

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Judiciary Committee

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BILL: SB 2062

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Persons with Developmental Disabilities

DATE: April 11, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	<b>Favorable</b>
2.	Boland	Maclure	JU	<b>Pre-meeting</b>
3.			BC	
4.				
5.				
6.				

**I. Summary:**

Currently, the Agency for Persons with Disabilities is required to provide, through its licensing authority and by rule, requirements for monitoring foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs that serve agency clients. There has been debate among scholars in this field as to whether residential service providers should, or even can, prohibit the use of pornography in residential facilities that serve clients of the Agency for Persons with Disabilities (agency or APD). A quality assurance tool now in use clarifies for inspectors that faith-based providers have the authority to establish rules that prevent residents from viewing objectionable materials. Concern exists, however, that absent specific direction, the agency's interpretation of this issue may change over time. The bill prohibits the imposition of monitoring requirements that would mandate the availability of pornographic materials in residential facilities serving clients of the agency.

The bill requires that in proceedings for involuntary placement, the court must order the person to the agency for placement in an appropriate facility, and may not release the person directly to a residential service provider. The agency is authorized to move the person from one facility to another and must notify the court and the person's counsel with 30 days after the transfer is completed.

The bill requires the agency to ensure there are a sufficient number of civil facilities providing community-based training for defendants who are charged with sex offenses. Also, if the agency determines that there are two or fewer facilities available to provide this type of training to defendants charged with sex offenses, the agency must immediately procure additional facilities.

The bill establishes a task force to provide input to APD for the creation of guidelines and procedures for providers of residential services relating to sexual activity among the residents of its facilities. The agency will provide administrative support for the task force, and the task force must issue a report to the President of the Senate and the Speaker of the House of Representatives by November 1, 2011.

This bill substantially amends ss. 393.067, 393.11, 916.1093, and 916.3025, F.S., and creates an unnumbered section of Florida law.

## II. Present Situation:

### Background

In December 2010, the St. Petersburg Times reported<sup>1</sup> on the case of Kevin Rouse, a 42-year-old mentally retarded client of the Agency for Persons with Disabilities (agency or APD) who is involuntarily committed to the Human Development Center (HDC) in Seffner, Florida. Mr. Rouse was placed at the facility for developmentally disabled men by the court after he was accused of committing a sexual offense.

Mr. Rouse's mother alleges that HDC promotes sexual activity among its residents and that her son, as part of his treatment plan, was encouraged to participate — against his and her religious convictions and desires — in such sexual activity.<sup>2</sup> The HDC responded that its policy respects the rights of the developmentally disabled to safely engage in consensual sexual activity.<sup>3</sup> Others in the field express divergent opinions on the ability of residents living in group homes housing sexual offenders to consent to sexual activity.<sup>4</sup>

In addition, Ms. Rouse's request to APD that her son be transferred to another facility was not honored.<sup>5</sup> The agency indicated that the only other available facility was located even further from Mr. Rouse's family than HDC, and that HDC is one of the few facilities in the state that is willing to provide services to sex offenders.<sup>6</sup>

The New Horizons Group Home in Brandon was cited during a licensure inspection in 2005 for failure to allow its residents to watch movies that were R or X-rated. The inspector felt that this house rule restricted the residents from fully exercising their rights.<sup>7</sup> The agency reports that the quality assurance tool now in use clarifies for inspectors that faith-based providers, such as New Horizons, have the authority to establish rules that prevent residents from viewing objectionable

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<sup>1</sup> Justin George, *Group home's unorthodox sex policy disquiets mother*, St. Petersburg Times, December 19, 2010, available at <http://www.tampabay.com/news/publicsafety/crime/group-homes-unorthodox-sex-policy-disquiets-mother/1140717> (last visited April 5, 2011).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Testimony by Jim DeBeaugrine, Director, Agency for Persons with Disabilities, before the Senate Committee on Children, Families, and Elder Affairs, February 8, 2011.

<sup>7</sup> E-mail from Logan McFaddin, Legislative Affairs Director, Agency for Persons with Disabilities, March 16, 2011 (on file with the Senate Committee on Children, Families, and Elder Affairs).

materials.<sup>8</sup> Concern exists, however, that absent specific direction, the agency's interpretation of this issue may change over time.

The Arc<sup>9</sup> notes that community services for developmentally-disabled persons charged with sexual offenses are virtually nonexistent.<sup>10</sup> Further,

Society is uncomfortable recognizing that people with disabilities are sexual beings and have the same needs for affection, intimacy and sexual gratification as those without disabilities. Providing good sex and relationship education and ample opportunities for sexual expression should be a high priority for parents, disability advocates, community agencies and all those who know or work with people with intellectual disabilities.<sup>11</sup>

The Agency for Persons with Disabilities (APD) was to have promulgated guidelines relating to sexual activity among residents of its facilities more than two years ago,<sup>12</sup> but has not yet done so.<sup>13</sup>

### **Monitoring Requirements**

Section 393.067, F.S., requires APD to provide, through its licensing authority and by rule, requirements for monitoring foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs that serve agency clients.

### **Involuntary Admission to Residential Services**

Pursuant to ss. 393.11 and 916.3025, F.S., a person may be involuntarily admitted to a residential facility for treatment after criminal proceedings against the individual are resolved and the court finds that the person needs continuing residential services. The need for services may be because (a) the person lacks ability to consent for voluntary admission and lacks sufficient basic self-care skills to ensure he or she is not a danger to self; or (b) the person would be a danger to himself or others.

The statutes appear to allow a court to commit the person to the custody of a facility. It has been reported that this provision has made it difficult for the agency to transfer a resident to another facility should the need arise.<sup>14</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> The Arc describes itself as “the largest national community-based organization advocating for and serving people with intellectual and developmental disabilities and their families.” See the organization’s website, <http://www.thearc.org/page.aspx?pid=2335> (last visited April 11, 2011).

<sup>10</sup> The Arc, Q&A: People with Intellectual Disabilities and Sexual Offenses, August 2009, <http://www.thearc.org/page.aspx?pid=2456> (last visited April 5, 2011).

<sup>11</sup> *Id.*

<sup>12</sup> See George, *supra* note 1.

<sup>13</sup> Testimony by Jim DeBeaugrine, Director, Agency for Persons with Disabilities, before the Senate Committee on Children, Families, and Elder Affairs, February 8, 2011.

<sup>14</sup> *Id.*

## UCEDDs

University Centers for Excellence in Developmental Disabilities Education, Research, and Service (UCEDD) are funded by the federal Administration on Developmental Disabilities.<sup>15</sup> There are currently 67 UCEDDs throughout the country, including two in Florida.<sup>16</sup> The centers work with people with disabilities, members of their families, state and local government agencies, and community providers in projects that provide training, technical assistance, service, research, and information sharing, with a focus on building the capacity of communities to serve all.<sup>17</sup>

### III. Effect of Proposed Changes:

Currently, the Agency for Persons with Disabilities (agency or APD) is required to provide, through its licensing authority and by rule, requirements for monitoring foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs that serve agency clients.<sup>18</sup> The bill prohibits the imposition of monitoring requirements that would mandate the availability of pornographic materials in residential facilities serving clients of APD.

The bill provides that the agency shall ensure that there are a sufficient number of civil facilities providing community-based training for defendants charged with sex offenses so that alternative placement options are available. Furthermore, the bill requires that when the agency determines that there are two or fewer facilities available to provide community-based training for defendants charged with sex offenses, the agency shall immediately procure additional facilities.

The bill requires that in proceedings for involuntary admission pursuant to s. 393.11, F.S., or s. 916.3025, F.S., the court must order the person to the agency for placement in an appropriate facility, and the court may not release the person directly to a residential service provider.

The statutes appear to allow a court to commit a person to the custody of a facility. It has been reported that this provision has made it difficult for the agency to transfer a resident to another facility should the need arise.<sup>19</sup> The bill provides that the agency is authorized to move a person from one facility to another and must notify the court and the person's counsel of the transfer within 30 days after the transfer is completed.

The bill provides that the Legislature recognizes the rights of the developmentally disabled to lead full and rewarding lives, and its obligation to protect vulnerable adults from sexual abuse. In order to address these complexities, the bill establishes a task force to provide input to APD for

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<sup>15</sup> The national network of UCEDDs is authorized under Public Law 106-402 (The Developmental Disabilities Assistance and Bill of Rights Act of 2000 or "DD Act").

<sup>16</sup> The two UCEDD facilities in Florida are at the Mailman Center for Child Development at the University of Miami Miller School of Medicine, and at the Florida Center for Inclusive Communities at the University of South Florida in Tampa. A complete listing of the centers is available at <http://www.acf.hhs.gov/programs/add/adddocs/uceddstxt.pdf> (last visited April 5, 2011).

<sup>17</sup> Association of University Centers on Disabilities, *About UCEDD*, available at <http://www.aucd.org/template/page.cfm?id=667> (last visited April 5, 2011).

<sup>18</sup> Section 393.067, F.S.

<sup>19</sup> See *Supra* note 13.

the creation of guidelines and procedures for providers of residential services relating to sexual activity among the residents of its facilities. The task force is composed of the following members:

- The director of the Agency for Persons with Disabilities or his or her designee.
- The director of Adult Protective Services in the Department of Children and Family Services.
- The executive director of The Arc of Florida.
- An Arc of Florida family board member appointed by the executive director of The Arc of Florida.
- The chair of the Family Care Council Florida.
- A parent representative from the Family Care Council Florida appointed by the chair of the Family Care Council Florida.
- A representative from the Developmental Disabilities Council.
- A representative from Disability Rights Florida.
- A representative from the Florida courts.
- A representative from the Florida Prosecuting Attorneys Association.
- A representative from the Florida Public Defender Association.
- A staff member of the University Center for Excellence in Developmental Disabilities at the University of South Florida/Center for Inclusive Communities.
- A self-advocate.

The members of the task force must hear from self-advocates, family members, experts at universities and colleges, and other entities with expertise pertinent to this issue.

Members of the task force serve without compensation, but are entitled to per diem and travel as provided in s. 112.061, F.S. The agency is to provide administrative support for the task force, and the task force must report its findings to the President of the Senate and the Speaker of the House of Representatives by November 1, 2011.

The bill provides an effective date of July 1, 2011.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The members of the task force are entitled to per diem and travel expenses related to their service, and the agency is to provide administrative support for the task force established in the bill. The fiscal impact to APD is expected to be minimal.<sup>20</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The APD notes that as relates to the requirement that it ensure sufficient facilities for defendants charged with sexual offenses (section 3 of the bill):

The term “sufficient” is not defined. The Agency can assist private providers to create community based placements for persons charged with sex offenses[,] but APD cannot require a private provider to admit nor provide services to any consumer that the provider does not feel would be appropriate for their residential facility.<sup>21</sup>

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.

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

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<sup>20</sup> Agency for Persons with Disabilities 2011 Bill Analysis SB 2062, March 24, 2011 (on file with the Senate Committee on Judiciary).

<sup>21</sup> *Id.*