

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SPB 7080

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: Persons with Developmental Disabilities

DATE: March 18, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

Proposed Senate Bill 7080 prohibits the imposition of monitoring requirements that would mandate the availability of pornographic materials in residential facilities serving clients of the Agency for Persons with Disabilities (agency or APD).

The bill requires that in proceedings for involuntary placement or conditional release, the court must order the person to the agency for placement in an appropriate facility, and may not release the person to a residential service provider. The agency is authorized to move the person from one facility to another and must notify the court when it does so.

SPB 7080 requires the agency to ensure there are sufficient community-based placements for defendants who are charged with sex offenses.

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, which will issue a report to the Legislature by November 1, 2011.

This bill substantially amends ss. 393.067, 393.11, 916.1093, 916.3025, 916.304, F.S., and creates an unnumbered section of Florida law.

II. Present Situation:

Background

In December 2010, the St. Petersburg Times reported¹ on the case of Kevin Rouse, a 42 year old mentally retarded client of the agency, 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 religious convictions and desires and hers.² HDC responds that their policy respects the rights of the developmentally disabled to safely engage in consensual sexual activity.³ Others in the field express divergent opinions on the ability of residents living in group homes housing sexual offenders to consent to sexual activity.⁴

In addition, Mrs. Rouse's request to APD that he be transferred to another facility was not honored.⁵ 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.⁶

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.⁷ 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 which prevent residents from viewing objectionable materials.⁸ Concern exists, however, that absent specific direction, the agency's interpretation may change over time.

The ARC notes that community services for developmentally-disabled persons charged with sexual offenses are virtually nonexistent.⁹ 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

¹ *Group home's unorthodox sex policy disquiets mother.* St. Petersburg Times, December 17, 2010.

² *Group home's unorthodox sex policy disquiets mother.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

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

⁷ E-mail from Logan McFaddin, Legislative Affairs Director, Agency for Persons with Disabilities, March 16, 2011 (on file with the Committee).

⁸ *Id.*

⁹ Q&A People with Intellectual Disabilities and Sexual Offenses. August 2009. The ARC. Available at <http://www.thearc.org/page.aspx?pid=2456> (last visited March 18, 2011).

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.¹⁰

APD was to have promulgated guidelines relating to sexual activity among residents of its facilities over two years ago,¹¹ but has not yet done so.¹²

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.¹³

Conditional Release

Pursuant to s. 916.304, F.S., a court may order the conditional release of any defendant found incompetent to proceed due to mental retardation or autism for community-based training based on an approved plan. The plan must include special provisions for residential care and supervision of the defendant and recommended auxiliary services. The court must enumerate the conditions of release, which is binding upon the defendant.

III. Effect of Proposed Changes:

Proposed Senate Bill 7080 prohibits the imposition of monitoring requirements that would mandate the availability of pornographic materials in residential facilities serving clients of the Agency for Persons with Disabilities.

SPB 7080 requires that when two or fewer community placements the agency to ensure there are sufficient community-based placements for defendants who are charged with sex offenses.

¹⁰ *Id.*

¹¹ *Group home's unorthodox sex policy disquiets mother.*

¹² Testimony by Jim DeBeaugrine, Director, Agency for Persons with Disabilities, before the Senate Committee on Children, Families, and Elder Affairs, February 8, 2011.

¹³ *Id.*

The bill requires that in proceedings for involuntary admission pursuant to s. 393.11, F.S., involuntary commitment pursuant to s. 916.3025, F.S., or conditional release, pursuant to s. 916.304, F.S., the court must order the person to the agency for placement in an appropriate facility, and may not release the person to a residential service provider.

The agency is authorized to move the person from one facility to another and must notify the court when it does so.

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 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, Inc.
- 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.

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 act is effective July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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.

APD notes that there may be a fiscal impact associated with Section 5 of the bill. See “Technical Deficiencies.”

VI. Technical Deficiencies:

The Agency for Persons with Disabilities notes as to Section 5 of the bill:¹⁴

When a person is conditionally released to the community for competency training, the court imposes conditions on the "person" to comply with the court's requirements. If the person fails to comply with those conditions, the court may impose further conditions or make a finding that the person now meets the criteria for secure placement for competency training.

However, if the court is required under a conditional release to release a person to the Agency for civil placement, then the court is imposing conditions on the Agency, instead of the person. While a criminal charge is pending, due process requires that the defendant comply with court orders. This language would shift due process requirements away from the defendant and force the Agency into a

¹⁴ Agency for Persons with Disabilities 2011 Bill Analysis SB 7080, March 18, 2011 (on file with the Committee).

posture of sharing responsibility for compliance with criminal court conditional release orders with a criminal defendant.

In addition, a conditional release to the Agency would require the Agency to provide services to a criminal defendant beyond simply competency training, such as residential habilitation, behavioral services, medical services. These defendants may not qualify for APD services and may not be entitled to such services, and would, in essence, be receiving such services ahead of individuals who have been determined eligible and placed on the APD waiting list to receive them by the fact that they have committed a crime.

The fiscal impact is projected to be extensive if the Agency is required to serve persons who do not meet the criteria for a developmental disability. The proposed change will create expectations within the judicial system that APD will be required to fund placement of defendants to comply with orders, and the Agency currently has no additional funding for this purpose.

VII. Related Issues:

APD notes¹⁵ 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 also cannot force private group home providers to render specific services nor serve specific individuals. The proposed language could put the Agency at risk of failure to comply with a statutory requirement if new facilities are not able to be "procured."

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.

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

¹⁵ *Id.*