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/CS/SB 2808

SPONSOR: Judiciary Committee; Children and Families Committee; and Senator Lynn

SUBJECT: Department of Children and Family Services

DATE: April 21, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable/CS
2.	Cibula	Lang	JU	Favorable/CS
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

This bill sets forth the following provisions relative to the services and responsibilities of the Department of Children and Families. Specifically, the bill:

Child Abuse

- Expands the list of persons to whom child abuse, neglect, and abandonment records held by the Department of Children and Families may be released to include staff of the child advocacy centers;
- 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;
- Strengthens the actions that may be taken in institutions in response to child abuse, removes outdated provisions, and requires procedures specific to investigations in different institutional settings;
- 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;

Services Provided by the Department

- Includes self neglect in the definition of "neglect" for the purposes of identifying adult neglect and providing adult protective services;
- Provides the department with direction relative to the course approval process for the Parent Education and Family Stabilization Course;
- Repeals the fee charged to certain individuals receiving services of the Community Care for the Disabled Adults program;

Agency Organization

- 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;
- 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;
- Removes the Developmental Disabilities program from the Department of Children and Families and establishes the program as the Agency for Persons with Disabilities;
- Provides that the Agency for Persons with Disabilities is to be housed within the Department of Children and Families but is a separate budget entity not subject to the control, supervision, or direction of the department and provides that the fiscal administration of the Medicaid funded services will be managed by the Agency for Health Care Administration;
- Requires that the Developmental Disabilities program and Developmental Disabilities Institution program be transferred to the Agency for Persons with Disabilities by type 2 transfer effective October 1, 2004;
- Requires the development of interagency agreements and plans to provide for the orderly transition of the programs to the Agency for Persons with Disabilities and the necessary support to the new agency;

Department Staffing

- Adds employment history screening to the employment screening required for mental health personnel working in the mental health programs;
- 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;
- Establishes criminal penalties for specific acts of sexual misconduct by employees of the Agency for Health Care Administration, the Agency for Persons with Disabilities, and the

Mental Health program of the Department of Children and Families perpetrated on individuals under their care;
- Establishes criminal penalties for employees who fail to report sexual misconduct;

Miscellaneous Provisions

- 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;
- Requires that community mental health providers, inpatient mental health providers, and substance abuse providers, and providers of child protection services receive a contract to participate in the provider network for pre-paid behavioral health services;
- Requires interagency agreements between the Department of Children and Families and the Department of Education at the state level and the Department of Children and Families and the district school boards at the local level relative to the education and related services for children found dependent or in shelter care and adds the Department of Children and Families and community-based care lead agencies to the organizations to which students' educational records may be released by the schools, consistent with the provisions of the Family Educational Records and Privacy Act.

This bill substantially amends sections 20.19, 39.301, 39.202, 39.302, 39.304, 39.701, 61.21, 92.53, 120.80, 393.063, 393.064, 393.065, 393.0651, 393.0655, 393.066, 393.0661, 393.067, 393.0673, 393.0675, 393.0678, 393.068, 393.0695, 393.071, 393.075, 393.11, 393.115, 393.12, 393.125, 393.13, 393.15, 393.17, 393.22, 393.501, 393.502, 393.503, 393.506, 394.4572, 397.405, 400.0255, 400.215, 400.464, 400.964, 408.301, 408.302, 408.15, 409.906, 409.91195, 409.912, 410.604, 415.102, 415.1113, 419.001, 420.622, 420.623, 420.625, 435.03, 435.04, 435.045, 839.13, 914.16, 914.17, 918.16, 943.0585, 943.059, and 1002.22 of the Florida Statutes. The bill creates sections 20.197, 39.0016, 393.135, 394.4593, and 916.1075, of the Florida Statutes. The bill repeals sections 393.14, 393.165, 393.166, and 393.505 of the Florida Statutes.

II. Present Situation:

Child Advocacy Centers Access to Records

The responsibility for conducting protective investigations on reports of child abuse, neglect, and abandonment is statutorily provided to the Department of Children and Families or its agents (i.e., the sheriff's offices that have assumed this function) in ch. 39, F.S. However, the full scope of investigative, assessment, and prosecution work required on some child abuse cases involves many state and local agencies. In a number of communities across the state, child advocacy centers have been formed to support the child protective investigative process. The child advocacy centers work to coordinate the activities of the many agencies involved in the investigation to reduce the number of times a child must be interviewed and, in turn, the trauma to the child, to facilitate joint investigations, and to provide for prompt access to mental health and other appropriate services. While the services offered by child advocacy centers vary based on the funding and needs of the community, each attempts to offer some combination of the following services: a neutral, child-friendly setting where all the agencies can interview and

examine the child; medical evaluations of the child; coordination of multi-disciplinary team meetings of all of the agencies involved in a case; on-site victim advocacy; and mental health services.

Currently, there are 21 child advocacy centers operating in Florida. Seventeen of these centers are accredited by the National Children's Alliance as meeting the required standards and criteria for child advocacy centers. The state chapter of the National Children's Alliance is the Florida Network of Children's Advocacy Centers. Minimum standards for child advocacy centers in Florida were established with the passage of ch. 98-403, L.O.F., which created s. 39.3035, F.S. This section requires child advocacy centers to meet the standards identified in statute in order to be full members of the Florida Network of Children's Advocacy Centers.

Records held by the Department of Children and Families concerning reports of child abuse, neglect, or abandonment are confidential and exempt from public disclosure, pursuant to s. 39.202(1), F.S. With the exception of the name of the reporter, these records are permitted to be disclosed only to those entities identified in s. 39.202(2), F.S., within the limitations and conditions specified in statute. The list of entities in s. 39.202, F.S., does not include child advocacy centers.

For some of the current child advocacy centers, the existing statutory provisions guiding the disclosure of these records includes or provides limited access to the records. Sixteen of the Child Protection Teams (CPTs) are also either currently a child advocacy center or in the process of negotiating a contract with a child advocacy center to combine the programs. The child advocacy centers that are also a CPT under contract with the Department of Health are authorized for disclosure as a contract provider of the Department of Health with a responsibility for child protective investigations under s. 39.202(2)(a), F.S. The Department of Health also interprets s. 39.202(5), F.S., to include providing information regarding the abuse, neglect, or abandonment of the child to the child advocacy center staff at the multi-disciplinary staffings since they are performing necessary evaluations of the child. However, there are groups of children not referred for CPT medical assessments who are often served by the child advocacy centers, including children who have been the victims of neglect or child-on-child abuse, for whom child advocacy centers would not have access to department records under current statutes.

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 [s. 39.301(9)(b) and s. 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.

Mental Health Employment Screening

Section 394.4572, F.S., requires mental health personnel to meet the ch. 435, F.S., level two screening standards. "Mental health personnel" includes 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 established 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 additional crimes that disqualify a person from employment. Not included in the level 2 screening requirements is an employment history check.

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.

Agency for Persons with Disabilities

The Developmental Disabilities Program, which provides support and services to enable persons with developmental disabilities to live productive lives and achieve personal outcomes, currently resides within the Department of Children and Families. There are two main components of the Developmental Disabilities Program; the developmental disabilities institutions and the community-based care. There are four state institutions operated by the Developmental Disabilities Program, as well as the Mentally Retarded Defendants Program. Most services, however, are provided contractually through community-based care providers and include medical care, therapy, vocational training and employment, case management, residential and basic care, daily living assistance, transportation, and recreation. These services are funded either through federal waivers (the Medicaid homes and community based waiver program and the Medicaid consumer choice waiver program) or general revenue.

During recent years, the Developmental Disabilities program has run millions of dollars over budget despite significant funding increases and has consistently maintained a long list of individuals who are waiting for services. At the Legislature's request, a program review

conducted by the Office of Program Policy Analysis and Government Accountability (OPPAGA)[1] focused on the rising costs of the Developmental Disabilities program. An analysis of program expenditure data for FY 1996-97 through FY 2000-2001 found errors that OPPAGA reported made it impossible for the department to accurately assess the number of services that a client received or the average rate paid for the different units of service. Since this study, and at the direction of the Legislature, the department conducted a program redesign of the Medicaid home and community-based waiver program and developed a methodology for standardized service rates. These initiatives were conducted to enable the program to contain expenditures and reduce the number of persons who were waiting to receive services.

Following the implementation of the standardized rate payment in July 2004, the department conducted a fiscal analysis of expenditures for the first quarter. Budget projections reflected that the rate of spending would exceed the annual funding allocated for the program. Based upon this analysis, the department implemented emergency rate reductions. However, further analysis reflected that the department's projections had been faulty.

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, or exploitation at some point of their lives.[2] 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 second or third degree felony that is punishable as provided in s. 775.082, s. 775.083, or s. 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

[1] Legislative Options to Control Rising Developmental Disabilities Costs, Report No. 02-09, February 2002, Office of Program Policy Analysis and Government Accountability.
[2] *Behind Locked Doors – Institutional Sexual Abuse*, Crossmaker, M., Sexuality and Disability, Vol. 9, No. 3, 1991.

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, as well as criminal penalties.

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 [s. 39.301(2), s. 39.301(17), and s. 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.[3] 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

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

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.

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.

Falsification of Records

Chapter 2002-386, L.O.F., amended s. 839.13, F.S., to provide for criminal penalties for a person who knowingly falsifies a record of an individual in the care and custody of a state agency or a record of the Department of Children and Families or its contract providers by altering, destroying, defacing, overwriting, removing, or discarding such records. Such acts are a felony of the third degree punishable as provided in ss. 775.082, 775.083, or 775.084, F.S., unless the act contributed to either great bodily harm or death of an individual in the care and custody of a state agency, in which case, the act would be a felony of the second degree. The Department of Children and Families reports that the section as currently written applies only to falsifying an existing document, not to creating a false document.

Education of Children Adjudicated Dependent

A child who has been adjudicated dependent for the purpose of protecting the child from abuse, neglect, or abandonment may be placed either in the home of one or both parents, with a relative or another adult approved by the court, or in the custody of the department which includes in a foster care placement [ss. 39.501(2) and 39.521(1)(b), F.S.]. Many of these children are school age, and continuing with the appropriate educational goals becomes an important consideration for the child. However, many children in foster care struggle academically and socially. For foster children, changes in placements often require changes in schools. School personnel often do not know a child is in foster care or the implications of foster care on a child's education.[4] Child welfare professionals often lack the training to provide the advocacy these children require in the educational system.[5] Studies have found that, compared with other children, children in foster care have higher rates of grade retention, lower academic skills, poorer rates of attendance, and higher dropout rates.[6]

The Department of Children and Families estimates that there are currently 31,600 children in department out-of-home placements, of whom 61 percent or 19,276 are estimated to be children of school age. According to the 2001 pre-Adoption and Safe Families Act audit, 52 percent or 10,023 of the children monitored statewide were found to have had a school change as a result of out-of-home placement.

Children who are in foster care and have a disability are a particularly vulnerable group. The Individuals with Disabilities Education Act (IDEA), which is codified into law under 20 U.S.C., Chapter 33, guides and supports special education and related services for children and youth with disabilities. The Florida K-20 Education Code contains a number of laws to implement IDEA, as does the State Board of Education Rules. In particular, each school board is required to provide the appropriate special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education [s. 1003.57, F.S.]. Exceptional students include students who have a disability, are gifted, or are developmentally delayed [s. 1003.01(3)(a), F.S.].

[4] Education Issue Brief: Improving Special Education for Children with Disabilities in Foster Care, Claire van Wingerden, John Emerson, and Dennis Ichhikawa, Casey Family Programs, June 2002, p. 2.
[5] van Wingerden, *Supra*, p. 3.
[6] van Wingerden, *Supra*, p. 2.

One effort to address this issue has been in Broward County where an interagency agreement has been executed between the department, Child Net (the community-based care lead agency), and the School Board of Broward County. This agreement has focused on providing educational stabilization and progress to children in the care of the department. It has been reported that this agreement has had a positive effect on the working relationship between the department and the school system and for the foster children.

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:

The bill sets forth a number of provisions relative to the services and responsibilities of the Department of Children and Families.

Child Advocacy Centers Access to Records

The bill expands the list of persons to whom child abuse, neglect, and abandonment records held by the Department of Children and Families may be released to include staff of the child advocacy centers. In order to gain access to these records, the child advocacy centers must have met the standards set forth in s. 39.3035, F.S., regarding their services and manner of operation, and staff must be actively providing the services of the center to the child.

[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.)

Child Protective Investigation Risk Assessment

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

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 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

This bill 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, 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. 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. 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. 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.

Mental Health Employment Screening

The bill amends s. 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 mental health personnel working in mental health programs.

Prepaid Behavioral Health Services

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.

Adult Protective Services

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 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 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

The bill amends 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.

Agency for Persons with Disabilities

The bill provides for the creation of an Agency for Persons with Disabilities. The bill creates s. 20.197, F.S., establishing the Agency for Persons with Disabilities which is to be administratively housed within the department but maintained as a separate budget entity that is not subject to the control, supervision, or direction of the department. A director for the agency is to be appointed by the Governor and is authorized to hire staff within appropriated resources.

The Agency for Persons with Disabilities is to be responsible for the provision of all services for persons with developmental disabilities pursuant to chapter 393 of the Florida Statutes. The programmatic responsibilities for all programs and the fiscal management of the developmental disabilities institutions will be retained by the agency. However, the fiscal administration of the Medicaid waiver services is to be managed by the Agency for Health Care Administration (AHCA). An interagency agreement between the Agency for Persons with Disabilities and AHCA is required that delineates AHCA's responsibility for contracting with Medicaid providers for provision of Medicaid services, providing reimbursements for Medicaid services, implementing utilization management measures, and approving of each client's plan of care.

The following revisions are made to the provisions pertaining to serving individuals with developmental disabilities:

- The requirement to identify prevention funding needs in the annual legislative budget request is eliminated in s. 393.064(1), F.S.
- The employment screening in s. 393.0655, F.S., is amended to require employment history checks and local criminal checks and to clarify that all persons who provide care

or have access to a client's living areas or personal property or funds must receive the employment screening with exceptions identified.

- Section 393.066, F.S. pertaining to community services and treatment is amended to direct the department to provide services and supports, within available resources, to assist Medicaid waiver clients who pursue employment and to delete language relative to the department districts, departmental prioritization of community based services, permitting construction of residential facilities, and department rule making authority.
- The home and community-based services delivery and comprehensive redesign provision, s. 393.0661, F.S., is amended to delete obsolete language and to direct the Agency for Persons with Disabilities to utilize a valid and reliable assessment instrument to identify client support needs, to authorize the agency to contract for or use support coordinators to complete the client assessment if inter-rater reliability is determined, and to contract for the determination of medical necessity of services and establishment of individualized budgets.
- Section 393.067, F.S., is amended 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 provides 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]
- The family care program in s. 393.068, F.S., is revised to remove a portion of the legislative intent language, delete redundant references, clarify that the provision of the services and support is contingent upon the availability of resources, add supportive employment to the list of authorized services, delete the prioritization of appropriations for family-based services and supports, and delete the requirement to develop a five year plan.
- Section 393.13, F.S., pertaining to personal treatment of persons who are developmentally disabled, is amended to provide direction to reduce the use of sheltered workshops and other non-competitive employment activities and promote opportunities for gainful employment for persons who seek such employment, as well as to delete to requirement to develop a plan for implementation of meaningful treatment programs.
- Section 393.17, F.S., pertaining to behavioral programs and certification of behavior analysts is revised to delete both the requirement that the department manage a behavior analyst certification program and the minimum requirements for certification which is replaced with language that authorizes the agency to recognize certification of behavior analysts awarded by a non-profit corporations that have the support of the Association for Behavior Analysis International. This change may result in persons becoming certified behavioral analysts who do not meet the requirements currently established in rule which are intended to ensure that qualified persons oversee the design and implementation of behavioral programs for persons with developmental disabilities.

[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).

- The transfer of appropriations provision in s. 393.22, F.S., is amended to delete the prohibition to both transferring funds from the program unless certain findings are made by the Secretary and reducing an ongoing commitment of funding to services for persons with mental retardation, cerebral palsy, autism, or spina bifida because of the development of programs for other disabilities.
- The family care council provisions of s. 393.502, F.S., are revised to provide for councils in the service areas of the agency instead of the department districts, to delete terms of membership, and to delete the provisions for appointment when the Governor does not act on a recommendation.
- Sections 408.301 and 408.302, F.S., relative to meeting the health care and social needs of special needs citizens are amended to incorporate the Agency for Persons with Disabilities and the Department of Elderly Affairs and to require that the Agency for Health Care Administration enter into interagency agreements with the Agency for Persons with Disabilities and the Department of Elderly Affairs.
- The home and community based services provision of the optional Medicaid services, in s. 409.906, F.S., is revised to delete reference to "Project AIDS Care Waiver."

Effective October 1, 2004, the Developmental Disabilities program and the Developmental Disabilities Institutions program in the department are to be transferred to the Agency for Persons with Disabilities by a type 2 transfer. Prior to this date, the agency and the department in consultation with the Department of Management Services are to determine the number of positions and the resources within the department dedicated to the program that are to be transferred to the agency and which staff persons from the department are to provide administrative support.

The director of the Agency for Persons with Disabilities is directed to work in consultation with the Secretaries from the department and AHCA or their designees to develop a transition plan. This plan is to be submitted to the Executive Office of the Governor and the Legislature by September 1, 2004. The bill directs the Agency for Persons with Disabilities, AHCA, and the department to work together to develop a plan that ensures all necessary electronic and paper-based data is accessible to the Medicaid Program. Additionally, an agreement is to be developed effective October 1, 2004, with the department to provide the administrative and day-to-day operational support for the agency. A plan for the orderly relocation of the non-central office staff of the Agency for Persons with Disabilities to the area offices of AHCA is to be developed.

Any pending judicial or administrative proceedings on October 30, 2004, are not affected by this act. The Agency for Persons with Disabilities is to be substituted as the real party of interest in respect to any pending proceeding.

The Office of Program Policy and Government Accountability must identify and evaluate statewide entities receiving state funding to address interests of individuals with disabilities, excluding entities providing direct services, to determine the level of coordination, the similarities and differences in these entities, the level of funding provided to these entities the uses of the funds, and whether duplication of efforts exist. A report is to be completed and provided to the Governor and Legislature by December 2005.

Sexual Misconduct

The bill prohibits an employee of the department, the Agency for Persons with Disabilities, or the Agency for Healthcare Administration from engaging in sexual misconduct with a client (a person in the care of the department or Agency for Persons with Disabilities 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.

The bill creates three new sections [s. 393.135, s. 394.4593, and s. 916.1075, F.S.] of statute that prohibit sexual misconduct by employees with certain clients who receive services provided by the Agency for Persons with Disabilities, Agency for Health Care Administration, and the Mental Health program 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 commits a felony of the second degree that is punishable as provided in s. 775.082, s. 775.083, or s. 775.084, 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.

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 to 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 either the department's or Agency for Persons with Disabilities' 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 an 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 s. 775.082, or s. 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 s. 775.082, or s. 775.083, or s. 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 stipulates that the provisions and penalties being established by this section are applied against an employee in addition to any other civil, administrative, or criminal sanction available under current law.

Sections 435.03, and 455.04, F.S., pertaining to employee background screening requirements are amended by the bill to include sexual misconduct as an offense banning employment. This bill also amends s. 943.0585 and s. 943.059, F.S., to incorporate the revisions to ch. 393, F.S., definitions section amended with the establishment of the Agency for Persons with Disabilities and to prohibit the court-ordered expunction and sealing of criminal history records relating to the sexual misconduct of an employee as specified by of s. 393.135, s. 394.4593, or s. 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 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.

The bill reenacts 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, 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.

Law Enforcement Receipt of Medical Reports

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

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

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.

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 the department 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

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. All parenting courses are to be available for any parent in any area of the state. 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 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.

Falsification of Records

Section 839.13, F.S., is modified by the bill to apply the criminal act of falsifying records to the creation a false document, in addition to falsifying an existing document.

Education of Children Adjudicated Dependent

The bill creates a new s. 39.0016, F.S., for the education of abused and neglected children and requires the Department of Children and Families to enter into an interagency agreement with the Department of Education to provide educational access to children known to the department. To achieve this goal, the agreement is to facilitate the delivery of services, avoid duplication of services, and combine resources to maximize the availability or delivery of services. “Children known to the department” is defined in the bill for the purposes of this section as children who are dependent or in shelter care.

The Department of Children and Families is directed to enter into interagency agreements with district school boards or other local educational entities relative to the education and related services for children known to the department who are school-age or, if younger than school-age, qualify for school district services. The bill sets forth the minimum requirements for the department and school boards that are to be stipulated in the interagency agreements. The requirements of the department are to include the following: enrollment of a child in school or

continuation of enrollment in the same school, if possible, to avoid disruption in the child's education; provision of the name and phone number of the child's caregiver and caseworker to the school and school district; a protocol for sharing of department information with the school district, which is to be consistent with the Family Educational Rights and Privacy Act; and notification to the school district of when a child's case plan will be developed or reviewed to provide the school district with an opportunity to participate in this case planning process so that information from the school may be provided if appropriate.

The requirements of the school district are to include the following: communication to the department on the services and information available from the school district that would facilitate educational access; identification of the educational and other services available through the school or school district that the school district believes are reasonably necessary to meet the educational needs of the child; a determination as to whether transportation is available if such transportation would prevent a change in school assignments that was the result of a change in residential placements; direction to assess the availability of federal, charitable, or grant funding for transportation that would enable the children's continued enrollment in the same schools; and provision of either an individual educational plan (for a student with disabilities) or an individual student intervention plan if intervention services are determined necessary, which is to include strategies to enable the child to maximize the attainment of educational goals.

The Department of Children and Families and school districts are required by the interagency agreements to cooperate in accessing services and supports needed for an appropriate education by a child who has or is suspected of having a disability, consistent with the Individuals with Disabilities Education Act and applicable state laws, rules, and assurances. The coordination of services for these children is to include a referral to screening, sharing of evaluations, provision of education and related services needed by the child, coordination of service plans to avoid duplicative or conflicting plans, appointment of a surrogate parent by the school district who will remain the surrogate parent throughout the state's custody of the child, and transitional planning for adolescent foster children that meets the requirements of the local school district.

The Department of Children and Families is also directed to incorporate training that would enhance all parties' understanding of the educational needs of the children including training for the for the surrogate parents, for parents or preadoptive parents, for caseworkers, and for foster parents. The training incorporated into the department's training program is to be coordinated with the Department of Education and local school districts and school personnel are to be provided with the opportunity to participate in any of the offered training.

The bill specifically stipulates that the provisions of s. 39.0016, F.S., establish goals, not rights, and that this section cannot be interpreted to require a service or an expansion of services beyond existing appropriations. The bill states that a cause of action against the state or its subdivisions, agencies, contractors, or subcontractors may not be maintained based on this section becoming law or for the Legislature not adequately funding the achievement of the goals. There is specifically no requirement by this section for the expenditure of funds to meet the goals of the bill other than any funds specifically appropriated for such purpose.

Section 1002.22(3)(d), F.S., is amended by the bill to permit the release of educational records to the Department of Children and Families or a community-based care lead agency, consistent with the Family Educational Rights and Privacy Act.

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.

Effective Date

Except as otherwise provided in the bill, 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:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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.

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 Governor and the Department of Children and Families report that there will be no fiscal impact associated with this bill. However, the organizational structure proposed for

the new agency includes the positions of Deputy Director of Staff, General Counsel, Senior Attorney, Inspector General, and a Deputy Director of Operations and their staffs. Offices of Legislative Affairs, Communications, Administrative Services, and Information Technology are also proposed. These offices and positions are not currently established in the Developmental Disabilities program.

Relative to the sexual misconduct provisions, there may 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 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.

The bill provides that the Department of Children and Families' training set forth in the "Education of Children Adjudicated Dependent" section includes a number of new training components for which the department identified a fiscal impact of $205,000 for the first year but noted that these costs can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.