

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1823 (PCB FFF 04-07) Developmental Services and Mental Health
SPONSOR(S): Future of Florida's Families and Murman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families	16 Y, 0 N	Walsh	Liem
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1823 creates the offense of sexual misconduct with certain developmentally disabled and mental health clients of the Department of Children and Families (DCF). It requires mandatory reporting of sexual misconduct and adds sexual misconduct to the list of offenses that bar employment on Level 1 and 2 screening standards. The bill prohibits the sealing or expunction of criminal history records of the offense of sexual misconduct.

The bill reenacts various sections of Florida Statutes for the purpose of incorporating the amendments contained in the bill.

There is no fiscal impact associated with the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill creates the offenses of sexual misconduct with certain developmentally disabled and mental health clients of the Department of Children and Families and provides criminal penalties for violations. It also expands employment background screening requirements to include sexual misconduct.

B. EFFECT OF PROPOSED CHANGES:

HB 1823 creates the offense of sexual misconduct with three client groups:

- An individual with a developmental disability who is in DCF’s custody; or who resides in a residential facility; or who receives services from a family care program (Chapter 393);
- A mental health patient who is in DCF’s custody; or who resides in a receiving or treatment facility (Chapter 394);
- A client who resides in a civil or forensic facility (Chapter 916).

The bill defines employee to include:

- Any paid staff member, volunteer, or intern of the Agency for Health Care Administration (AHCA) or DCF;
- Any person under contract with AHCA or DCF;
- Any person providing care or support to a client on behalf of DCF or its providers.

The bill provides that an employee who engages in sexual activity with a client commits a felony of the second degree.¹ An employee may be found guilty of sexual misconduct without having committed the crime of sexual battery.²

The bill provides that consent of the client is not a defense to prosecution of the crime. The bill excludes from prosecution employees who are legally married to the client or who have no reason to believe that the person with whom the employee engaged in sexual misconduct is a DCF client.

The bill provides that notwithstanding prosecution, any violation of this section, as determined by the Public Employees Relations Commission, constitutes sufficient cause for dismissal from employment and prohibits the person from any future employment within the developmental disabilities, mental health services, or developmental disabilities and mental health services systems, respectively.

The bill requires that any employee who witnesses sexual misconduct, or who otherwise knows or has reasonable cause to suspect a person has engaged in sexual misconduct, immediately report the misdemeanor, that coercing or threatening a person with the intent to alter a report is a third degree felony.

¹ S. 775.082(3)(c): For a felony of the second degree, by a term of imprisonment not exceeding 15 years. S. 775.083(1)(b): In addition to the term of imprisonment in s. 775.082, payment of a fine not exceeding \$10,000. S. 775.084(4)(a)(2), relating to a habitual offers: For a felony of the second degree, by a term of imprisonment not exceeding 30 years.

² S. 794.011(1)(h): “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 an other object; however, sexual battery does not include an act done for a bona fide medical purpose.

C. SECTION DIRECTORY:

Section 1: Creates s. 393.135, F.S.; defines “employee,” “sexual activity,” and “sexual misconduct;” provides that employee who engages in sexual misconduct with an individual who has a developmental disability commits a felony of the second degree without having committed sexual battery; provides that consent of the client is not a defense to prosecution; provides exceptions; provides that violation is sufficient cause for dismissal from public employment and prohibits re-employment in any capacity in the developmental services system; requires employee reporting to the hotline and in writing to the inspector general; requires inspector general to conduct an investigation and upon a finding of probable cause, notify the state attorney; provides that failure to report or inaccurate, incomplete or false reporting is a first degree misdemeanor, that coercing or threatening a person with the intent to alter a report is a third degree felony.

Section 2: Creates s. 394.4593, F.S.; defines “employee,” “sexual activity,” and “sexual misconduct;” provides that employee who engages in sexual misconduct with a patient commits a felony of the second degree without having committed sexual battery; provides that consent of the client is not a defense to prosecution; provides exceptions; provides that violation is sufficient cause for dismissal from public employment and prohibits re-employment in any capacity in the mental health services system; requires employee reporting to the hotline and in writing to the inspector general; requires inspector general to conduct an investigation and upon a finding of probable cause, notify the state attorney; provides that failure to report or inaccurate, incomplete or false reporting is a first degree misdemeanor, that coercing or threatening a person with the intent to alter a report is a third degree felony.

Section 3: Creates s. 916.1075, F.S.; defines “employee,” “sexual activity,” and “sexual misconduct;” provides that employee who engages in sexual misconduct with a client who lives in a civil or forensic facility commits a felony of the second degree without having committed sexual battery; provides that consent of the client is not a defense to prosecution; provides exceptions; provides that violation is sufficient cause for dismissal from public employment and prohibits re-employment in any capacity in the mental health services system; requires employee reporting to the hotline and in writing to the inspector general; requires inspector general to conduct an investigation and upon a finding of probable cause, notify the state attorney; provides that failure to report or inaccurate, incomplete or false reporting is a first degree misdemeanor, that coercing or threatening a person with the intent to alter a report is a third degree felony.

Section 4: Amends s. 435.03(2), F.S.; adds to Level 1 screening standards offenses under newly-created ss. 393.135, 394,4593, and 916.075; renumbers subparagraphs.

Section 5: Amends s. 435.04(2), F.S.; adds to Level 2 screening standards offenses under newly-created ss. 393.135, 394,4593, and 916.075; renumbers subparagraphs.

Section 6: Amends s. 393.0655(1), F.S.; applies the amended screening requirements to developmental disabilities direct service providers.

Section 7: Amends s. 393.067(3), F.S.; clarifies that a residential facility or comprehensive transitional education program license is not a professional license, does not create a property right in the recipient, and is not an entitlement; reenacts ss. 393.067(6)(a), (b), (c), (d), (f), and (g) for the purpose of incorporating the amendment to s. 435.04.

Section 8: Amends s. 394.4572, F.S.; applies the amended screening requirements to mental health personnel.

Section 9: Amends s. 943.0585, F.S.; prohibits expunction of criminal history record that relates to violation of newly-created sexual misconduct statutes.

Section 10: Amends s. 943.059, F.S.; prohibits sealing of criminal history record that relates to violation newly-created sexual misconduct statutes.

Section 11: Amends s. 400.215(2)(a), F.S.; corrects cross-reference; reenacts ss. 400.215(2)(b) and (c) and 400.215(3) for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 12: Amends s. 400.964(7), F.S.; corrects cross-reference; reenacts ss. 400.964(1), (2), and (7) for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 13: Amends s. 435.045(1)(a), F.S.; corrects cross-reference; reenacts the subsection for the purpose of incorporating the amendment to s. 435.04.

Section 14: Reenacts s. 400.414(1)(f) and (g), F.S., for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 15: Reenacts s. 400.4174, F.S., for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 16: Reenacts ss. 400.509(4)(a), (b), (c), (d), (f), and (g), F.S., for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 17: Reenacts s. 400.556(2)(c), F.S., for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 18: Reenacts ss. 400.6065(1), (2), and (4), F.S., for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 19: Reenacts ss. 400.980(4)(a), (b), (c), (d), (f), and (g), F.S., for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 20: Reenacts s. 409.175(2)(k), F.S., for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 21: Reenacts s. 409.907(8)(d), F.S., for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 22: Reenacts ss. 435.05(1) and (3), F.S., for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 23: Reenacts s. 744.3135, F.S., as amended by Chapter 2003-402, Laws of Florida, for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 24: Reenacts s. 985.04(2), F.S., for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 25: Reenacts s. 400.512, F.S., for the purpose of incorporating the amendments to ss. 435.03 and 435.04.

Section 26: Reenacts s. 400.619(4), F.S., for the purpose of incorporating the amendment to s. 435.03.

Section 27: Reenacts s. 400.6194(1), F.S., for the purpose of incorporating the amendments to s. 435.03.

Section 28: Reenacts s. 400.953, F.S., for the purpose of incorporating the amendments to s. 435.03.

Section 29: Reenacts s. 409.912(32), F.S., for the purpose of incorporating the amendments to s. 435.03.

Section 30: Reenacts s. 435.07(4), F.S., for the purpose of incorporating the amendments to s. 435.03.

Section 31: Reenacts s. 464.018(1)(e), F.S., for the purpose of incorporating the amendments to s. 435.03.

Section 32: Reenacts s. 744.309(3), F.S., for the purpose of incorporating the amendments to s. 435.03.

Section 33: Reenacts s. 744.474(12), F.S., for the purpose of incorporating the amendments to s. 435.03.

Section 34: Reenacts s. 985.407(4), F.S., for the purpose of incorporating the amendments to s. 435.03.

Section 35: Reenacts s. 39.001(2)(b), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 36: Reenacts s. 39.821(1), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 37: Reenacts ss. 110.1127(3)(a) and (c), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 38: Reenacts s. 112.0455(12)(a), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 39: Reenacts ss. 381.0059(1), (2), and (4), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 40: Reenacts ss. 381.60225(1)(a), (b), (c), (d), (f) and (g), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 41: Reenacts ss. 383.305(7)(a), (b), (c), (d), (f) and (g), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 42: Reenacts ss. 390.015(3)(a), (b), (c), (d), (f) and (g), F.S. for the purpose of incorporating the amendments to s. 435.04.

Section 43: Reenacts ss. 394.875(13)(a), (b), (c), (d), (f) and (g), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 44: Reenacts ss. 395.0055(1), (2), (3), (4), (6) and (8), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 45: Reenacts ss. 395.0199(4)(a), (b), (c), (d), (f) and (g), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 46: Reenacts s. 397.451(1)(a), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 47: Reenacts ss. 400.071(4)(a), (b), (c), (d) and (f), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 48: Reenacts ss. 400.471(4)(a), (b), (c), (d), (f) and (g), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 49: Reenacts ss. 400.506(2)(a), (b), (c), (d), (f) and (g), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 50: Reenacts s. 400.5572, F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 51: Reenacts s. 400.607(3)(a), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 52: Reenacts ss. 400.801(4)(a), (b), (c), (d), (f) and (g), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 53: Reenacts ss. 400.805(3)(a), (b), (c), (d), (f) and (g), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 54: Reenacts ss. 400.906(5)(a), (b), (c), (d), (f) and (g), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 55: Reenacts ss. 400.931(5)(a), (b), (c), (e) and (f), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 56: Reenacts ss. 400.962(10)(a), (b), (c), (d) and (f), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 57: Reenacts ss. 400.991(7)(b) and (d), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 58: Reenacts s. 402.302(2)(e), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 59: Reenacts s. 402.305(2)(a), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 60: Reenacts s. 402.3054(3), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 61: Reenacts ss. 483.30(2)(a), (b), (c), (d), (f) and (g), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 62: Reenacts ss. 483.101(2)(a), (b), (c), (d), (f) and (g), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 63: Reenacts s. 744.1085(5), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 64: Reenacts s. 984.01(2)(b), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 65: Reenacts s. 985.01(2)(b), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 66: Reenacts ss. 1002.36(7)(a) and (b), F.S., for the purpose of incorporating the amendments to s. 435.04.

Section 67: Reenacts ss. 943.0582(2)(a) and 943.0582(6), F.S., for the purpose of incorporating the amendments to ss. 943.0585 and 943.059.

Section 68: Reenacts ss. 943.053(7), (8) and (9), F.S., for the purpose of incorporating the amendment to s. 943.059.

Section 69: Provides that the creation of ss. 393.135, 394.4593 and 916.1075, F.S., apply to offenses committed on or after the effective date.

Section 70: Provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its March 17, 2004, meeting, the Committee on the Future of Florida's Families adopted PCB FFF 04-07 without amendment.