

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 Judiciary Committee

BILL: CS/SB 2054

INTRODUCER: Children, Families, and Elder Affairs Committee and Children, Families, and Elder Affairs Committee

SUBJECT: Domestic Violence

DATE: February 15, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	Fav/CS
2.	O'Connor	Cibula	JU	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill makes statutory changes to conform to proviso included in the FY 2011-2012 General Appropriations Act (GAA).¹

The bill revises the duties and functions of the Department of Children and Family Services (DCF or department) relating to the domestic violence program. Specifically, the bill:

- Limits the department's role in certification of domestic violence shelters to initial certification, suspension and revocation. Ongoing certification of domestic violence shelters will be performed by the Florida Coalition Against Domestic Violence (FCADV or coalition).
- Requires the department to partner with the FCADV to coordinate and administer the statewide activities related to the prevention of domestic violence.
- Requires the department to contract with the coalition for the delivery and management of services for the state's domestic violence program.

¹ SB 2000 (2011 Reg. Session).

- Eliminates certification of batterers' intervention programs as well as the authority for the department to collect fees associated with the certification program.

This bill substantially amends ss. 39.902, 39.903, 39.904, 39.905, 381.006, 381.0072, 741.281, 741.2902, 741.30, 741.316, 741.32, 741.325, 948.038, and 938.01, creates s. 39.9035, and repeals s 741.327, Florida Statutes.

II. Present Situation:

The initiative to transfer multiple functions related to domestic violence from the department to the FCADV was first introduced in the Governor's budget recommendations for the 2011-12 fiscal year. The bill to carry out the transfer was not enacted during the 2011 Legislative Session.² However, proviso language was added to the General Appropriations Act giving the coalition funding and authority to implement statutory directives contained in Chapter 39, F.S., relating to the domestic violence program. The department negotiated a contract with the coalition to perform these tasks, which was effective July 1, 2011.

Domestic Violence Program

The department has historically been responsible for the statewide domestic violence program, which provides supervision, direction, coordination, and administration of activities related to domestic violence prevention and intervention services.³ Specifically, the department was required to:

- Develop criteria for the approval or rejection of certification or funding of domestic violence centers.
- Develop minimum standards for domestic violence centers to ensure the health and safety of the clients in the centers.
- Receive and approve or reject applications for certification of domestic violence centers.
- Evaluate each certified domestic violence center annually to ensure compliance with the minimum standards. The department has the right to enter and inspect the premises of certified domestic violence centers at any reasonable hour in order to effectively evaluate the state of compliance of these centers.
- Promote the involvement of certified domestic violence centers in the coordination, development, and planning of domestic violence programming in the districts and the state;
- Serve as a clearinghouse for information relating to domestic violence.
- Enlist the assistance of public and voluntary health, education, welfare, and rehabilitation agencies in a concerted effort to prevent domestic violence and to treat persons engaged in or subject to domestic violence.
- Develop and provide educational programs on domestic violence for the benefit of the general public, persons engaged in or subject to domestic violence, professional persons, or

² HB 5309 was heard only in the House Health Care Appropriations Subcommittee and the House Appropriations Committee. A bill addressing these issues was not filed in the Senate.

³ Section 39.903, F.S.

others who care for or may be engaged in the care and treatment of persons engaged in or subject to domestic violence.⁴

Florida Coalition Against Domestic Violence

The department was also required to contract with a statewide association whose primary purpose is to represent and provide technical assistance to certified domestic violence centers. This association implements, administers, and evaluates all services provided by the certified domestic violence centers.⁵

The coalition serves as the professional association for the state's 42 certified domestic violence centers and is the primary representative of battered women and their children in the public policy arena.⁶ Funding sources for the coalition have included the federal Family Violence Prevention Services Act,⁷ the federal Violence Against Women Act,⁸ membership fees, private donations, and funds from the state. The coalition administers state and federal funding earmarked to the 42 domestic violence centers in the state.

Effective January 1, 2004, the coalition became responsible for approving or rejecting applications for funding and contracting with certified centers. In order to receive state funds, a center must obtain certification by the state. However, the issuance of certification does not obligate the coalition to provide state funding. The coalition monitors the centers fiscally and programmatically under their new authority to administer funds. This review process also includes a review of a center's compliance with rules and laws.

Domestic Violence Centers

Domestic violence centers are community-based agencies that provide services to the victims of domestic violence. Minimum services include temporary emergency shelter; information and referrals; safety planning, counseling, and case management; a 24-hour emergency hotline; educational services for community awareness; assessment and appropriate referral of resident children; and training for law enforcement officers and other professionals.⁹

Domestic violence centers have been required to be certified since 1978.¹⁰ The department is responsible for monitoring certification on an annual basis to ensure that the certified centers

⁴ *Id.*

⁵ *Id.*

⁶ In 1977, 14 shelters in Florida formed a network of battered women's advocates known as the Refuge Information Network. Several years later, this initial organization was incorporated as the Florida Coalition Against Domestic Violence. The Coalition, like the Network, was founded on principles of cooperation and unity among shelters. Members share the goal of ending domestic violence through community education, public policy development and services for victims. Retrieved January 9, 2012 from <http://www.fcadv.org/>

⁷ 42 U.S.C.A. s. 10401.

⁸ 42 U.S.C.A. s. 13701.

⁹ Section 39.905, F.S.

¹⁰ Chapter 78-281, Laws of Fla.

continue to remain in compliance with the standards for certification.¹¹ A domestic violence center must be certified in order to receive funding.¹²

Batterers' Intervention Programs

The department has been responsible for certifying batterers' intervention programs since 2001.¹³ The Office for Certification and Monitoring of Batterers' Intervention Programs was created in the Department of Corrections in 1995 and transferred to the department in 2001¹⁴ for the purpose of uniformly and systematically standardizing programs to hold those who perpetrate acts of domestic violence responsible for those acts and to ensure safety for victims of domestic violence.¹⁵

Section 741.325, F.S., requires the department to promulgate guidelines setting forth certain requirements of the programs. Those guidelines require programs to:

- Have a primary purpose of victims and their children, if present;
- Hold batterers accountable for acts of domestic violence;
- Be at least 29 weeks in length and include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming;
- Be a psychoeducational model that employs a program content based on tactics of power and control by one person over another; and
- Have facilitators, supervisors, and trainees who meet certification requirements established by the program.

Several sections of statute authorize or require judges to order an offender to participate in a batterers' intervention program. For example, section 948.038, F.S., provides that as a condition of probation, community control, or any other court-ordered community supervision, a judge must, with certain exceptions, order a person convicted of an offense of domestic violence to attend and successfully complete a batterers' intervention program. This section requires that the batterers' intervention program be certified under section 741.32, F.S., and the offender must pay the cost of attending the program.

Fees

The department was authorized to assess and collect fees for the certification of batterers' intervention programs as follows:¹⁶

- An annual certification fee not to exceed \$300 for the certification and monitoring of batterers' intervention programs; and

¹¹ Section 39.903(1)(d), F.S.

¹² Section 39.905(6)(a), F.S.

¹³ Section 741.325, F.S.

¹⁴ Chapter 95-195, Laws of Fla., created the office in the Department of Corrections. Chapter 2001-183, Laws of Fla., transferred the office to the department.

¹⁵ Section 741.325, F.S.

¹⁶ Section 741.327, F.S.

- An annual certification fee not to exceed \$200 for the certification and monitoring of assessment personnel providing direct services to persons who:
 - Are ordered by the court to participate in a domestic violence prevention program;
 - Are adjudged to have committed an act of domestic violence as defined in section 741.28, F.S.;
 - Have an injunction entered for protection against domestic violence; or
 - Agree to attend a program as part of a diversion or pretrial intervention agreement by the offender with the state attorney.¹⁷

In addition, all persons required by the court to attend domestic violence programs certified by the department are required to pay an additional \$30 fee for each program to the department.¹⁸ The fees assessed and collected under this section are deposited in the Executive Office of the Governor's Domestic Violence Trust Fund¹⁹ and directed to the department to fund the cost of certifying and monitoring batterers' intervention programs.²⁰

III. Effect of Proposed Changes:

The bill maintains the department's operation of the domestic violence program, but requires the department to contract with the coalition to perform specific duties currently performed by the department.

Responsibilities of the department under the bill include:

- Developing criteria for the approval, suspension, or rejection of certification of domestic violence centers;
- Developing minimum standards for domestic violence centers;
- Receiving and approving or rejecting applications for **initial** certification of domestic violence centers;²¹
- Having the authorization to enter and inspect at any reasonable hour the premises of domestic violence centers applying for initial certification;
- Coordinating with state agencies that have health, education, or criminal justice responsibilities to raise awareness of domestic violence and promote consistent policy implementation;
- Entering into partnerships with the coalition to coordinate and administer statewide activities related to the prevention of domestic violence; and
- Considering and awarding applications from certified domestic violence centers for capital improvement grants pursuant to section 39.9055, F.S.

Responsibilities of the coalition under the bill include:

¹⁷ *Id.*

¹⁸ *Id.* The intent that the programs be user-fee funded with fees from the batterers who attend the program as payment for programs is important to the batterer taking responsibility for the act of violence. An exception is made for those local, state, or federal programs that fund batterers' intervention programs in whole or in part.

¹⁹ Section 741.01, F.S.

²⁰ The department has indicated that the current fee collections do not support the cost associated with the certifying and monitoring batterers' intervention programs.

²¹ Certification will be renewed annually by the department upon a favorable monitoring report by the coalition.

- Having the authorization to enter and inspect the premises of certified domestic violence centers for monitoring purposes;
- Delivering and managing services for the state’s domestic violence program;²²
- Implementing, administering, and evaluating all domestic violence services provided by the certified domestic violence centers;
- Receiving and approving or rejecting applications for funding of certified domestic violence centers; and
- Evaluating certified domestic violence centers in order to determine compliance with minimum certification standards.

When approving funding for a newly certified domestic violence center, the coalition is required to make every effort to minimize any adverse economic impact on existing certified domestic violence centers or services provided within the same service area. In order to minimize duplication of services, the coalition must make every effort to encourage subcontracting relationships with existing certified domestic violence centers within the same service area. In distributing funds allocated for certified domestic violence centers, the coalition is required to use a formula approved by the department as specified in section 39.905(7)(a), F.S.

The bill also revises current law by:

- Creating a definition for the term “Coalition” to mean the Florida Coalition Against Domestic Violence;
- Requiring the coalition, rather than the department, to submit the annual report on the status of domestic violence in the state to the Legislature;²³
- Requiring a new center applying for certification in an area where a center already exists to demonstrate the unmet need by the existing center and describe efforts to reduce duplication of services;
- Requiring domestic violence centers to file with the coalition, rather than the department, the list of employees and volunteers who may claim a privilege to refuse to disclose confidential communications between a domestic violence victim and an advocate;
- Specifying that the coalition, rather than the department, will conduct annual food service inspection functions for domestic violence shelters and that the coalition will not apply the term “food service establishment” if the center does not prepare and serve food; and
- Eliminating the requirement that a batterers’ intervention program must be a certified program under section 741.32, F.S.²⁴

²² Services include, but are not limited to, the administration of contracts and grants.

²³ Section 39.905, F.S.

²⁴ Due to previous budget cuts, the department suspended the acceptance and approval of new applicants for certification as a batterer intervention program or as an assessor. Certifications for all currently certified programs and assessors in good standing were extended for one year. Retrieved January 6, 2012, from <http://www.dcf.state.fl.us/programs/domesticviolence/bip/bip.shtml>.

With respect to the batterers' intervention programs, the bill:

- Amends legislative intent relating to certifying batterers' intervention programs;
- Eliminates the role of the department related to the certification of these programs;
- Eliminates statutory references to certified batterers' intervention programs;
- Requires that batterers' intervention programs meet the requirements currently in law but removing the authority for the department to promulgate rules to establish these requirements; and
- Retains references to batterers' intervention programs in statute but eliminates references to the programs being certified by the department.

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:

The certification held by a domestic violence center is property that is protected by the state and federal constitutions. The Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, section 9 of the Florida Constitution provide that neither federal nor state governments can deprive any person of life, liberty, or property without the due process of law. The Legislature may choose to remove the language at lines 256-57, which states that “[t]he grant, denial, suspension, or revocation of certification does not constitute agency action under chapter 120.” This language may constitute a due process violation, as it removes the processes in place under chapter 120 that provide notice and an opportunity to be heard for those who wish to object to the denial, suspension or revocation of their certifications.²⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill repeals the requirement for providers of batterers' intervention programs to submit an initial application fee and annual certification fee to the department. Currently, the application fee is \$300 and the annual renewal fee is \$150 for batterers' intervention programs, and there is a \$100 application fee and a \$74 annual renewal fee for assessors.

²⁵ See *Oakcrest Early Education Center, Inc. v. Dept. of Children and Families*, 936 So. 2d 1174 (Fla. 5th DCA 2006).

The bill also repeals the requirement for persons court-ordered to attend batterers' intervention to pay an additional \$30 fee to the department.

B. Private Sector Impact:

See Tax/Fee Issues above.

C. Government Sector Impact:

The department reports that the General Appropriations Act (GAA) for the 2011-12 for fiscal year transferred \$951,851 of budget from the department to the coalition to perform certain duties rather than the department. The bill repeals the department's authority to collect fees; however, there is no fiscal impact because the department's budget for the batterer intervention program was not approved in the fiscal year 2011-12 GAA.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on January 25, 2012:

The committee substitute:

- Removes the phrase “as directed by the department” because this function is no longer a responsibility of the department;
- Clarifies that the coalition also delivers some services; and
- Narrows the scope of services to be implemented, administered, and evaluated by the coalition from “all” services to “domestic violence” services.

B. Amendments:

None.