a law enforcement officer or other designated agent of the court to:
    - Take the respondent into custody and deliver him or her to be evaluated either by the nearest appropriate licensed service provider or by a licensed service provider designated by the court; and
    - If a hearing date is set, serve the respondent with notice of the rescheduled hearing and a copy of the involuntary treatment petition if the respondent has not already been served.

The bill requires the petitioner and the service provider to promptly inform the court that the respondent has been assessed so that the court can schedule a hearing as soon as is reasonable. The bill requires the service provider to serve the respondent, before his or her discharge, with the notice of hearing and a copy of the petition. If the respondent has not been assessed within 90 days of the ex parte assessment and stabilization order, the bill requires the court to dismiss the case.

The bill amends s. 397.6957, F.S., requiring a respondent to be present during a hearing on an involuntary treatment services petition unless the respondent has knowingly, intelligently, and voluntarily waived their right to appear, or upon proof of service, the court finds that the respondent's presence is inconsistent with their best interests or will likely be harmful to them.

The bill authorizes the court to consider testimony from family members familiar with the respondent's history and how it relates to their current condition. The bill also permits the court to utilize drug testing for respondents in Marchman Act cases. The bill allows witnesses, such as

medical professionals or personnel involved in treatment of the respondent, to testify remotely via audio-video conference, and allows any witnesses intending to remotely to attend and testify at the hearing as long as they provide the parties with all relevant documents by close of business on the day before the hearing. Current law requires the respondent to be present at such hearings unless the court finds appearance to be harmful, in which case the court must appoint a guardian advocate to appear on the respondent's behalf.

The bill prohibits a respondent from being involuntarily ordered into treatment if a clinical assessment is not performed, unless the respondent is present in court and expressly waives the assessment. Outside of emergency situations, if the respondent is not, or previously refused to be, assessed by a qualified professional and, based on the petition, testimony, and evidence presented, it appears that the respondent qualifies for involuntary treatment services, the bill requires the court to issue an involuntary assessment and stabilization order to determine the correct level of treatment for the respondent. In Marchman Act cases where an assessment was attached to the petition, the bill allows the respondent to request, or the court on its own motion to order, an independent assessment by a court-appointed physician or another physician agreed to by the court and the parties.

An assessment order issued in accordance with the bill is valid for 90 days, and if the respondent is present or there is either proof of service or the respondent's whereabouts are known, the bill provides that the involuntary treatment hearing may be continued for no more than 10 court working days. Otherwise, the petitioner and the service provider are required to promptly inform the court that the respondent has been assessed in order for the court to schedule a hearing as soon as practicable. The bill mandates that the service provider serve the respondent, before his or her discharge, with the notice of hearing and a copy of the petition. The bill requires the assessment to occur before the new hearing date. However, if there is evidence indicating that the respondent will not voluntarily appear at the hearing, or is a danger to self or others, the bill permits the court to enter a preliminary order committing the respondent to an appropriate treatment facility for further evaluation until the new hearing date. As stated above, the bill requires the court to dismiss the case if the respondent still has not been assessed after 90 days.

Assessments conducted by a qualified professional under the bill must occur within 72 hours after the respondent arrives at a licensed service provider unless the respondent displays signs of withdrawal or a need to be either detoxified or treated for a medical condition. In such cases, the amount of time the respondent may be held for observation is extended until that issue is resolved. If the assessment is conducted by someone other than a licensed physician, the bill requires review by a licensed physician within the 72-hour period.

If the respondent is a minor, the bill requires the assessment to begin within the first 12 hours after the respondent is admitted and the service provider may request to extend the 72 hours of observation by petitioning the court in writing for additional time; however the service provider is required to provide copies of the motion to all parties in accordance with applicable confidentiality requirements. The bill permits the court to grant additional time or expedite the respondent's involuntary treatment hearing is determined to be appropriate after a hearing. The involuntary treatment hearing can only be expedited by agreement of the parties on the hearing date or if there is notice and proof of service. If the court grants the service provider's petition, the service provider is permitted to hold the respondent until its extended assessment period

expires or until the expedited hearing date. In cases where the original or extended observation period ends on a weekend or holiday, the provider is only permitted to hold the respondent until the next court working day.

The bill requires the qualified professional, in accordance with applicable confidentiality requirements, to provide copies of their completed report to the court and all relevant parties and counsel. The report is required to contain a recommendation on the level, if any, of substance abuse and any co-occurring mental health treatment the respondent may need. The qualified professional's failure to include a treatment recommendation results in the petition's dismissal.

The bill grants the court the authority to order a law enforcement officer or other designated agent of the court to take the respondent into custody and transport them to or from the treating or assessing service provider and the court for their hearing.

The bill provides that the court may initiate involuntary examination proceedings at any point during the hearing if it has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, is likely to neglect or injure himself, herself, or another if not committed,, or otherwise meets the involuntary commitment provisions covered under the Baker Act. The bill requires any treatment order to include findings regarding the respondent's need for treatment and the appropriateness of other less restrictive alternatives.

The bill amends s, 397.697, F.S., relating to court determinations and the effect of a court order for involuntary services, providing that in order to qualify for involuntary outpatient treatment an individual must be accompanied by a willing, able, and responsible advocate, or a social worker or case manager of a licensed service provider, who will inform the court if the individual fails to comply with their outpatient program. The bill also requires that if outpatient treatment is offered in lieu of inpatient treatment, it must be available in the county where the respondent resides and it may be offered for up to six months if it is established that the respondent meets involuntary placement criteria and has been involuntarily ordered into inpatient treatment at least twice during the past 36 months, the outpatient provider is in the same county as the respondent, and the respondent's treating physician certifies that the respondent can be more appropriately treated on an outpatient basis and can follow a treatment plan.

The bill requires the court to retain jurisdiction in all cases resulting in involuntary inpatient treatment so that it may monitor compliance with treatment, change treatment modalities, or initiate contempt of court proceedings as needed. The bill also permits hearings to be set with the court to address the ancillary matters for which the bill extends jurisdiction, provided the proceedings are served in accordance with court procedural rules. The bill clarifies that while subject to the court's oversight, a service provider's authority is separate and distinct from the court's continuing jurisdiction.

The bill also requires the DCF to receive and maintain copies of involuntary assessment and treatment orders issued pursuant to ss. 397.6955 and 397.6957, F.S., relating to professional certificates, and law enforcement officers' protective custody reports, respectively. The DCF is required to utilize de-identified data from these orders and reports to develop annual reports on the Marchman Act in a manner similar to what the DCF currently does for Baker Act data. Similar to the annual Baker Act reports, the bill requires these reports to be submitted annually to

the Governor, President of the Senate, the Speaker of the House of Representatives, and minority leaders of both parties in both chambers of the Legislature.

The bill amends s. 397.6975, F.S., related to extension of involuntary services periods, providing that a service provider may petition the court for an extension of an involuntary treatment period at any point before the expiration of the current treatment period if the individual in treatment appears to need additional care, removing the current requirement that the petition be filed at least 10 days before the expiration of the current court-ordered treatment period. The bill requires the court to immediately schedule a hearing to be held not more than 10 court working days after the filing of the petition to extend. The bill allows the court to order additional treatment if the original time period will expire before the hearing is concluded and it appears likely to the court that additional treatment will be required.

The bill deletes remaining provisions in s. 397.6975, F.S., found in current subsection (3)-(7). Section 397.6975, F.S., which currently provide for the following:

- Section 397.6975(3), F.S., provides that within one court working day after the filing of a petition for continued involuntary services, the court is required to appoint the office of criminal conflict and civil regional counsel to represent the respondent, unless the respondent is otherwise represented by counsel.
- Section 397.6975(4), F.S., requires hearings on petitions for continued involuntary services to be held before circuit court, and allowing the court to appoint a magistrate to preside over the hearing. This subsection requires the court to adhere to procedures for obtaining an order pursuant to section 397.697, F.S.
- Section 397.6975(5), F.S., provides that notice of a hearing must be provided to the respondent or his or her counsel, and that the respondent and the respondent's counsel may agree to a period of continued involuntary services without a court hearing.
- Section 397.6975(6), F.S., provides that the same procedure is to be repeated before the expiration of each additional period of involuntary services.
- Section 397.6975(7), F.S., requires the court to consider testimony and evidence regarding the respondent's competence in instances where the respondent has previously been found incompetent to consent to treatment.

The bill repeals the following provisions relating to court-ordered, involuntary assessments and stabilization under the Marchman Act:

- Section 397.6811, F.S., relating to involuntary assessment and stabilization;
- Section 397.6814, F.S., relating to the contents of a petition filed in a hearing on involuntary assessment and stabilization;
- Section 397.6815, F.S., relating to court procedures for hearings on involuntary assessments and stabilization;
- Section 397.6818, F.S., relating to court determinations in a hearing on involuntary assessments and stabilization;
- Section 397.6819, F.S., relating to the responsibility of licensed service providers pertaining to involuntary assessments and stabilization;
- Section 397.6821, F.S., relating to extensions of time for completion of involuntary assessments and stabilization; and
- Section 397.6822, F.S., relating to dispositions of individuals after involuntary assessments.

The bill combines these processes into a consolidated involuntary treatment process under sections 397.6951-397.6975, F.S. Currently, if a person is assessed and stabilized through a non-court-ordered admission, a petition for involuntary services would be filed and the court would schedule a hearing within five days. Under the bill, a petition for involuntary treatment would be filed and the court would have to hold a hearing within ten court working days.

Baker Act – Cross-References and Technical Changes

The bill amends ss. 394.495 and 394.496, F.S., explicitly updating professionals involved in the Baker Act from a list of cross referenced statutes to a list of professional titles, including:

- Clinical psychologist;
- Clinical social worker;
- Physician;
- Psychiatric nurse;
- Psychiatrist; or
- Person working under the direct supervision of one of these health care professionals.

The bill amends s. 394.499, F.S., relating to integrated children's CSU or juvenile addiction receiving facility services, revising "guardian" to "parent or legal" guardian, to state: a person under 18 years of age for whom voluntary application is made by his or her parent or legal guardian. Also, the bill adds a statutory reference to the voluntary admissions section presently in statute (s. 394.4625, F.S.).

Marchman Act - Cross-References and Technical Changes

The bill makes the following technical changes related to current Marchman Act provisions:

- Amends s. 397.6971, related to early release from involuntary services, to change all instances of the word 'services' to 'treatment services.'
- Amends s. 397.6977, F.S., relating to disposition of individual completion of involuntary treatment services, to change all instances of the word 'services' to 'treatment services.'
- Repeals s. 397.6978, F.S., relating to guardian advocates; patients incompetent to consent; and substance abuse disorder.

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Receiving and treatment facilities may see an increase in demand for their services based on the expansion of criteria in the bill. There is also an anticipated workload for providers associated with the collection and submission of the forms to the DCF by all facilities licensed to receive individuals under involuntary assessment and treatment, including hospitals and jails.[114] The extent of these impacts are indeterminate.

C. Government Sector Impact:

The DCF anticipates a negative fiscal impact from collecting and analyzing data related to involuntary assessment and treatment orders under the Marchman Act.[115] The initial estimated cost for this requirement is approximately $425,000.[116]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 394.455, 394.459, 394.461, 394.462, 394.463, 394.4655, 394.467, 394.495, 394.496, 394.499, 397.305, 397.311, 397.501, 397.675, 397.6751, 397.681,

[114] The DCF, *Agency Analysis for HB 1143*, p. 11, January 5, 2022 (on file with the Senate Committee on Children, Families, and Elder Affairs).
[115] *Id*.
[116] *Id*.

397.693, 397.695, 397.6951, 397.6955, 397.6957, 397.697, 397.6971, 397.6975, and 397.6977 of the Florida Statutes.

This bill creates section 397.341 of the Florida Statutes.

This bill repeals sections 397.6811, 397.6814, 397.6815, 397.6818, 397.6819, 397.6821, 397.6822, and 397.6978 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Children, Families, and Elder Affairs (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

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1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer may ~~shall~~ take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. A law enforcement officer transporting a person pursuant to this subparagraph shall consider the person's mental and behavioral


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state and restrain him or her in the least restrictive manner necessary under the circumstances, especially if the person is a minor. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under s. 464.0123, a mental health counselor, a marriage and family therapist, or a clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

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When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

Section 2. Paragraph (a) of subsection (6) of section 394.467, Florida Statutes, is amended to read:

394.467 Involuntary inpatient placement.—

(6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

(a)1. The court shall hold the hearing on involuntary inpatient placement within 5 court working days, unless a continuance is granted.

2. Except for good cause documented in the court file, the hearing must be held in the county or the facility, as appropriate, where the patient is located, must be as convenient to the patient as is consistent with orderly procedure, and shall be conducted in physical settings not likely to be injurious to the patient's condition. The respondent must be present at the hearing, in person or remotely through audio-video teleconference. If the court finds that the patient's attendance at the hearing is not consistent with the best interests of, or is likely to be injurious to, the patient, or the patient knowingly, intelligently, and voluntarily waives his or her right to be present, and the patient's counsel does not object, the court may waive the presence of the patient from all or any portion of the hearing. Absent a showing of good cause, such as specific symptoms of the patient's condition, the court may permit the patient and all witnesses, including, but not

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limited to, any medical professionals or personnel who are or have been involved with the patient's treatment, to remotely attend and testify at the hearing under oath through audio-video teleconference. Any witness intending to remotely attend and testify at the hearing must provide the parties with all relevant documents by the close of business on the day before the hearing. The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding.

3. The court may appoint a magistrate to preside at the hearing. One of the professionals who executed the petition for involuntary inpatient placement certificate shall be a witness. The patient and the patient's guardian or representative shall be informed by the court of the right to an independent expert examination. If the patient cannot afford such an examination, the court shall ensure that one is provided, as otherwise provided for by law. The independent expert's report is confidential and not discoverable, unless the expert is to be called as a witness for the patient at the hearing. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The patient may refuse to testify at the hearing.

Section 3. Section 397.341, Florida Statutes, is created to read:

397.341 Transportation of individuals by law enforcement officers.—A law enforcement officer transporting an individual pursuant to this chapter shall consider the person's mental and behavioral state and restrain him or her in the least


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restrictive manner necessary under the circumstances, especially if the individual is a minor.

Section 4. Section 397.6818, Florida Statutes, is amended to read:

397.6818 Court determination.—The respondent must be present, in person or remotely through audio-video teleconference, at the hearing initiated in accordance with s. 397.6811(1), unless he or she knowingly, intelligently, and voluntarily waives his or her right to be present or upon receiving proof of service and evaluating the circumstances of the case, the court finds that his or her presence is inconsistent with his or her best interest or is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian advocate to act on behalf of the respondent throughout the proceedings. The court shall hear all relevant testimony, including testimony from individuals such as family members familiar with the respondent's prior history and how it relates to his or her current condition. ~~The respondent must be present unless the court has reason to believe that his or her presence is likely to be injurious to him or her, in which event the court shall appoint a guardian advocate to represent the respondent.~~ Absent a showing of good cause, such as specific symptoms of the respondent’s condition, the court may permit the patient and all witnesses, such as any medical professionals or personnel who are or have been involved with the respondent’s treatment, to remotely attend and testify at the hearing under oath through audio-video teleconference. Any witness intending to remotely attend and testify at the hearing must provide the parties with all relevant documents by the

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close of business on the day before the hearing. The respondent has the right to examination by a court-appointed qualified professional. After hearing all the evidence, the court shall determine whether there is a reasonable basis to believe the respondent meets the involuntary admission criteria of s. 397.675.

Section 5. Subsection (1) of section 397.6957, Florida Statutes, is amended to read:

397.6957 Hearing on petition for involuntary services.—

(1) The respondent must be present, in person or remotely through audio-video teleconference, at a hearing on a petition for involuntary services unless he or she knowingly, intelligently, and voluntarily waives his or her right to be present or upon receiving proof of service and evaluating the circumstances of the case, the court finds that his or her presence is inconsistent with his or her best interest or is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian advocate to act on behalf of the respondent throughout the proceedings. ~~,~~ The court shall hear and review all relevant evidence, including testimony from individuals such as family members familiar with the respondent's prior history and how it relates to his or her current condition, and the ~~review of~~ results of the assessment completed by the qualified professional in connection with the respondent’s protective custody, emergency admission, involuntary assessment, or alternative involuntary admission. Absent a showing of good cause, such as specific symptoms of the respondent’s condition, the court may permit the patient and all witnesses, such as any medical professionals or personnel who

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are or have been involved with the respondent's treatment, to remotely attend and testify at the hearing under oath through audio-video teleconference. Any witness intending to remotely attend and testify at the hearing must provide the parties with all relevant documents by the close of business on the day before the hearing. ~~The respondent must be present unless the court finds that his or her presence is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian advocate to act in behalf of the respondent throughout the proceedings.~~

Section 6. This act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 394.463; requiring law enforcement officers transporting individuals for involuntary treatment to take certain actions; amending s. 394.467; revising the conditions under which a court may waive the requirement for a patient to be present at an involuntary inpatient placement hearing; authorizing the court to permit the patient and all witnesses to attend and testify remotely at the hearing through certain means; creating s. 397.341; requiring law enforcement officers transporting individuals for treatment to take certain actions; amending s. 397.6818; revising the conditions under

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which a court may waive the requirement for a patient to be present at an involuntary assessment and stabilization hearing; authorizing the court to permit the patient and all witnesses to remotely attend and testify at the hearing through certain means; amending s. 397.6957; revising the conditions under which a court may waive the requirement for a patient to be present at an involuntary services hearing; authorizing the court to permit the patient and all witnesses to remotely attend and testify at the hearing through certain means; providing an effective date.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Children, Families, and Elder Affairs (Bean) recommended the following:

Senate Substitute for Amendment (678898) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 394.4625, Florida Statutes, is amended to read:

394.4625 Voluntary admissions.—

(1) AUTHORITY TO RECEIVE PATIENTS.—

(a) A facility may receive for observation, diagnosis, or

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treatment any person 18 years of age or older making application to the facility by express and informed consent for admission or any person ~~age~~ 17 years of age or younger ~~under~~ for whom such application is made by his or her guardian. If found to show evidence of mental illness~~,~~; to be competent to provide express and informed consent or, for a minor, the express and informed consent of the minor's guardian~~,~~; and to be suitable for treatment, such person ~~18 years of age or older~~ may be admitted to the facility. ~~A person age 17 or under may be admitted only after a hearing to verify the voluntariness of the consent.~~

Section 2. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient’s clinical record.

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A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer may ~~shall~~ take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. A law enforcement officer transporting a person pursuant to this subparagraph shall consider the person's mental and behavioral state and restrain him or her in the least restrictive manner necessary under the circumstances, especially if the person is a minor. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under s. 464.0123, a mental health counselor, a marriage and family therapist, or a clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that

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the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

Section 3. Section 397.341, Florida Statutes, is created to read:

397.341 Transportation of individuals by law enforcement officers.—A law enforcement officer transporting an individual pursuant to this chapter shall consider the person's mental and behavioral state and restrain him or her in the least restrictive manner necessary under the circumstances, especially

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if the individual is a minor.

Section 4. This act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 394.4625; requiring the express and informed consent of a minor's guardian for voluntary admission of the minor to a receiving facility; removing a requirement that a hearing be held to verify the voluntariness of a minor's consent before his or her admission to a facility; amending s. 394.463; requiring law enforcement officers transporting individuals for involuntary treatment to take certain actions; creating s. 397.341; requiring law enforcement officers transporting individuals for treatment to take certain actions; 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 Committee on Children, Families, and Elder Affairs

BILL:	SB 1846
INTRODUCER:	Senator Bean
SUBJECT:	Public Records/Respondent's Name
DATE:	January 31, 2022
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Cox	CF	**Pre-meeting**
2.			JU	
3.			AP	

I. Summary:

SB 1846 makes the following information, filed with or by the court in proceedings under the Baker Act or Marchman Act, confidential and exempt from public records requirements:

- The respondent's name (at trial and on appeal);
- Petitions for voluntary and involuntary admission for mental health examination;
- Applications for voluntary and involuntary admission for mental health examinations or treatment; and
- All petitions or applications for voluntary and involuntary substance abuse treatment or assessment and stabilization.

The bill provides a public necessity statement, and extends the scheduled repeal dates of the public record exemptions under the Baker Act by three years, and under the Marchman Act by five years, to October 2, 2027.

The bill is likely to have an insignificant, negative fiscal impact on courts throughout the state. See Section V. Fiscal Impact Statement.

This bill provides that the act shall take effect on the same date that an unidentified bill or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 1844, which is tied to this bill, has an effective date of July 1, 2022.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

Section 119.011(12), F.S., defines "public records" to include:

> All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to "perpetuate, communicate, or formalize knowledge of some type."[6]

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[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[9] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[10]

General exemptions from the public records requirements are contained in the Public Records Act.[11] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[12]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.[13] Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.[14] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[15]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[16] (the Act), prescribe a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] The Act requires the repeal of

[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST. art. I, s. 24(c).
[10] *Id*. *See, e.g.*, *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[11] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[12] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[13] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[14] *Id*.
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[19]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[20] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

The Act also requires specified questions to be considered during the review process.[24] In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.[26]

[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.
[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.

Confidentiality of Records under the Baker and Marchman Acts

Baker Act

Section 394.4615, F.S., in part, provides that clinical records related to procedures under the Baker Act are confidential and exempt[27] and may not be disclosed without written consent of the individual, with certain exceptions. Such exceptions include specified disclosure by the individual, a guardian, or a guardian advocate.[28]

Court records, including all petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court under the Baker Act are also confidential and exempt from disclosure.[29] The clerk of the court is authorized to disclose court records to specified entities, including, for example, parties to the proceedings and certain governmental entities.[30]

Current law does not make confidential and exempt:
- A respondent's name, at trial and on appeal, for Baker Act cases;
- Information contained in an application, rather than a petition, for voluntary and involuntary admission for mental health examinations under the Baker Act.

Marchman Act

All service provider records related to procedures under the Marchman Act are confidential and exempt and may not be disclosed without written consent of the individual, with certain exceptions.[31] Additionally, petitions for involuntary assessment and stabilization, court orders, and related records that are filed with the court under the Marchman Act are confidential and exempt from disclosure.[32] However, the clerk of the court may disclose such records to specified entities, including, for example, parties to the proceedings and certain governmental entities.[33]

Current law does not make confidential and exempt:
- A respondent's name, at trial and on appeal, for Marchman Act cases;
- Information contained in an application, rather than a petition, for involuntary assessment and stabilization under the Marchman Act; and
- Petitions for voluntary assessment and stabilization under the Marchman Act.

III. Effect of Proposed Changes:

The bill amends ss. 394.464 and 397.6760, F.S., expanding existing public records exemptions to include:
- A respondent's name, at trial and on appeal, under both the Baker Act and Marchman Act;

[27] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
[28] Section 394.4615(1)-(2), F.S.
[29] Section 394.464(1), F.S.
[30] Section 394.464(1)-(2), F.S.
[31] Section 397.501(7), F.S.
[32] Section 397.6760(1), F.S.
[33] Section 397.6960(1)-(2), F.S.

- Petitions for voluntary Baker Act examinations;
- Applications for voluntary or involuntary examinations or treatment under the Baker Act;
- Petitions for voluntary and involuntary substance use disorder treatment under the Marchman Act; and
- Applications for voluntary and involuntary assessment and stabilization under the Marchman Act.

The bill applies the exemption to appeals pending or filed under either the Baker Act or Marchman Act on or after July 1, 2022. The bill also adds service providers to the list of individuals to whom the clerk of court may disclose confidential and exempt pleadings and other documents under either the Baker Act or Marchman Act.

The bill continues to prohibit the clerk of court from publishing personal identifying information on a court docket or in a publicly accessible file, as under current law, but creates a narrow exception that allows courts to use a respondent's name to schedule and adjudicate cases. The bill also applies the existing exemption to all court filings for voluntary Marchman Act cases.

The bill extends the current scheduled repeal dates of the public record exemptions provided under the Baker Act by three years, and under the Marchman Act by five years, to October 2, 2027. The bill maintains the public record exemptions for the disclosure of pleadings and other documents filed with a court involving admission proceedings.

The bill provides a public necessity statement, specifying that the exemption protects sensitive personal information, the release of which could cause unwarranted damage to the reputation of an individual. The statement provides:

> Legislature finds that it is a public necessity that applications for voluntary and involuntary mental health examinations and substance abuse treatment which are filed with or by a court and a respondent's name, which is published on a court docket and maintained by the clerk of the court, under part I of chapter 394 and parts IV and V of chapter 397, Florida Statutes, be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The mental health and substance abuse impairments of a person are medical conditions that should be protected from dissemination to the public. A person's health and sensitive personal information regarding his or her mental health or substance abuse impairment are intensely private matters. Making such applications, petitions, orders, records, and identifying information confidential and exempt from disclosure will protect such persons from the release of sensitive, personal information that could damage their and their families' reputations. The publication of personal identifying information on a physical or virtual docket, regardless of whether any other record is published, defeats the purpose of protections otherwise provided. Further, the knowledge that such sensitive, personal information is subject to disclosure could have a chilling effect on a person's willingness to seek out and comply with mental health or substance abuse treatment services.

This bill provides that the act shall take effect on the same date that an unspecified bill or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 1844 has an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill expands existing exemptions under the Baker and Marchman Acts to include a respondent's name, at trial and on appeal, on applications for voluntary mental health examinations or treatment and substance abuse treatment, and appeals pending or filed on or after July 1, 2022. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 3 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect personal identifying information of individuals who have been the subject of an involuntary examination under the Baker Act, or who have applied for voluntary substance use disorder treatment under the Marchman Act, at trial and on appeal. This bill exempts only such personal identifying information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator anticipates that the bill will have a minimal, but indeterminate, impact on expenditures of the State Courts System, if any.[34]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 394.464 and 397.6760 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

[34] The Office of the State Courts Administrator, *Agency Analysis of HB 1157*, January 21, 2022, p. 2. (on file with the Senate Committee on Children, Families, and Elder Affairs).

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Children, Families, and Elder Affairs (Bean) recommended the following:

Senate Amendment

Delete line 155

and insert:

SB 1844 or similar legislation takes effect, if such legislation

The Florida Senate

Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Michelle Branham

Secretary of Elderly Affairs

NOTICE OF HEARING

TO: Mrs. Michelle Branham

YOU ARE HEREBY NOTIFIED that the Committee on Children, Families, and Elder Affairs of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, February 1, 2022, in the Mallory Horne Committee Room, 37 Senate Building, commencing at 1:00 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 27th day of January, 2022

Committee on Children, Families, and Elder Affairs

Senator Ileana Garcia
As Chair and by authority of the committee

cc: Members, Committee on Children, Families, and Elder Affairs
Office of the Sergeant at Arms