SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2808

SPONSOR: Children and Families Committee and Senator Lynn

SUBJECT: Department of Children and Family Services

DATE: March 12, 2004 REVISED: ____ ____ ____ ____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Fav/CS
2.			JU	
3.			AHS	
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I. Summary:

Committee Substitute for SB 2808 sets forth the following provisions relative to the services and responsibilities of the Department of Children and Families:

- Clarifies that the risk assessment conducted when there is a report of child abuse, neglect, or abandonment begins immediately, is on-going to reflect changes in the child's risk, and can include a safety plan.
- Modifies the description of the citizen review panel process to use terminology that will allow for the receipt of federal funding, to clarify the application of the six month review process to the court review and citizen review panel reviews, and to require the court to stipulate its findings relative to the care the child is receiving when the child is not required to appear before the court;
- Shifts the responsibility for conducting Medicaid related fair hearings, with the exception of Medicaid eligibility determination hearings, from the Department of Children and Families to the Agency for Health Care Administration;
- Directs the Department of Children and Families to support individuals with developmental disabilities who are in the Medicaid Home and Community-Based Waiver or the Medicaid Consumer Directed Care Waiver and who choose to seek employment;
- Adds employment history screening to the employment screening required for direct service providers of developmental disabilities services and mental health personnel working in the mental health programs;
- Sets forth the legal parameters of the residential facility license and comprehensive transitional education program license, including that these licenses are not professional licenses, they do not create a property right, and they are a privilege, not an entitlement;

- Requires that community mental health providers, inpatient mental health providers, substance abuse providers, and providers of child protection services receive a contract to participate in the provider network for pre-paid behavioral health services;
- Includes self neglect in the definition of "neglect" for the purposes of identifying adult neglect and providing adult protective services;
- Specifies that the notification of a person's right to legal counsel in an administrative hearing being held to consider the imposition of an administrative fine for false reporting of adult abuse is to be included in the notification of the intent to impose the fine;
- Amends provisions relative to homelessness services to correct the name of the Florida Supportive Housing Coalition in the Council on Homelessness membership, to articulate the construction and rehabilitation activities for which the Homelessness Housing Assistance Grant funds may be used to change the due date of the annual report on local homeless coalitions, and to require a statement of assurance from local lead agencies that the proposed services for the grant-in-aid funding is consistent with the local coalitions' continuum of care plan;
- Establishes a specific prohibition to acts of sexual misconduct for employees of the department or the Agency for Health Care Administration who engage in certain activities with an individual in the care of the department or living in certain facilities which could result in criminal penalties for performing such an act or failing to report the act, is added to the list of crimes identified in employment screening that prohibits employment, and could prohibit any future employment in either the developmental disabilities service system or the mental health service system regardless of the sexual misconduct was prosecuted;
- Requires the department to use a competitive bid process to contract in two pilot districts for the performance of certain eligibility determination functions for public assistance programs, to assess the service delivery in the pilots, to provide a report to the Governor and Legislature, and to authorize the Governor to provide direction relative to expansion of contracted public assistance eligibility determination;
- Adds law enforcement agencies to the groups that can receive medical reports from hospitals regarding children who have been abused and for whom a protective investigation is being conducted;
- Strengthens the actions that may be taken in institutions in response to child abuse, removes outdated provisions, and requires procedures specific to investigations in different institutional settings;
- Directs the department to adopt rules for the hiring and training of child protective staff, to develop a program design to test an alternative response system, and to report to the legislature on the implementation of the recommendations of the Protective Investigator Retention Workgroup;
- Provides the department with direction relative to the course approval process for the Parent Education and Family Stabilization Course; and
- Repeals the fee charged to certain individuals receiving services of the Community Care for the Disabled Adults program.

This bill substantially amends sections 39.301, 39.302, 39.304, 39.701, 61.21, 120.80, 393.0655, 393.066, 393.067, 393.13, 394.4572, 400.0255, 400.215, 400.964, 408.15, 409.91195, 409.912, 410.604, 415.102, 415.1113, 420.622, 420.623, 420.625, 435.03, 435.04, 435.045, 943.0585,

and 943.059, of the Florida Statutes. The bill creates sections 393.135, 394.4593, and 916.1075, of the Florida Statutes.

II. Present Situation:

Child Protective Investigation Risk Assessment

Section 39.301, F.S., sets forth the requirements for conducting a child protective investigation when a report of child abuse, neglect, or abandonment has been received by the central abuse hotline. The child protective investigation is to be initiated either immediately or within 24 hours and is to be completed within 60 days. Minimum requirements of the child protective investigation include a face-to-face interview with the child, other siblings, parents, and other adults in the home and an on-site assessment of the child's residence to determine the composition of the family, whether there is indication of abuse, the person responsible for the abuse, whether there is any criminal background of the family members, and the services needed for the child. In addition, an assessment of risks and needs of the child and family which incorporates the information from these above sources is to be conducted. This risk assessment is required to be completed within 48 hours after the initial contact with the child and is to provide evidence of whether a case plan, which is a plan of voluntary or court-ordered services for the family to address the problems that have resulted in the risk to the child, is needed [ss. 39.301(9)(b) and 39.601(2), F.S.].

Citizen Review Panels

Title IV E of the Social Security Act requires that each child in foster care receive a review no less frequently than once every six months in order to determine the safety of the child, the continuing necessity and appropriateness of the child's placement, the level of compliance with the child's case plan, the progress made in addressing the circumstances that resulted in the need for foster care placement, and the projected date the child will either be reunified with his or her parents or placed for adoption [42 U.S.C. 675, sec 475]. Federal law permits this review to be conducted by either the court or by administrative review [42 U.S.C. 675, sec 475]. Such an administrative review process was established within Florida's dependency system with ch. 90-306, L.O.F. Currently, there are three citizen review panel programs operating in Florida each with at least one panel and one program with 18 panels. Section 39.701(2), F.S., provides that citizen review panels may conduct the hearings required every six months to review the status of the child. Citizen review panels are authorized for a judicial circuit by an administrative order executed by the chief judge of the circuit [s. 39.702(1), F.S.]. These panels are composed of five citizens who serve without compensation and are administered by an independent not-for-profit organization [s. 39.702, (2) and (3), F.S.]. Section 39.702(5), F.S., sets forth the required policies and procedures that the independent not-for-profit organization must establish for such aspects as the recruitment, selection and training of panel members, the operation of the panel, and the assurance that the panels comply with the appropriate state and federal laws.

The requirements for holding the six month judicial reviews of the status of the child, the information to be considered, and the determinations to be made by the court at these reviews, are delineated in s. 39.701, F.S., as is the role the citizen review panel plays in this review process. For the cases reviewed by the citizen review panels, the same requirements for noticing,

for the reports to be considered, and for the determinations of the cases to be deliberated that are stipulated for judicial review hearings are applied. Limitations of the citizen review panels are identified including that a citizen review panel may only conduct two consecutive reviews without an intervening judicial review. Also, the court alone is permitted to dispense with the attendance of the child, of other parties, and even of the hearing under certain circumstances. Once the citizen review panel has conducted its review, it submits a report and a recommended order to the court.

Federal matching funds are available for certain state and local administrative costs under Title IV-E at a matching rate of fifty percent, including the preparation for and participation in judicial determinations [45 C.F.R. sec. 1356.60]. The department reports that preparation and participation in judicial determinations can include the administrative costs for the administrative reviews which seventeen other states have already utilized. The barrier to Florida's receipt of this funding is reportedly the current statutory language of s. 39.701, F.S., which frames the activities of the citizen review panels as judicial functions which are ineligible for Title IV-E funding [ACYF-PIQ-92-03, July 17, 1992]. Specifically, s. 39.701, F.S., refers to the reviews of the citizen review panels as hearings and the recommendations of the panel as recommended orders.

Medicaid Fair Hearings

Federal law requires that a state Medicaid plan provide an opportunity for a fair hearing to any Medicaid recipient or applicant whose Medicaid eligibility or covered services have been denied or otherwise limited or who is to be transferred or discharged from a nursing facility [42 C.F.R. 431.865]. When the former Department of Health and Rehabilitative Services was reorganized in 1974 and the Medicaid program, with the exception of Medicaid eligibility determination, was shifted to the Agency for Health Care Administration, the department retained responsibility for conducting all fair hearings afforded to Medicaid recipients and applicants through its Office of Appeals Hearings. For February 2002, through February 2003, the DCF Office of Appeals Hearings conducted a total of 7,190 fair hearings, of which 187 were related to Medicaid benefits, 222 were nursing facility discharge hearings, 718 were disqualification hearings for TANF and food stamp recipients, and 6,063 were for eligibility determination and other fair hearings not related to AHCA. The department reports that given the volume of fair hearings held, the hearings must be conducted quickly requiring an expertise to be developed in the pertinent areas. The fair hearings requested relative to Medicaid benefits or nursing home transfers are areas where greater expertise is available in AHCA than the department.

Employment of Individuals with Developmental Disabilities

Employment rates for individuals with developmental disabilities continue to remain low even with improvements in technology and other advances in the field. The U.S. Bureau of the Census 1997 Survey of Income and Program Participation reports that the unemployment rate for all working age adults with disabilities was 70 percent.[1] A recent study of the employment needs and goals of individuals with developmental disabilities in Florida found that 78 percent of the

[1] *Survey of The Employment Needs and Goals of Individuals with Developmental Disabilities*, sponsored by the Florida Developmental Disabilities Council, March 200, p. 1.

individuals who participated in the study went to a day program or a workshop, and less than 31 percent were either working in a supported employment job or were competitively employed.[2] Of those individuals who did not have a community job, 75 percent reported they would like a job in the community.[3]

Legislative intent for services for individuals with developmental disabilities recognizes the goal of enabling individuals with developmental disabilities to achieve their greatest potential for independent and productive living. However, the emphasis of this goal is enabling these individuals to live in their own homes or in residences in their own community and not on building their capability to become and remain employed [s. 393.062, F.S.]. Section 393.066, F.S., authorizes the department to provide services to individuals with developmental disabilities and reiterates the goal of the services as allowing individuals with developmental disabilities to live as independently as possible and to achieve lives that are as productive as possible. Similarly, the Bill of Rights of Persons Who are Developmentally Disabled [s. 393.13, F.S.], which provides further legislative intent that the design and delivery of services is to enable individuals with developmental disabilities to live their lives as close to normal as possible, does not identify providing opportunities for employment as an aspect of the system that supports this goal.

Developmental Disabilities and Mental Health Employment Screening

Section 393.0655, F.S., requires that any direct service provider is to meet the ch. 435, F.S., level two screening standards. A "direct service provider" is an individual 18 years of age or older who has direct contact with individuals with developmental disabilities and who is unrelated to the individuals with developmental disabilities, including family members residing with the direct service provider [s. 393.063(15), F.S.]. Similarly, s. 394.4572, F.S., requires mental health personnel to meet the ch. 435, F.S., level two screening standards. "Mental health personnel" is considered to be all program directors, professional clinicians, staff, and volunteers working in a mental health program or facility, public or private, who have direct contact with unmarried patients under the age of 18 years [s. 394.4572(1), F.S.].

Chapter 435, F.S., provides for two levels of screening requirements that various employment and licensure statutes utilize based on the responsibilities of the position being filled or facility being licensed. The level one screening standards stipulated in s. 435.03, F.S., require a criminal background screening of statewide criminal and juvenile records through the Department of Law Enforcement, a local criminal records check through local law enforcement, and an employment history check. Section 435.03(2), F.S., identifies a list of crimes which, if an individual were found guilty of or entered a plea of nolo contendere or guilty, would disqualify that person from having satisfied the background screening requirements. The level two screening requirements of ch. 435.04, F.S., require the same state and local criminal records check and add a federal criminal records check through the Federal Bureau of Investigation [s. 435.04(1), F.S.]. Section 435.04(2), F.S., identifies a longer list of crimes than stipulated for the level one screening that

[2] *Id.*, p. 5.
[3] *Id.*, p. 6.

could disqualify a person. Not included in the level 2 screening requirements is an employment history check.

Developmental Disabilities Program Licensing

Section 393.067, F.S., sets forth a licensure process for residential facilities and comprehensive transitional education programs, including provider qualifications, standards, training criteria, and monitoring. A “residential facility” is one that provides room and board as well as personal care to individuals with developmental disabilities [s. 393.063(39), F.S.]. A “comprehensive transitional education program” is a group of centers or units that operate jointly to provide individuals with developmental disabilities with a sequential series of educational care, training, treatment, habilitation, and rehabilitation services. The department has raised concerns that the current licensing authority granted to them for these facilities and programs does not provide sufficient authority to reject a license application or terminate a license when serious questions exist as to the adequate provision of care but specific licensure criteria have not been violated.

Prepaid Behavioral Health Services

While the Department of Children and Families is responsible for delivery of publicly funded mental health and substance abuse services, the Agency for Health Care Administration (AHCA) provides a substantial portion of the funding for these services through the Medicaid Program thus requiring collaboration in strategies to improve the efficiencies and effectiveness of the programs. Section 409.912, F.S., requires AHCA to provide Medicaid services in the most cost-effective manner which has included transitioning the provision of mental health and substance abuse services from a traditional fee-for-service and unit cost contracting methodology to a capitated pre-paid arrangement. Chapter 2003-279, L.O.F., provided a time frame of July 1, 2006, to implement this transition to capitated pre-paid arrangements and directed AHCA and the department to contract with managed care entities or arrange to provide these services through a capitated pre-paid arrangement to all Medicaid recipients, with the exception of one area, where allowed by federal law and regulation. Section 409.912,(4)(b)7, F.S., requires that traditional community mental health providers contracting with the department under ch. 394, F.S., providers of services for children and families in the child protection system, and inpatient mental health providers licensed under ch. 395, F.S., be offered the opportunity to contract and participate in the provider network for the pre-paid behavioral health services.

Adult Protective Services

Chapter 415, F.S., sets forth the statutory framework for Florida’s system of adult protective services which provides for investigating alleged adult abuse, neglect, and exploitation and the provision of services and supervision to protect adults from further abuse, neglect, or exploitation. Adults protected by this chapter are vulnerable adults who are at least 18 years of age and are experiencing an impaired ability to perform the normal activities of daily living or to provide for their own care or protection [s. 415.102(26), F.S.]. Reports of known or suspected abuse, neglect, or exploitation are made to the central abuse hotline [s. 415.103 F.S.]. For the purposes of adult protective investigations and services, “neglect” is defined as the failure or the omission of the caregiver to provide the care, supervision, and services that a vulnerable adult needs to maintain his or her physical or mental health.

Protective investigators of the department conduct an onsite investigation of allegations of abuse, neglect, or exploitation of vulnerable adults to determine the following: if the reported victim is a vulnerable adult; if there is any indication of abuse, neglect, or exploitation and the extent and nature of the injuries; the composition of the family or household; the person responsible for the abuse, neglect, or exploitation; the immediate or long term risk; and the services needed to protect the vulnerable adult. If the investigation determines that the vulnerable adult is in need of services or supervision to protect the vulnerable adult from further abuse, neglect, or exploitation, such services are to be arranged [s. 415.105, F.S.]. If the vulnerable adult determined to need such services and supervision lacks the understanding or capacity to make or communicate responsible decisions, the department may petition the court to authorize the provision of protective services [s. 415.1051, F.S.]. The department's authority to obtain a court order to provide protective services without the consent of the vulnerable adult had historically been based on the definition of "neglect" that had included the disabled adult or elderly person's failure to provide the care needed to maintain his or her own physical or mental health. Chapter 2000-349, L.O.F., removed reference to the disabled adult or elderly person's failure to provide the care from the definition of "neglect. " At least one court has dismissed the department's petition for involuntary adult protective services on the grounds that ch. 415, F.S., no longer applies to "self neglect."

In addition to the criminal penalties that may be imposed for making a false report, the department is authorized to impose an administrative fine of up to $10,000 [s. 415.1113(1), F.S.]. The person alleged to have filed the false report is entitled to an administrative hearing under ch. 120, F.S., prior to the imposition of the administrative fine and has a right to be represented by legal counsel at the administrative hearing [s. 415.1113(4) and (5), F.S.]. However, the statute does not stipulate how the person is to be notified of his or her right to legal counsel. Also, the statute's stipulation of the person's right to legal counsel is set forth within the subsection that provides for the level of proof required at the hearing which may be construed as not requiring the notification of right to legal counsel until the day of the hearing.

Homelessness Services

Chapter 2001-98, L.O.F., established the State Office on Homelessness within the department, as well as the Council on Homelessness, to develop and advise the State Office on Homelessness. Section 420.622, F.S., sets forth the membership of the Council which includes representation from the Florida Coalition for Supportive Housing. However, the legal name of this organization is actually the Florida Supportive Housing Coalition. The State Office on Homelessness was authorized by ch. 2001-98, L.O.F., to distribute Homeless Housing Assistance Grants. These grants provide up to $750,000 to construct and rehabilitate transitional or permanent housing units for homeless persons. The statute, however, does not define the construction and rehabilitation activities for which these grant funds may be used.

Financial and social services for the homeless are provided through local coalitions for the homeless created by the department [s. 420.623, F.S.]. Local coalitions can apply for state funding through a competitive grants-in-aid program administered by the department through its districts [s. 420.625, F.S.]. These local coalitions are required to develop local homeless continuum of care plans which present an assessment of the availability and need for services for

the homeless population and the plan for providing a continuum of care [s. 420.623, F.S.]. Additional functions of the coalition are delineated in s. 420.623, F.S., including collecting data on the homeless population, developing a spending plan, and preparing an annual report. The department is required to submit by June 30th of each year a compilation of all the programs and resources available locally, local spending plans, progress implementing the continuum of care plans, and data collected.

Sexual Misconduct

Concerns have been raised regarding employees of the Department of Children and Families who engage in sexual misconduct with clients who are in the care of the department. Particular concerns have been expressed regarding the vulnerability of persons with developmental disabilities who live in residential facilities, developmental services institutions, foster care facilities, group homes, intermediate care facilities, residential habilitation centers, and family care centers. There is also concern for persons with mental illness who may be temporarily residing at a receiving facility or living for longer periods of time at a treatment facility.

National statistics indicate that between 70 and 90 percent of these vulnerable individuals will be the victims of sexual abuse, assault, and/or exploitation at some point of their lives.[4] Many times this abuse comes from persons who are charged with providing care to these persons with disabilities. Because of functional limitations that are experienced by individuals with developmental disabilities or mental illness, they can be particularly vulnerable to these types of crimes.

Currently, s. 825.102, F.S., addresses the sexual abuse of elderly or disabled persons and specifies the penalties for these crimes. Depending upon the offense, the sexual abuse of an elderly or disabled person is a 2nd or 3rd degree felony that is punishable as provided in ss. 775.082, 775.083, or 775.084, of the Florida Statutes. The current law also requires that certain persons who know or have a reasonable suspicion to suspect that a vulnerable adult is being abused immediately make a report to the abuse hotline [s. 415.1034, F.S.]. If an investigation reveals that an incident occurred, subsequent actions include the notification of law enforcement, and the state attorney's office. Further, s. 794.011, F.S., addresses the crime of sexual battery and specifies penalties for that crime if the victim is "mentally defective" and the offender has knowledge of this fact. These provisions have not been considered strong enough to put a stop to the sexual victimization of clients who are in the care of the department.

It has been difficult to prosecute offenders because in many instances the perpetrator argues that the victim provided consent. It has been suggested that strengthening the penalties associated with staff sexual misconduct would be a way to help ensure the safety of these vulnerable clients. Strengthening the penalties associated with sexual misconduct would also have an impact on employee screening and termination practices as well as criminal penalties.

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[4] *Behind Locked Doors – Institutional Sexual Abuse*, Crossmaker, M., Sexuality and Disability, Vol. 9, No. 3, 1991.

Administration of Public Assistance Eligibility

The Economic Self-Sufficiency (ESS) program of the department is responsible for determining eligibility for food stamps, Temporary Assistance for Needy Families (TANF), Medicaid, and Refugee cash assistance. More than 7,367 individuals are employed by the ESS program who, during FY 2002-2003, processed more than 1.4 million eligibility applications and assisted more than 2.7 million clients.[5] The Florida Legislature has provided direction to the department in both 1997 and in 2003 to examine and begin pursuing the option of outsourcing the eligibility determination function for Medicaid, food stamps, and TANF. While TANF requirements have allowed for this privatization, federal regulations for food stamps and Medicaid have prohibited the complete outsourcing of the eligibility determination process. Specifically, federal regulation for both food stamps [7 C.F.R. Part 272.4] and Medicaid [42 U.S.C. 1396a(a)(4)] require that a public employee perform the actual eligibility determination for these benefits. The department has requested waivers of this requirement for both programs. While a waiver for the Medicaid program has not been approved, a waiver of this requirement was granted by the United States Department of Agriculture (USDA) for a limited number of food stamp clients in six sites.

In response to the 2003 legislative directive in the General Appropriations Act for 2003-2004 proviso language, the department has embarked upon a modernization initiative for the ESS program. This modernization initiative has focused on soliciting bids for most of the ESS eligibility determination functions with the goal of simplifying the ESS process and utilizing other innovations to create more efficiencies in the program such as a call/change center and internet innovations. To address the food stamp and Medicaid requirement for a public employee to determine eligibility, the plan has included using private sector employees to conduct the initial front-end processing for eligibility determination and providing for a DCF employee to review the work and provide the official approval to meet the federal requirement. The department has released the Request for Information to receive comments on the program requirements and the draft solicitation document from which the formal solicitation document will be finalized and released with an anticipated contract execution date of July 2004. At this time, the department estimates a 5-year contract for approximately $1.2 billion (or $220 to $250 million per year). The department reports that the plan for meeting the requirements of the 2003 proviso has continued to evolve. In particular, the department reports that the USDA has very recently offered to expedite a review of a waiver request from Florida that would allow the department to use the private sector for the entire eligibility determination process on a statewide basis and not require as stringent an evaluation as initially required for the six site demonstration project. The department reports it intends to develop such a waiver which would eliminate the need for any public employee role in the determination of eligibility, including DCF giving final approval. Florida would become the only state with such a broad-scale privatized eligibility determination process.

The employees of the department have been developing an employee plan for achieving the required efficiencies. The department reports that the employees' plan will be compared with the selected private sector plan after the competitive procurement process at which time a decision

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[5] *Economic Self-Sufficiency Eligibility Process: A Study in Conjunction with DCF Reengineering Initiatives*, Internal Audit of the Office of Inspector General of the Department of Children and Families, November 26, 2003

will be made as to whether to contract with the private sector vendor or utilize the employees' plan.

Law Enforcement Receipt of Medical Reports

If a child who is the subject of a child abuse investigation either complains of an injury, is alleged to have been sexually abused, or appears to need a medical examination, the child protective investigator may refer the child to a physician or the emergency room of a hospital for an examination without the consent of the parents or legal custodians [s. 39.304, F.S.]. Hospitals and other facilities licensed under ch. 395, F.S., are required to provide copies of the photographs, x-rays, and medical reports of these examinations to the department, its agents, or the child protection teams for their child abuse investigation or assessment of the child. Law enforcement is required to be contacted relative to certain allegations of child abuse [ss. 39.301(2), 39.301(17), and 39.202, F.S.] from which an investigation of criminal conduct may be initiated. However, law enforcement is not identified as an entity permitted to receive copies of the medical reports, and at least one sheriff's office has experienced difficulties obtaining this information.

Institutional Child Abuse

Child protective investigations of institutional child abuse are conducted using the same laws and investigative requirements as are used for familial child abuse and neglect allegations with the exception or addition of the provisions set forth in s. 39.302, F.S. This section, however, only addresses a very narrow scope of the institutional investigative process including unannounced investigations, notification of facility owner or operator if the facility is not licensed, access to information when agencies are conducting joint investigations, a visit to the child's place of residence, communication with the state attorney and law enforcement, the department's authority to restrict access to children when there is evidence of abuse or neglect, the department's responsibility to assist a facility to maintain operation under certain circumstances, notification of the Florida local advocacy council, notification of the state attorney and law enforcement if a criminal investigation is warranted, and the conducting of a specialized investigation under certain circumstances.

Issues have been raised by protective investigators in the field regarding the protective investigators' lack of authority to take action to protect children because the recourse available is limited to actions designed to be applied to parents or other familial caregivers.[6] The Protective Investigator Retention Workgroup created with ch. 2003-127, F.S., to examine certain aspects of the work of the child protective investigator, also found unnecessary requirements for institutional child abuse investigations, a lack of consistent communication between DCF and the agencies with oversight of the facilities regarding the investigations and findings, and a need for more guidance relative to investigating these reports. As a result, the Retention Workgroup developed a series of recommendations to reduce unnecessary investigative activities, improve information sharing, and to stipulate expectations for the department's actions.

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[6] Senate Interim Project Report 2003-110, *Retention of Protective Investigators and Projective Investigative Supervisors*.

Retention of Protective Investigators

Section 39.301, F.S., has required Florida's child protective investigators to apply the same set of investigative activities to all child abuse reports. Chapter 2003-127, L.O.F., amended this section to allow for an on-site and enhanced investigative processes and, thus, began the effort to provide for different levels of investigative activities. The discussions of the Retention Workgroup recognized the importance of creating a process that would enable protective investigators to focus more attention on the serious abuse and neglect allegations and provide certain lower risk families with a less intrusive system that is focused on strengthening the functioning of families and, in turn, child safety and child well-being outcomes. As a result, the Retention Workgroup developed recommendations for piloting an Alternative Response Model in Florida. This proposed model would provide for some child abuse and neglect reports to be eligible for an Assessment Response Track, require other particular reports to be investigated using the current full investigative requirements, allow for reports of abuse to be closed using a streamlined process when there is clear and convincing evidence that no maltreatment occurred, and provide for an expedited closure of certain cases with referrals to community services when there are no safety threats and the family has sufficient protective capabilities.

The Retention Workgroup also found that the system for hiring and preparing protective investigators for the job needed to be strengthened, and a culture of valuing employees from the highest administrative level within the organization to the frontline staff should be instituted. Towards this end, the Retention Workgroup developed recommendations to strengthen the process and requirements for hiring protective investigators including adding some experience in child welfare or a related area to the basic educational requirement for protective investigators and protective investigative supervisors and enhancing the screening and hiring process to expose prospective staff to the job early, to consider utilizing a characteristic-based screening assessment, and to involve the supervisor in the selection decision. The Retention Workgroup developed recommendations to strengthen the training, including requiring a protected caseload and standardizing not only the pre-service classroom training but also the on-the-job training. Additional recommendations were developed to strengthen management's focus on the frontline staff.

Parent Education and Family Stabilization Course

Section 61.21, F.S., requires parties who have children and who are separating or in a divorce or who are part of a paternity action to complete the Parent Education and Family Stabilization Course before a final judgment is entered. This course is to be designed to provide parents with education on the consequences of divorce on the parents and children. The judicial circuits had been responsible for approving the parenting courses to be offered, but with ch. 2003-402, L.O.F., the responsibility for approving the parenting courses was shifted to the Department of Children and Families.

Community Care for Disabled Adults Program Fee Assessment

The Community Care for Disabled Adults program offers services and case management to disabled adults to make it possible for them to live independently [s. 410.604, F.S.]. Services include homemaker service, home-delivered meals, and personal care. Depending on the

availability of funding, individuals may also receive such services as adult day care, chore services, respite care, interpreter services, medical equipment or supplies, health maintenance services, and transportation. Chapter 88-350, L.O.F., required that individuals receiving the Community Care for Disabled Adults services who had income above the Institutional Care Program level ($1,635 for an individual as of October 2002) be charged a fee. A 2003 Office of Program Policy Analysis and Government Accountability (OPPAGA) report stated that although the department promulgated rules in 1989 that established a fee assessment process, including verification of income and expenses and the collection of the fee, as of September 2002, four districts had not implemented the fee assessment and collection process. Of the districts implementing the process, few individuals were found who had incomes that exceeded the Institutional Care Program (ICP) level and many of these individuals were not required to be charged because of the level of their monthly expenses. In addition, the administrative cost entailed in this assessment and collection process was estimated to basically equal the amount that would be collected. As a result, OPPAGA recommended that the system of assessing and collecting fees be eliminated.[7]

III. Effect of Proposed Changes:

Committee Substitute for SB 2808 sets forth a number of provisions relative to the services and responsibilities of the Department of Children and Families.

Child Protective Investigation Risk Assessment

Section 1 of the bill sets forth additional requirements for conducting the risk assessment. First, a clear directive is articulated by the bill that a risk assessment must be conducted for every report accepted by the hotline and that the risk assessment is to commence upon receipt of the report from the hotline. Second, the bill stipulates that assessment of risk is an on-going process that requires continuous review and modifications to the assessment to reflect the child and family's changing risk and needs. Third, the option of developing and implementing a safety plan is provided by the bill. A safety plan provides for the actions needed to address the immediate, emerging, and long-term safety of the child. The identification of these actions have historically been considered in the assessment of the child; however, the development of the child safety assessment for Homesafenet has resulted in a more formalized process and plan which this bill recognizes.

Citizen Review Panels

Section 2 of the bill modifies the terminology used to describe the activities of the citizen review panel to eliminate the current barrier to the receipt of federal matching funding for these services. Specifically, the citizen review panel "hearings" are changed to "reviews" and the "recommended orders" of the panels are changed to "recommendations" to the court. This

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[7] *Improvements Needed in the Department of Children and Families Adult Services Program*, OPPAGA Progress Report, Report No. 03-08, January 2003. (Based on a survey of the districts, it was estimated that only 18 of the program's 932 current participants had incomes above the ICP levels and would, therefore, be subject to the fees. It was estimated that the maximum amount that would be collected is $1,560, but the administrative cost for the fee assessment and collection is estimated at $1,500.)

terminology more clearly reflects the role and process of the citizen review panel since these panels do not have the authority of the court, and the court has and continues to be charged with making the determinations for all six month reviews regardless of whether the reviews are actually conducted by the court or the court is relying on the information and deliberations of the citizen review panels.

Further clarification of how aspects of the six month review process are applied to the court hearings or the citizen review panel is provided by the bill. First, s. 39.701(4), F.S., stipulates that the court schedules the next judicial review but is silent as to the scheduling of the next review if being conducted by the citizen review panel. The bill provides that the court schedules the next review, including both the next judicial hearing or the next review to be conducted by the citizen review panel. Second, s. 39.701(6), F.S., which provides for the written report of the investigation and social study of the child to be submitted to either the court or citizen review panel, is amended by the bill to stipulate that the report is submitted only to the court. This amendment clarifies that all information for the case is part of the official court record since the court is the entity responsible for the six month reviews and actual determinations of the reviews. Third, several references to the court or judicial hearing are modified to reflect the sole involvement of the court or that either the court or citizen review panel is involved in a particular portion of the judicial review process. Fourth, the bill recognizes the citizen review panels that may conduct the six month review as those authorized by the court. Finally, the bill also requires that if the court is permitting the child to not appear before the court at a judicial hearing, then the court must stipulate its findings that the department had direct knowledge of the care the child is receiving.

Medicaid Fair Hearings

Committee Substitute for SB 2808 shifts the responsibility for conducting the fair hearings for those aspects of the Medicaid program that are unrelated to eligibility determination from the Department of Children and Families to the Agency for Health Care Administration. Fair hearings related to Medicaid eligibility determinations would remain the responsibility of the department. Specifically, section 3 of the bill amends s. 120.80(7), F.S., to add AHCA to the current exemption afforded DCF from using an administrative law judge for the hearings conducted relative to the Medicaid program. Section 8 of the bill amends s. 400.0255(8), (15), and (16), F.S., to reflect the responsibility of AHCA for conducting fair hearings related to nursing home resident transfers and discharges that were previously conducted by DCF. Section 9 of the bill amends s. 408.15, F.S., which sets forth the powers of the Agency for Health Care Administration, to authorize AHCA to establish and conduct the Medicaid fair hearings that are unrelated to eligibility determinations. Section 10 of the bill amends s. 409.91195, F.S., which provides for the Medicaid Pharmaceutical and Therapeutics Committee within AHCA to develop a preferred drug formulary, is amended to provide that appeals from Medicaid recipients of the preferred drug formulary can be heard by AHCA instead of DCF.

Employment of Individuals with Developmental Disabilities

Sections 5 and 7 amend ss. 393.062 and 393.066, F.S., respectively, to direct the department to support individuals with developmental disabilities who choose to seek gainful employment. Specifically, s. 393.066, F.S., is amended to direct the department to provide each individual in

the Medicaid Home and Community Based Waiver program and the Medicaid Consumer Directed Care program who chooses to seek employment with services and supports, to the extent available resources will permit. Similarly, s. 393.13, F.S., is amended to add that the design and delivery of services should provide individuals with developmental disabilities with the opportunity to choose employment and reduce the use of nonemployment day activities, including sheltered workshops.

Developmental Disabilities and Mental Health Employment Screening

Section 4 and 58 of the bill amend ss. 393.0655 and 394.4572, F.S., to add the employment history check required in the ch. 435, F.S., level one screening but not the level two screening to the employment screening required for both direct service providers offering developmental disability services and mental health personnel working in mental health programs.

Developmental Disabilities Program Licensing

Section 7 amends s. 393.067, F.S., to set forth the legal parameters of the residential facility license and the comprehensive transitional education program license. Specifically, the bill clarifies that these facility and program licenses are not professional licenses for a particular individual and do not create a property right[8] for the license holder. The bill stipulates that the license is not an entitlement but a public trust and a privilege and in an administrative or court proceeding initiated by the department, it is this privilege, that must guide the finder of fact or trier of law.[9] This provision of the bill broadens the discretion of the department to reject a license application or terminate a license for reasons other than those stipulated in statute or rule.

Prepaid Behavioral Health Services

Section 11 of the bill amends s. 409.912(4)(b), F.S., to require that the community mental health providers, inpatient mental health providers, and providers of child protection services actually receive a contract to participate in the provider network for pre-paid behavioral health services, instead of being offered an opportunity to accept or decline a contract. Also, substance abuse treatment providers are added to the list of service providers to which this requirement to contract applies. This provision prevents offering of contracts to a service provider that would not be fiscally feasible to accept. However, the department notes that it is unacceptable business practice to require a risk managing entity to give a contract to a service provider unless the terms are acceptable to both parties.

Adult Protective Services

Section 12 of the bill amends the definition of "neglect" in s. 415.102, F.S., to include the failure or omission of vulnerable adults to provide themselves with care and services necessary to maintain their physical and mental health. This revision provides clear authority to the

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[8] "property right" is defined as a right to a specific property, whether tangible or intangible (Black's Law Dictionary, Seventh Edition).
[9] "finder of fact" or "trier of law" is the person(s) in a court or an administrative hearing who hears the testimony and reviews the evidence to rule on a factual issue (Black's Law Dictionary, Seventh Edition).

department to utilize the actions available through ch. 415, F.S., i.e., making the services of the department available and petitioning the court for an order authorizing the provision of protective supervision, if necessary, when self-neglect of a vulnerable adult is found.

Section 415.1113, F.S., which authorizes the department to impose administrative fines for false reporting, is amended by section 13 of the bill to specify how and when the person alleged to have filed a false report is to be notified of his or her right to legal counsel in an administrative hearing. Specifically, the notice of intent to impose the administrative fine required to be served on the person by the department is required by the bill to also include the notification of the right to be represented by legal counsel.

Homelessness Services

Sections 14, 15 and 16 of the bill amend provisions of ch 420 F.S., relative to homelessness services. First, the bill amends s. 420.622, F.S., to replace the reference to the Florida Coalition for Supportive Housing in the list of required members of the Council on Homelessness with the correct name of the coalition, Florida Supportive Housing Coalition. Section 420.622, F.S., is further modified to clarify the eligible uses of the Homelessness Housing Assistance Grant. The construction and rehabilitative activities for which these grants funds may be used is specifically articulated and includes site preparation and demolition costs; professional fees for architects, surveyors, or engineers; certain local government fees; utilities and special district fees; costs of labor, materials and tools; and other construction and rehabilitative associated costs. These costs are eligible for grant funding if they could not be contributed, absorbed, or waived. Second, the date by which the annual report on the local homeless coalitions is to be submitted to the Legislature and Governor is changed from June 30th to December 31st which coincides with the Council on Homelessness' annual report due date and allows both reports to be reviewed as a package. Finally, the requirements for the spending plan that is part of the grant-in-aid funding process is amended to require that the lead agency for the local catchment area provide a statement that the proposed services are contained in and consistent with the local coalition's continuum of care plan.

Sexual Misconduct

Committee Substitute for Senate Bill 2808 prohibits an employee of the department or the Agency for Healthcare Administration from engaging in sexual misconduct with a client (a person in the care of the department or living in certain facilities) and provides for mandatory reporting of sexual misconduct. The offense of sexual misconduct is a second degree felony, and the failure of a person having knowledge of such a crime to report it is a first degree misdemeanor. A defendant is prohibited from using the consent of the individual as a defense for the charge of sexual misconduct. The crime of sexual misconduct is also added to the list of offenses that prohibit employment if identified through Level 1 and 2 background screening. The bill forbids the sealing or the expunction of criminal records when the offense of sexual misconduct has been committed.

Sections 17, 18, and 19 of the bill create three new sections [ss. 393.135, 394.4593, and 916.1075, F.S.] of statute that prohibit sexual misconduct by employees with certain clients who receive services provided by the Developmental Disabilities and Mental Health programs within

the department. These sections provide definitions for the terms “employee,” “sexual activity,” and “sexual misconduct.”

This bill specifies that an employee who engages in sexual misconduct with a client or a patient as specified commits a felony of the second degree that is punishable as provided in ss. 775.082, 775.083, or 775.083, F.S. The bill further provides that an employee may be found guilty of violating sexual misconduct without having committed the crime of sexual battery. It is unknown if the evidence provided to establish sexual misconduct has occurred as specified in this bill is sufficient for a court hearing.

The bill requires that an employee who witnesses sexual misconduct or otherwise knows or has reasonable cause to suspect a person has engaged in sexual misconduct must immediately report the incident to the department’s central abuse hotline and to law enforcement. The employee must then prepare, sign and date a report that specifically describes the nature of the misconduct including the time and location the incident occurred and the persons involved in the incident. The written report is to be delivered to the employee’s supervisor or program director who then must provide copies to the department’s inspector general. The inspector general is required to immediately conduct an administrative investigation and notify the state attorney if there is reasonable cause to believe the incident occurred.

An employee who fails to make a report, willfully prevents another person from doing so, or knowingly or willfully submits an inaccurate, incomplete, or untruthful report commits a first degree misdemeanor that is punishable as provided for in ss. 775.082, or 775.083, F.S. Further, a person who threatens or coerces another person to alter testimony or a written report commits a third degree felony that is punishable as provided in ss. 775.082, or 775.083, or 775.084, F.S.

Currently, there are procedures for abuse reporting of incidents relating to sexual abuse of clients in the care of the department [ch. 415, F.S.]. It is unclear how employees will make a determination to report a violation based on “reasonable cause.” It is also questionable whether these same employees will actually make a report to law enforcement if they have not personally observed the incident.

The consent of the client or patient to sexual activity does not prohibit prosecution in accordance with this proposed legislation. However, these requirements are not applicable if the employee is legally married to the client or the employee had no reason to believe that the individual was a client receiving services in accordance with the specifications of this bill.

The bill further specifies that, notwithstanding prosecution, any violation of sexual misconduct, as determined by the Public Employees Relations Commission, constitutes sufficient cause under s. 110.227 F.S., for dismissal from employment. Section 393.135, F.S., prohibits the person from being employed by the developmental services system in any capacity but does not specifically preclude the individual from working in the mental health services system; s. 394.4569(5), F.S., prohibits the individual from working in any capacity in the mental health services system but does not specifically preclude employment in the developmental services system; however, s. 916.1075(5), F.S., prohibits the person from being employed in any capacity in connection with the developmentally disabled or mental health service systems. It is not clear why these employment prohibitions are different. This bill does not specify how

employers are to obtain information relating to employee dismissal for reasons of sexual misconduct.

Sections 435.03, and 455.04, F.S., pertaining to employee background screening requirements are amended in sections 20 and 21 of the bill to include sexual misconduct as an offense banning employment. This bill also amends ss. 943.0585 and 943.059, F.S., in sections 22 and 23 of the bill to prohibit the court-ordered expunction and sealing of criminal history records relating to the sexual misconduct of an employee as specified by of ss. 393.135, 394.4593, or 916.1075, F.S., without regard to whether adjudication was withheld or the defendant was found guilty or plead nolo contendere to the offense or if whether the defendant committed this crime as a minor and was found guilty or plead nolo contendere to the crime. Based upon the requirement of ch. 916, F.S., it appears that background screening is only required for institutional security personnel; there is no specified screening for other employees.

Sections 24 through 57 and sections 59 through 84 of the bill reenact the following sections of the Florida Statutes for the purpose of incorporating the addition of the new offenses to ss. 435.03 and 435.04, F.S. as applied to the following sections: 39.001, 39.821, 110.1127, 112.0455, 381.0059, 381.60225, 383.305, 390.015, 393.0655, 393.067, 394.875, 395.0055, 395.0199, 397.451, 400.071, 400.414, 400.471, 400.4174, 400.506, 400.509, 400.512, 400.556, 400.5572, 400.6065, 400.607, 400.619, 400.6194, 400.801, 400.805, 400.906, 400.931, 400.953, 400.962, 400.980, 400.991, 402.302, 402.305, 402.3054, 409.175, 409.907, 435.05, 435.07, 464.018, 483.30, 483.101, 744.1085, 744.309, 744.474, 744.3135, 943.053, 943.0582, 984.01, 985.01, 985.04, 985.407, and 1002.36., F.S. Section 85 of the bill applies the offenses provided for in ss. 393.135, 394.4593, and 916.1075, F.S., committed on or after the effective date of the act.

Administration of Public Assistance Eligibility

Section 86 of the bill directs the department to competitively bid the eligibility determination activities for food stamps, Medicaid, TANF, and other public assistance programs under its jurisdiction to one or more providers. Initially, these services are to be performed by the selected providers in only two pilot districts, one predominantly rural district and one predominantly urban district. Contracts are to be effective September 30, 2004. The competitive bid process used by the department is required to allow employees of the department performing this eligibility determination process the opportunity to submit a proposal. The department is directed to allow employees to organize, to provide the employees with legal procurement and fiscal expertise, and to allow employees to select consultants to assist them in preparing the bid offer. The bill also requires the approval of the Technology Review Workgroup before implementing any technological change to the FLORIDA system that resulted from this competitive procurement process.

The department is directed to assess the quality of the services delivered in the two pilot districts prior to contracting for the conducting of eligibility determination services in additional districts. This assessment by the department is to provide a comparison of data from before the outsourcing with data from after the service delivery was contracted, the minimum elements for which are outlined in the bill. The department is required to prepare two reports for the Governor and Legislature regarding the implementation of the pilots, the assessment of services, and a plan

for future implementation; one is due December 30, 2004, and the other January 30, 2005. The bill authorizes the Governor to provide direction to the department regarding expanding the privately performed eligibility determination to additional districts, unless countermanded by the Legislature. If the initiative to privately perform eligibility determinations continues beyond June 30, 2005, additional reports to the Governor and Legislature are required to be submitted semi-annually beginning January 1, 2006, and to continue until either the initiative has ceased or has been in place statewide for three years.

Law Enforcement Receipt of Medical Reports

Section 87 of the bill amends s. 39.304, F.S., to add law enforcement agencies to the groups that can receive photographs, x-rays, and medical reports from hospitals and other facilities licensed under ch. 395, F.S., regarding children who have been abused and for whom a protective investigation is being conducted.

Institutional Child Abuse

Section 88 of the bill amends s. 39.302, F.S., to strengthen the actions that may be taken in facilities in response to child abuse, remove out-dated provisions, and require procedures specific to investigations in different institutional settings. Specifically, the requirement to automatically refer all reports accepted for child protective investigation to the state attorney is eliminated by this bill. The department continues to be required to notify the state attorney if a criminal investigation is found to be needed. The bill expands this provision to require notification if criminal conduct is suspected. The department is required by the bill to inform the owner or operator of the facility in which the investigation is being conducted of the report, regardless of whether the facility is licensed or not. The requirement that the protective investigation always include a visit to the child's family's residence is modified to require that the parents or legal custodians be notified of the allegation within 48 hours of commencing the investigation. An on-site visit to the child's residence is only required if determined necessary or there is a need for further services.

Subsection (2) of s. 39.302, F.S., currently authorizes the department to restrict the access of a facility employee considered responsible for the abuse if that employee's continued contact poses a threat of harm to the child. This provision is expanded by the bill to require that other actions identified as necessary to respond to the immediate safety concern be implemented, if there is a continued threat of harm to the child, and that the agency or department with responsibility for the on-going regulation or oversight of a facility ensure that the actions are implemented. The concurrence of the protective investigative supervisor that some evidence of the child abuse, neglect, or abandonment exists is added to the bill which guards against the misuse of the expanded authority. The department is also authorized by the bill to recommend corrective actions after the completion of the investigation to prevent further abusive acts.

The bill eliminates the department's responsibility to assist a facility to maintain operation if the department's restriction of an employee's access to the child will result in the closure of the facility. It has been reported that this provision is not used. The bill also eliminates the provision allowing for the use of a specialized investigation under certain circumstances because the

specific procedures for conducting an investigation will be delineated in rule and the utilization of specialized investigations can be incorporated in rule if determined needed.

The department is directed to adopt rules to guide the child protective investigations for each type of facility to which s. 39.302, F.S., applies. These rules are to provide for the conducting of institutional child protective investigations, the use of child safety assessments that are specific to the institutions instead of the current child safety assessment which is specific to familial abuse, communication and collaboration with the facilities and licensing or oversight agencies, and, in general, implementation of s. 39.302, F.S.

Retention of Protective Investigators

Section 88 of the bill directs the department to adopt rules that set forth the minimum education and experience requirements, as well as minimum screening and hiring requirements, for child protective investigators and child protective investigative supervisors as recommended by the Retention Workgroup. In addition, the department is to adopt rules that provide for the minimum process requirements for child welfare training. These rules would include not only the recommendations of the Retention Workgroup, such as requiring a protected caseload and providing for training in institutional child abuse investigations, but will formalize the current training requirements including the requirement for pre-service training and certification.

Section 89 of the bill requires the department to report to the Legislature by December 31, 2004, on the implementation of the recommendations in the Retention Workgroup and those in the 2004 interim project *Retention of Protective Investigators Phase II*. While this report is to present the actions taken to implement all the recommendations of the interim project and Retention Workgroup, specific direction is provided relative to some of the recommendations contained in the report. First, a full program design for piloting an alternative response system in Florida is to be developed which is to provide for different levels of investigation including a streamlined track, a family assessment track, and a traditional investigative track. This program design is to be developed in collaboration with all the potential players in the system and include, at a minimum, detailed requirements for the proposed system, the expectations of each of the players, possible pilot sites, and an evaluation component. Second, there is to be an examination of the information needed by the court and recommendations for revisions to the information currently required to be provided. This directive focuses not only on the elements needed in the predisposition study which the Retention Workgroup recommended be eliminated but examines the information sharing between DCF and the courts comprehensively. Third, the department is to report on the status of the rule development required by this bill.

Parent Education and Family Stabilization Course

Section 91 of the bill amends s. 61.21, F.S., to provide direction to the department relative to the course approval process, including requirements for and resulting from course approval. Specifically, the bill requires all providers of the parenting course under s. 61.21, F.S., to be approved by the department and authorizes the department to withdraw the approval if the course provider does not comply with either the requirements of the section or the implementing rules. The courses approved by the department and the sites of the courses are to be provided to each of the judicial circuits. Each judicial circuit is required to make information on all approved courses

for their circuit available to the parents. Providers of the course may charge a fee. However, each circuit must have, at least, one site that offers the course on a sliding fee scale. The department is required by the bill to include as an approved course at least one statewide internet course and one statewide correspondence course. The department is authorized to adopt rules to implement these provisions.

Community Care for Disabled Adults Program Fee Assessment

Section 92 of the bill repeals subsection (6) of s. 410.604, F.S., which eliminates the requirement that individuals receiving Community Care for Disabled Adult services be charged a fee for services if their income is above the institutional care program eligibility standard.

The bill takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

V. None. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The direction to the department to make employment services available to individuals with developmental disabilities should increase the number of individuals with developmental disabilities who become employed and earn a wage.

The repeal of the fee currently charged certain recipients of the services of the Community Care for Disabled Adults will allow those disabled adults to retain the dollars they had been paying in fees.

The strategies instituted for performing the eligibility determination functions through the proposed contracting can either enhance the ability of low-income individuals and families to receive the food stamps they need or deter the receipt of the food stamps.

C. Government Sector Impact:

The revisions to the citizen review panel provisions will bring additional dollars to the programs through the receipt of federal reimbursement.

The sexual misconduct provisions of the bill may result in an undetermined increase in administrative procedures relating to employee appeals as allowed under s. 110.227, F.S. There may also be an undetermined increase in court hearings relating to the crime of sexual misconduct. In addition, staff training will need to be developed and delivered for employees working in areas affected by this bill.

The Department of Children and Families estimates that statewide ESS modernization will achieve at least $9,595,500 in GR savings, as well as another $8,104,500 in trust fund savings. The department reports this savings would not be realized with the limited approach proposed by the bill.

The department reports that the development, implementation, and monitoring of the Parent Education and Family Stabilization course approval process will require the establishment of one FTE position which has a fiscal impact of $64,311 for FY 2004-2005 and $45,128 for FY 2005-2006. However, this fiscal impact is not the result of the amendments to the course approval process as provided for in the bill but the transfer of the course approval responsibility from the courts to the department with ch. 2003-402, L.O.F.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The legal parameters of the residential facility and the comprehensive transitional education program license as provided in s. 393.067, F.S., applies to current licensees and license applicants yet to apply. Unlike any new license applicants that may seek licensure after this provision becomes effective, the current licensees were granted a license and have been operating under the existing statutory scheme which included due process rights to determine whether the governmental action was consistent with statutes and rules.

The sexual misconduct provisions of this bill may increase reporting to the central abuse hotline. In addition, current law already provides for the prosecution of offenses related to sexual battery. The practice of using abuse records to eliminate persons for employment was discontinued by Chapter 95-228, L.O.F. Concerns have been raised that based upon the provisions of this bill the practice of using abuse files to disqualify persons for employment will be renewed. Further, current employee regulations prohibit sexual activity with clients of the department and require dismissal for infractions. Finally, certain professional and licensing standards prohibit sexual activities with clients. Infractions can result in the license being revoked and possible civil penalties.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.