

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 Committee on Children, Families, and Elder Affairs

BILL: SB 1232

INTRODUCER: Senator Baxley

SUBJECT: Public Assistance Fraud

DATE: January 19, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Pre-meeting
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1232 requires that excess funds recovered by the Department of Children and Families (DCF) from public assistance fraud be used exclusively by the department in its efforts to combat public assistance fraud. The bill requires DCF to develop a plan on how to use these funds, including the payment of awards to persons reporting fraud. The bill authorizes DCF to investigate public assistance fraud. Currently, DCF prevents and detects fraud, and recovers funds. The authority to investigate fraud is assigned to the Division of Public Assistance Fraud in the Department of Financial Services. The bill also designates DCF as a criminal justice agency for public assistance fraud investigations. This will allow DCF to access criminal histories of public assistance applicants and participate in specialized law enforcement training.

The bill could have a fiscal impact on the Department of Financial Services as it could increase public assistance fraud referrals from DCF. The bill has an effective date of July 1, 2018.

II. Present Situation:

Public Assistance Programs

The Department of Children and Families (DCF) operates the Economic Self-Sufficiency program, also known as ACCESS. There are five services within the Economic Self-Sufficiency program as described below.

- **Temporary Cash Assistance** provides cash assistance to families with children under the age of 18, or through age 18 if the 18-year-old is enrolled in high school full time. The program provides time-limited financial assistance and services intended to help families gain economic self-sufficiency. These families must meet the program's technical, income, and asset requirements.

- **Food Assistance Program** helps low income families meet their household nutritional needs by supplementing their purchasing power with a monthly benefit allotment based on the number of people in the household and how much money is left after countable expenses are subtracted. Families must meet the program's eligibility rules. Food assistance benefits may only be used to purchase groceries; they may not be used to purchase household items such as cleaning supplies, grooming items, tobacco, alcoholic beverages, or hot food.
- **Relative Caregiver Program** provides monthly cash assistance to relatives who have custody of a related child under age 18 who has been found to be dependent by a Florida court and placed in their home by a Community-Based Care Lead Agency. The monthly cash assistance amount is higher than a Temporary Case Assistance grant for one child, but less than the amount paid for a child in the foster care program.
- **Optional State Supplementation** is a state-funded public assistance program that provides a monthly cash payments to indigent elderly or disabled individuals who live in special non-institutional, residential living facilities, including assisted living facilities, adult family care homes and mental health residential treatment facilities.
- **Medicaid** provides medical coverage to low-income individuals and families and the Economic Self-Sufficiency program determines eligibility for all Medicaid program participants, except for individuals who receive federal Supplemental Security Income (SSI) payments, as these individuals are automatically Medicaid eligible. The Medicaid program is administered by the Agency for Health Care Administration.

In addition, the state investigates fraud resulting from Disaster Assistance/Emergency benefits, the School Readiness and Voluntary Pre-Kindergarten programs, and Social Security Disability benefits.¹

Public Assistance Fraud

Section 414.39, F.S., defines public assistance fraud as when someone fails to disclose information used to determine their eligibility for public assistance; fails to disclose a change in circumstances that would affect their eligibility; or aids another person in the commission of any such act, commits a misdemeanor or felony depending on the amount of the fraud.

Department of Children and Families

Section 414.39, F.S., also requires DCF to create an error-prone or fraud-prone case profile within its public assistance information system and shall screen each application for public assistance, including food assistance, Medicaid, and temporary cash assistance, against the profile to identify cases that have a potential for error or fraud. Each case so identified shall be subjected to pre-eligibility fraud screening. If funded to do so, DCF shall pay a reward to a person who furnishes and reports original information relating to a violation of the state's public assistance fraud laws. In 2011, DCF created the Public Benefits Integrity office to prevent and detect fraud, waste, abuse in the public assistance programs, as well as to recover benefits that

¹ Department of Financial Services, Division of Public Assistance Fraud website.
<https://www.myfloridacfo.com/division/PAF/> (last visited 1/18/18).

were erroneously paid. In Fiscal Year 2015-16, the office collected over \$22 million through benefit recovery.²

When benefits are overpaid, a claim is established by DCF detailing the dollar amount of benefits within each public assistance program the recipient household may have participated. The claim amounts to a federal debt that must be repaid by the household. Under existing public assistance program rules, a percentage of the federal claim may be retained by the state as an incentive to identify and recover overpaid benefits.³ The percentage of federal debt collected that the state may retain is known as the state-retained share of recoveries. The percentage retained varies based on the reason that benefits were overpaid in the first place.

Section 414.39 also allows DCF, subject to availability of funds, to pay a reward to a person who furnishes and reports original information relating to a violation of the state's public assistance fraud laws if:

- a report is made to DFS or the Department of Law Enforcement (FDLE),
- the information relates to criminal fraud upon public assistance program funds or a criminal violation of public assistance fraud laws by another person, or
- leads to the recovery of a fine, penalty, or forfeiture of property.

The reward may not exceed 10 percent of the amount recovered or \$500,000, whichever is less, in a single case. The reward shall be paid from the state share of the recovery in DCF's Federal Grants Trust Fund.

Department of Financial Services

Section 414.411, F.S., assigns the responsibility to investigate all public assistance fraud to the Department of Financial Services (DFS). DFS examines records and interviews persons who may have knowledge of public assistance fraud. All public assistance recipients must allow state agencies access to their past or present employers and records. DFS may administer oaths and affirmations, issue and serve subpoenas for the attendance of witnesses or the production of business records, books, papers, correspondences, memoranda, and other records. The Division of Public Assistance Fraud within DFS is considered a criminal justice agency. Such designation allows access to specialized training and to the state and federal criminal history databases.⁴ DFS public assistance fraud investigations can result in criminal prosecution based on a referral to a state attorney or administrative sanctions and recoveries in the commission of fraud. Currently DFS investigates less than 10% of the referrals made by DCF and the Office of Early Learning.⁵

III. Effect of Proposed Changes:

Section 1 amends s. 414.39, F.S., to clarify that the amount of the reward DCF may pay for information regarding public assistance fraud may not exceed 10 percent of the amount

² Office of Program Policy Analysis and Government Accountability, Government Program Summaries, available at <http://www.oppaga.state.fl.us/profiles/5047> (last visited 1/17/18).

³ Department of Financial Services Bill Analysis of HB 643. Dated 11/29/17. On file with the Senate Committee on Children, Families and Elder Affairs.

⁴ Florida Crime Information Center/National Crime Information Center

⁵ Department of Financial Services Bill Analysis of HB 643. Dated 11/29/17. On file with the Senate Committee on Children, Families and Elder Affairs.

recovered in full or \$500,000, whichever is less. Current law allows DCF to pay awards up to 10 percent of the amount recovered or \$500,000, whichever is less.

Section 2 amends s. 414.41, F.S., relating to recovered funds from public assistance fraud. The bill requires that excess funds in the Federal Grants Trust Fund be retained each year for use by DCF for its efforts to combat public assistance fraud. The bill allows such funds to be used to pay awards as well as pay for fraud prevention initiatives implemented by DCF. DCF will report to the legislature each October 1st what such initiatives accomplished in regards to the amount of awards paid and the outcome of fraud prevention activities. The bill requires such expenditures to be appropriated by the legislature. Currently, such funds can be requested through the legislative budget recommendation (LBR) by DCF.

Section 3 amends 943.045, F.S., to add DCF's office that combats public assistance fraud to the definition of a criminal justice agency. The office would need to demonstrate to FDLE and FBI that a majority (greater than 50%) percentage of the unit's budget and workload is dedicated to the administration of criminal justice as described in s. 943.045 (2), F.S. and 28 CFR 20.3 in order to be recognized as a criminal justice agency and be granted access to criminal justice information systems (FCIC/NCIC).⁶ Once the agency has submitted the required documentation, FDLE would review the information to ensure the requesting agency is performing the administration of criminal justice prior to submitting to the FBI for review and approval.⁷ It is unclear whether DCF's public assistance fraud office would qualify as a criminal justice agency.

The Code of Federal Regulation (28 CFR 20.3 (b)) Administration defines criminal justice as the performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.⁸ Section 943.045 (2), F.S., defines "Administration of criminal justice" as performing functions of detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders by governmental agencies. The administration of criminal justice includes criminal identification activities and the collection, processing, storage, and dissemination of criminal justice information by governmental agencies. If DCF's Public Benefits Integrity Office is able to qualify as criminal justice agency, it would be able to check the criminal background of public assistance applicants. Such information could help detect potential fraud. In addition, DCF personnel would be able to participate in specialized law enforcement training.

Section 4 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill would restrict the use of recovered funds from public assistance fraud in the DCF Federal Grants Trust Fund to activities contained in DCF's plan for improving its efforts to combat public assistance fraud.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

DCF collects between \$4 and \$7 million each year beyond the costs of its public assistance fraud recovery efforts.⁹ These funds are typically appropriated by the legislature for department priorities in the General Appropriations Act each year. The bill would limit the appropriation authority of the legislature by requiring these funds be spent pursuant to DCF's plan for improving its efforts to combat public assistance fraud.

The bill may have an impact on the DFS Public Assistance Fraud investigations. Currently, DFS currently investigates less than 10% of the suspected fraud referred to it by DCF and the Department of Education's Office of Early Learning.¹⁰ This is due to insufficient resources and staff. Enhancing detections could result in more cases referred by DCF.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁹ Department of Children and Families Bill Analysis of SB 1232. Dated 12/12/17. On file with the Senate Committee on Children, Families and Elder Affairs.

¹⁰ Department of Financial Services Bill Analysis of HB 643. Dated 11/29/17. On file with the Senate Committee on Children, Families and Elder Affairs.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 414.39, 414.41, and 943.045.

IX. Additional Information:

A. Committee Substitute – Statement of 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.
